U.S. Department of Justice
Executive Office for Immigration Review
Office of the General Counsel

5107 Leesburg Pike, Suite 2150
Falls Church, Virginia 22041

09/30/2022

Ms. Mahreen Rasheed
American Oversight
1030 15th Street NW
Suite B255
Washington, DC 20005

Re: 2022-41667

Dear Ms. Rasheed,

This letter is in response to your Freedom of Information Act (FOIA) request dated 04/20/2022 to the Executive Office for Immigration Review (EOIR) in which you seek

1. All records reflecting any formal or informal directive, order, advisory, memorandum, guidance, or final analysis regarding the issue or practice of creating immigration court dockets based upon returned or undeliverable notices or other mail.

2. All email communications (including emails, complete email chains, calendar invitations, and attachments thereto) sent by the following officials, or anyone communicating on their behalf such as a scheduler or assistant, containing any of the following key terms:
Key Terms:
i. “In absentia docket”
ii. “Dead letter”
iii. “Returned notice docket”
iv. “Returned notice hearing”
v. “Returned notice hearings”
Officials:
Executive Office for Immigration Review:
a. Chief Appellate Immigration Judge David Wetmore
b. Chief Immigration Judge Tracy Short
c. Director, Executive Office for Immigration Review (EOIR), David Neal
d. Acting Deputy Director, EOIR, Charles Adkins-Blanch
e. Assistant Director of the Office of Policy, EOIR, Lauren Alder Reid
f. Anyone acting as Assistant Director of the Office of Administration, EOIR, including, but not limited to, Michael Porter
g. Assistant Chief Immigration Judge Elizabeth L. Young
h. Assistant Chief Immigration Judge Matthew Kaufman

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i. Assistant Chief Immigration Judge Daren Margolin
j. Deputy Court Administrator Scott McDaniel
k. Regional Deputy Chief Immigration Judge Daniel Daugherty
l. EOIR Spokesperson Kathryn Mattingly
m. Principal Deputy Chief Immigration Judge Daniel Weiss
n. Regional Deputy Chief Immigration Judge Mary Cheng
o. Regional Deputy Chief Immigration Judge Shelia McNulty

In an effort to accommodate your office and reduce the number of potentially responsive records to be processed and produced, American Oversight has limited request item 2 to emails sent by the listed officials. To be clear, however, American Oversight still requests that complete email chains be produced, displaying both sent and received messages.

For both items 1 and 2, please provide all responsive records from January 1, 2021, through the date the search is conducted.
(Date Range for Record Search: From 1/1/2021 To 6/10/2022).

A search was conducted and one or more records responsive to your request were located. We are granting partial access to the responsive record(s).

Also, a search was conducted for responsive records for the Office of Administration and no records were located.

Portions of the enclosed records have been redacted in accordance with FOIA Exemption 5, 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency communications protected by the deliberative process privilege, attorney work-product doctrine, and/or the attorney-client privilege.

Additionally, portions of the enclosed records have been redacted in accordance with FOIA Exemption 6, 5 U.S.C. § 552(b)(6), which concerns material the release of which would constitute a clearly unwarranted invasion of the personal privacy of third parties.

Please be advised that we have considered the foreseeable harm standard when reviewing records and applying FOIA exemptions.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. *See* 5 U.S.C. § 552(c) (2006 & Supp. IV 2010). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist. *See* http://www.justice.gov/oip/foiapost/2012foiapost9.html.

We have classified you as an "other" requester. Requesters under the "other" classification are entitled to two free hours of search time. In this instance, we have waived all fees related to the processing of your request.

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You may contact the EOIR FOIA Public Liaison by e-mail at EOIR.FOIARequests@USDOJ.GOV or by telephone number (703) 605-1297 for any further assistance and to discuss any aspect of your request. Please reference the FOIA control number. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at (202) 741-5770; toll free at (877) 684-6448; or facsimile at (202) 741-5769.

If you are not satisfied with the Executive Office for Immigration Review's determination in response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 441 G Street, NW, 6th Floor, Washington, D.C. 20530, or you may submit an appeal through OIP's FOIA STAR portal by creating an account following the instructions on OIP's website: https://www.justice.gov/oip/submit-and-track-request-or-appeal. Your appeal must be postmarked or electronically transmitted within 90 days of the date of this response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

Jeniffer Perez Santiago
Attorney Advisor

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Wed, 27 Oct 2021 22:03:25 +0000
To: Daugherty, Daniel J (EOIR); Young, Elizabeth L. (EOIR)
Cc: Lin, Austin (EOIR); Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Attachments: [EXTERNAL] Time sensitive question about SF Courts, [EXTERNAL] Re: [EXT] Reporter questions
Importance: High

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

(b)(5)

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(b)(5)

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:
(b)(5)

End.

AMERICAN OVERSIGHT

From: Kopan, Tal
Sent: Wed, 27 Oct 2021 16:59:24 +0000
To: Mattingly, Kathryn (EOIR)
Cc: Fernandes, Deepa
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

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From: Tyche Hendricks
Sent: Wed, 27 Oct 2021 19:39:54 +0000
To: Mattingly, Kathryn (EOIR)
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
(b)(6) M

We've moved temporarily. You can find us at:
KQED
50 Beale Street, 5th Floor
San Francisco, CA 94105-1813
https://protect2.fireeye.com/v1/url?k=dc0cbdd4-83978498-dc0b9931-0cc47adca7cc-17239752ea1a849f&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=0eee002e-51753962-0ee924cb-0cc47adca7cc-c91695ca974fe6c6&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>

On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto:(b)(6)> wrote:

EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>

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Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) [(b)(6) mailto:(b)(6)]
Cc: EOIR, PAO (EOIR) [(b)(6) mailto:(b)(6)]
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized "returned notice" docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) <(b)(6) mailto:(b)(6)> wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

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Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir>>

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR) <(b)(6)<mailto:(b)(6)
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

Tyche

Tyche Hendricks

AMERICAN OVERSIGHT

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

(b)(6) M

We've moved temporarily. You can find us at:

KQED

50 Beale Street, 5th Floor

San Francisco, CA 94105-1813

https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F><https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D><https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>>>

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From: Mattingly, Kathryn (EOIR)
Sent: Thu, 20 Jan 2022 21:08:24 +0000
To: Barnes, Rob (EOIR); Kaltenbacher, Teresa A. (EOIR); Martin, John (EOIR); Montenegro, Gail (EOIR); Nance, Kelly (EOIR); St Jean, Amanda (EOIR)
Subject: FW: Comment on FOIA on returned notices

FYI.

From: Mattingly, Kathryn (EOIR)
Sent: Thursday, January 20, 2022 4:05 PM
To: Kopan, Tal <tal.kopan@sfchronicle.com>
Subject: RE: Comment on FOIA on returned notices

Hi Tal – Please see below. Best – Kathryn

BACKGROUND, not for attribution:

As we do not have a copy of what you are reviewing, we suspect some context is missing.

For an immigration judge to order a noncitizen removed *in absentia*, the respondent must have failed to appear for an immigration court hearing, the Department of Homeland Security must have proven the individual is removable under immigration law, and the judge must have verified that notice of the hearing was sent to the individual's most recent address on file.

When possible, courts may arrange for certain unrepresented respondents—such as those whose notices were returned to the court as "undeliverable"—another opportunity to have their day in court through reissuance of a hearing notice for a new hearing date. If the respondents again fail to appear, the immigration judge will again evaluate the specific facts and may order the individuals removed. Of course, some respondents will have provided updated contact information, receive the second notice, and appear. The ultimate result is fewer removal orders issued *in absentia* than would be issued without these specialized master calendar hearings.

EOIR is unable to confirm the legitimacy of the documents you forwarded. The FOIA office is the source for legitimate agency records.

From: Kopan, Tal <tal.kopan@sfchronicle.com>
Sent: Wednesday, January 19, 2022 8:53 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to

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check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.
Thanks!
Tal

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

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From: Mattingly, Kathryn (EOIR)
Sent: Thu, 28 Oct 2021 23:15:31 +0000
To: Alder Reid, Lauren (EOIR); Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: FW: [EXT] RE: Time sensitive question about SF Courts
Attachments: image001.jpg, image002.jpg

All – FYSA, and (b)(5)

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
To be clear, this is not a docket with the occasional returned notice, this is a docket specifically for only people with returned notices. Unless the court is denying that (although it said as much to liaisons and we've witnessed these hearings).
Are we able to initiate a statistics request? What do we need to give you to start that process?
Lastly this is on background as what? How may we attribute the info!
Thank you! Of course our editor just informed us they want to hold the story until Sunday, sigh, sorry I didn't know that sooner.

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
http://SFChronicle.com/Subscribe

On Oct 28, 2021, at 7:06 PM, Mattingly, Kathryn (EOIR) (b)(6) wrote:

Hello Tal – Please see below. Best – Kathryn

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BACKGROUND:

Immigration courts throughout the country continue to schedule master calendar hearings. Dockets may include cases in which hearing notices were returned to the court as "undeliverable." This is not new or unusual process.

A special statistics request, which would take at least 15 business days to process, would be necessary to obtain the San Francisco Immigration Court datasets you are seeking. Alternatively, you can find raw datasets through EOIR Case Data (September 2021).

For an *in absentia* removal order to be issued, the immigration judge must find that proper notice was given and that DHS has established removability. EOIR remains committed to ensuring that all who come before its courts will receive due process and a timely and fair adjudication, the outcome of which is based on the law.

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 2:30 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

As of now, we are planning to publish in the morning, so that would be too late to make it into the story. A response is always of use to us, but this is also about whether the Department of Justice wants to have a say in the story. I can let you know if for some reason our timing changes.
If you can't get a full response today, let me know if you could perhaps do a partial one.
Thanks!

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
<image001.jpg>

From: Kathryn Mattingly <(b)(6)>
Date: Thursday, October 28, 2021 at 2:27 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>

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Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Hi Tal,

I am continuing to work on your inquiry and hope to have a response today. If not, will a response still be of use to you
tomorrow?

Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 1:26 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Hi Kathryn! Just wanted to check in on whether you still think you can get us some answers today, and if you have a sense of timing.
Appreciate it!
Tal

From: Kathryn Mattingly <(b)(6)>
Date: Wednesday, October 27, 2021 at 4:17 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: [EXT] RE: Time sensitive question about SF Courts

Hello Tal,

I am working on your inquiry but will not be able to meet your short deadline. Will responses be of use to you tomorrow?

Thanks,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>

AMERICAN OVERSIGHT

Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
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Twitter: @TalKopan
SFChronicle.com/Subscribe
<image002.jpg>

San Francisco Chronicle

San Francisco Chronicle

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Fri, 29 Oct 2021 19:30:35 +0000
To: Alder Reid, Lauren (EOIR)
Cc: Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: FW: [EXT] RE: Time sensitive question about SF Courts

Lauren – I really have (b)(5)

(b)(5)

Draft:

(b)(5)

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Friday, October 29, 2021 3:23 PM
To: Mattingly, Kathryn (EOIR) < (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Do you have two minutes to jump on the phone? I think this is getting lost in email

Tal Kopan
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San Francisco Chronicle

From: Kathryn Mattingly < (b)(6)
Date: Friday, October 29, 2021 at 3:18 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Tal,

I am happy our raw datasets may be of use to you. For agency interpretation of that data, i.e., statistics, I am still able to submit a special statistics request. I would be happy to do my best to expedite the request, but I will not be able to get you something today to meet your deadline.

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Best,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Friday, October 29, 2021 2:35 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
Do you have a minute to jump on a call real quick? I think we actually made sense of the data, but I want to triple check I'm not misunderstanding anything.

Tal Kopan
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SFChronicle.com/Subscribe
San Francisco Chronicle

From: Kathryn Mattingly (b)(6)
Date: Friday, October 29, 2021 at 2:34 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Good afternoon Tal,

Thank you for letting me know that your story got held until Sunday.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

AMERICAN OVERSIGHT

Best,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
To be clear, this is not a docket with the occasional returned notice, this is a docket specifically for only people with returned notices. Unless the court is denying that (although it said as much to liaisons and we've witnessed these hearings).
Are we able to initiate a statistics request? What do we need to give you to start that process?
Lastly this is on background as what? How may we attribute the info!
Thank you! Of course our editor just informed us they want to hold the story until Sunday, sigh, sorry I didn't know that sooner.

Tal Kopan
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http://SFChronicle.com/Subscribe

On Oct 28, 2021, at 7:06 PM, Mattingly, Kathryn (EOIR) <(b)(6)> wrote:

Hello Tal – Please see below. Best – Kathryn

BACKGROUND:

Immigration courts throughout the country continue to schedule master calendar hearings. Dockets may include cases in which hearing notices were returned to the court as "undeliverable." This is not new or unusual process.

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A special statistics request, which would take at least 15 business days to process, would be necessary to obtain the San Francisco Immigration Court datasets you are seeking. Alternatively, you can find raw datasets through EOIR Case Data (September 2021).

For an *in absentia* removal order to be issued, the immigration judge must find that proper notice was given and that DHS has established removability. EOIR remains committed to ensuring that all who come before its courts will receive due process and a timely and fair adjudication, the outcome of which is based on the law.

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 2:30 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

As of now, we are planning to publish in the morning, so that would be too late to make it into the story. A response is always of use to us, but this is also about whether the Department of Justice wants to have a say in the story. I can let you know if for some reason our timing changes.
If you can't get a full response today, let me know if you could perhaps do a partial one.
Thanks!

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
<image001.jpg>

From: Kathryn Mattingly (b)(6)
Date: Thursday, October 28, 2021 at 2:27 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Hi Tal,

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I am continuing to work on your inquiry and hope to have a response today. If not, will a response still be of use to you
tomorrow?

Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 1:26 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Hi Kathryn! Just wanted to check in on whether you still think you can get us some answers today, and if you have a sense of timing.
Appreciate it!
Tal

From: Kathryn Mattingly <(b)(6)>
Date: Wednesday, October 27, 2021 at 4:17 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: [EXT] RE: Time sensitive question about SF Courts

Hello Tal,

I am working on your inquiry but will not be able to meet your short deadline. Will responses be of use to you tomorrow?

Thanks,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
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AMERICAN OVERSIGHT

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If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

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Twitter: @TalKopan
SFChronicle.com/Subscribe
<image002.jpg>

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From: Mattingly, Kathryn (EOIR)
Sent: Wed, 27 Oct 2021 20:05:16 +0000
To: Lampman, Zachary (EOIR) (CTR)
Subject: FW: [EXT] Reporter questions

I think we (b)(5)

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org>
Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
(b)(6) M

We've moved temporarily. You can find us at:
KQED
50 Beale Street, 5th Floor
San Francisco, CA 94105-1813
https://protect2.fireeye.com/v1/url?k=dc0cbdd4-83978498-dc0b9931-0cc47adca7cc-17239752ea1a849f&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=0eee002e-51753962-0ee924cb-0cc47adca7cc-c91695ca974fe6c6&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>

On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR)
(b)(6) r<mailto (b)(6) > wrote:

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EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) <(b)(6) <mailto:(b)(6)>>
Cc: EOIR, PAO (EOIR) <(b)(6) <mailto:(b)(6)>>
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized “returned notice” docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto:(b)(6)> wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

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Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir>>

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR) <(b)(6)<mailto:(b)(6)>>
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

AMERICAN OVERSIGHT

Tyche

Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

(b)(6) M

We've moved temporarily. You can find us at:

KQED

50 Beale Street, 5th Floor

San Francisco, CA 94105-1813

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dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>>>

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Wed, 10 Nov 2021 23:29:52 +0000
To: Fooshe, Alexis (EOIR)
Subject: FW: [EXT] Reporter questions

FYI. I will work on this on Monday. I (b)(5)

(b)(5)

I have no email from Joe on the FOIA either, so I'll ask Joe too.

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org>
Sent: Wednesday, November 10, 2021 5:51 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thank you for this. I have made three FOIA requests and am hoping for expedited processing.

I also have some questions about the dedicated docket and the San Francisco returned notice docket, especially in regard to this letter<https://protect2.fireeye.com/v1/url?k=0c8af163-5311c9b4-0c8dd586-0cc47adca7d0-2c123432f322166f&q=1&e=dcf069d5-4081-473a-8ad1-0c41ed568b1e&u=https%3A%2F%2Fdocs.google.com%2Fdocument%2Fd%2F1jptcY0XDWvX0fN-s045Uu52c1YcLiZRzcgX-gP2nMxo%2Fedit> that was sent last week by the San Francisco Bar Association and other advocates to Assistant Chief Immigration Judge Elizabeth Young.

I would like to request an interview for next week, in person or over Zoom or telephone, that I would record for radio broadcast. I request to speak with ACIJ Young or with an EOIR official who can address EOIR's response to the letter, as well as answer questions about the dedicated docket -- in particular the pace with which cases are moving and the difficulty respondents are encountering to find legal representation.

Thank you,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
Pronounciation: TIE-key HEN-dricks
415.553.2826 T
(b)(6) M

We're back in our reimagined headquarters. Come see us at KQED Live.<https://kqed.org/live> KQED
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AMERICAN OVERSIGHT

On Nov 1, 2021, at 7:21 AM, Mattingly, Kathryn (EOIR) (b)(6) <mailto (b)(6) wrote:

EXTERNAL

Good morning Tyche,

Please see EOIR's FOIA webpage<https://www.justice.gov/eoir/freedom-information-act-foia> for instructions on how to request EOIR records.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

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Kathryn

-----Original Message-----
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Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR) (b)(6) <mailto: (b)(6) >>
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

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Tyche

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Senior Editor, Immigration
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415.553.2826 T
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On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto: (b)(6) <mailto: (b)(6) mailto: (b)(6) >> wrote:

EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) (b)(6) <mailto (b)(6) <mailto: (b)(6) %3c mailto:K (b)(6) >>>
Cc: EOIR, PAO (EOIR) (b)(6) mailto: (b)(6) mailto: (b)(6) cmailto:F (b)(6) (b)(6)
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized “returned notice” docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto: (b)(6) <mailto (b)(6)

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mailto:(b)(6)>> wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court%3chttps:/www.justice.gov/eoir/san-francisco-immigration-court>>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download%3chttps:/www.justice.gov/file/1398881/download>>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download%3chttps:/www.justice.gov/eoir-operational-status/page/file/1419176/download>>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download%3chttps:/www.justice.gov/eoir/page/file/1079306/download>>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download%3chttps:/www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main

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-----Original Message-----
From: Tyche Hendricks
<thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR)
(b)(6) mailto: (b)(6) mailto:P (b)(6) cmailto (b)(6)
(b)(6)
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

Tyche

Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

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(b)(6) M

We've moved temporarily. You can find us at:

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50 Beale Street, 5th Floor

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AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 8 Nov 2021 15:31:28 +0000
To: Safi, Zakia (EOIR) (CTR)
Subject: FW: [EXTERNAL] Biden Admin. Urges Ariz. Judge To Keep Vax Mandate Intact
Attachments: Weekly Media Report (Week of October 25, 2021)

Hi Zakia – Happy Monday! Can you tell me what (b)(5) (b)(5) (b)(5). See attached. Let me know and I can help with key words if needed. Thanks!!

(b)(5)

From: Immigration Law360 <news@law360.com>
Sent: Monday, November 8, 2021 4:06 AM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: [EXTERNAL] Biden Admin. Urges Ariz. Judge To Keep Vax Mandate Intact

IMMIGRATION

Monday, November 8, 2021

TOP NEWS

Biden Admin. Urges Ariz. Judge To Keep Vax Mandate Intact

The Biden administration urged an Arizona federal court to allow executive orders requiring certain federal employees and contractors to be vaccinated against COVID-19, saying the state attorney general couldn't show the vaccine mandate unconstitutionally excluded undocumented immigrants.

Brief attached | Read full article »

AMERICAN OVERSIGHT

Justices To Take Up Retaliation Claim Against Border Agent

The U.S. Supreme Court announced Friday that it will review a suit from a Washington state bed and breakfast owner claiming that a U.S. Customs and Border Patrol agent violated his First and Fourth Amendment rights by shoving him and then retaliating after he reported the incident.

2 documents attached | Read full article »

3rd Circ. Revives Guatemalan Activist's Torture Protection Bid

Immigration judges ignored a slew of reports documenting recent escalations in violence toward activists in Guatemala to deny an environmentalist's claim for humanitarian protection, a Third Circuit panel ruled Friday, reviving the man's bid to stay in the U.S.

Opinion attached | Read full article »

LITIGATION

4th Circ. Reiterates 'Crime of Moral Turpitude' Is Constitutional

The Fourth Circuit has refused to breathe life into a Salvadoran national's deportation appeal and ruled that the standard that governs offenses that amount to removable crimes of violence is not unconstitutionally vague, pointing to U.S. Supreme Court precedent.

Opinion attached | Read full article »

ADMINISTRATIVE DISPUTES

DOL Applied Wrong Rule To Miami Hotelier's H-2B Bid

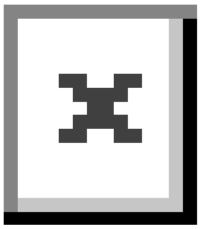
A French billionaire with three Miami-based companies that all sought temporary foreign workers this year saw his latest certification application revived after a judge determined that the U.S. Department of Labor had reviewed it under the wrong standard.

Decision attached | Read full article »

EXPERT ANALYSIS

How To Comply With ABA's New Language Access Guidance

Considering the American Bar Association's recent language access guidance for lawyers working with clients with whom communication is impeded, attorneys should carefully navigate social and cultural differences and take steps to maintain professional obligations, say Hilary Gerzhoy and Deepika Ravi at Harris Wiltshire.



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Hamlins LLP

Harris Wiltshire

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LEGAL INDUSTRY

Legal Sector Adds 4,700 Jobs In October

The U.S. legal sector added 4,700 jobs in October, according to data released by the U.S. Department of Labor on Friday, continuing a steady increase in employment this year as the delta variant surge of the COVID-19 pandemic begins to subside and the industry looks ahead at office reopenings.

Read full article »

2nd Circ.'s Carney To Take Senior Status

Second Circuit Judge Susan L. Carney is taking senior status, opening another vacancy on the appellate court for President Joe Biden to fill.

Read full article »

Albany DA Says Cuomo Sex-Crime Charge May Be 'Defective'

A criminal sex-crime charge filed by the Albany County sheriff against former New York Gov. Andrew Cuomo is "potentially defective," the county's district attorney said in a court filing released Friday that alluded to "exculpatory" transcript evidence gathered in the investigation.

Read full article »

Book Publishers Turn To O'Melveny, Shearman In DOJ Action

Penguin Random House LLC and Simon & Schuster are turning to a group of veteran BigLaw attorneys to defend a proposed combination that the U.S. Department of Justice is seeking to block over the alleged harm it would bring to competition in the publishing industry.

Read full article »

4 BigLaw Players In Elizabeth Holmes' Criminal Fraud Trial

In the two months since the start of former Theranos CEO Elizabeth Holmes' fraud trial, jurors have heard a variety of testimony highlighting the role several BigLaw firms and their attorneys played in the rise and fall of the once high-flying blood-testing startup.

Read full article »

Hogan Lovells

Howard Kennedy LLP

Jones Day

Kelley Drye

Kirkland & Ellis

Latham & Watkins

Law Office of John D. Cline

Morgan Lewis

O'Connell & Aronowitz

O'Melveny & Myers

Paul Hastings

Paul Weiss

Penningtons Manches

Pinsent Masons

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Up Next At High Court: Eclectic Arguments End Nov. Session

After tackling the culture war issues of abortion and gun rights in the first week of November, the U.S. Supreme Court will focus on a broader array of legal questions to close out its November argument session, hearing cases involving defective copyrights, state secrets privilege and the city of Austin's ban on most digital billboards.

Read full article »

Bipartisan Bill Renews Push In House For Free PACER

A bipartisan pair of U.S. House members has introduced legislation to make access to PACER free, echoing a similar push in the Senate and renewing a House effort from last year to revamp the federal court document system.

Read full article »

GC Cheat Sheet: The Hottest Corporate News Of The Week

This week general counsel received some help with evaluating their outside counsel when Law360 Pulse offered its new ranking of law firms, focusing first on pro bono work. GCs also learned that in-house counsel are much in demand when Major Lindsey & Africa shared a new study showing that recruiting and placement is at a record high, especially with minorities.

Read full article »

In Case You Missed It: Hottest Firms And Stories On Law360

For those who missed out, here's a look back at the law firms, stories and expert analyses that generated the most buzz on Law360 last week.

Read full article »

UK Litigation Roundup: Here's What You Missed In London

This past week in London has seen three travel groups sue Ryanair following complaints about ticket sales, a British music copyright collective target a handful of gyms with intellectual property claims, and a drugmaker take on a generics rival. Here, Law360 looks at these and other new claims in the U.K.

Read full article »

Podcast

Pro Say: The Vaccine Rule That Could Launch 1,000 Lawsuits

AT&T Inc.

Air Liquide

American Airlines Grou Inc.

American Bar Association

American Civil Liberties Union

American Friends Servi Committee Inc.

American International Group Inc.

Apple Inc.

BDT & Co. LLC

Bertelsmann AG

CBS Corp.

Capital Area Immigrants Rights Coalition

Cerberus Capital Management L.P.

Deutsche Bank AG

Endo International PLC

Fitbit Inc.

Georgia State Universit

Google LLC

H&M Hennes & Mauritz AB

Home Box Office Inc.

JetBlue Airways Corp.

LinkedIn Corp.

AMERICAN OVERSIGHT

The U.S. Department of Labor on Thursday delivered the much-anticipated details of President Joe Biden's order that large private businesses require employees either to be vaccinated against COVID-19 or submit to weekly tests.

Read full article »

JOBS

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Business Immigration Paralegal (New York, Newark NJ , or Stamford CT Offices)
McCarter & English, LLP
New York, New York

ML Strategies LLC

Major Lindsey & Africa LLC

Mylan NV

Netflix Inc.

Office Depot Inc.

Penguin Random Hous LLC

Pennsylvania Bar Association

Ryanair Holdings PLC

Simon & Schuster Inc.

Spotify Technology SA

The Walt Disney Co.

Tower Legal Solutions

Twentieth Century Fox Film Corp.

UCLA School of Law

ViacomCBS Inc.

Warner Bros. Entertainment Inc.

Wynn Resorts Ltd.

Yale University

GOVERNMENT AGENCIES

Arizona Attorney General's Office

Centers for Disease Control and Prevention

Centers for Medicare & Medicaid Services

AMERICAN OVERSIGHT

Federal Bureau of Investigation

Federal Trade Commission

Financial Conduct Authority

Internal Revenue Service

National Labor Relation Board

New York Department o Financial Services

Peace Corps

Texas Department of Criminal Justice

U.S. Attorney's Office fo the Northern District of California

U.S. Copyright Office

U.S. Court of Appeals fo the Fourth Circuit

U.S. Court of Appeals fo the Second Circuit

U.S. Court of Appeals fo the Third Circuit

U.S. Department of Homeland Security

U.S. Department of Justice

U.S. Department of Labor

U.S. District Court for th District of Arizona

AMERICAN OVERSIGHT

U.S. District Court for th Eastern District of Pennsylvania

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From: Lampman, Zachary (EOIR) (CTR)
Sent: Mon, 1 Nov 2021 18:29:00 +0000
To: Barnes, Rob (EOIR); Nance, Kelly (EOIR); Kaltenbacher, Teresa A. (EOIR); St Jean, Amanda (EOIR); Martin, John (EOIR); Montenegro, Gail (EOIR); Mattingly, Kathryn (EOIR); Sherman, Bradley (EOIR)
Cc: Pietruszka, Tyler (EOIR) (CTR)
Subject: Weekly Media Report (Week of October 25, 2021)
Attachments: Weekly News Inquiries Report (Week of Oct. 25, 2021).docx

Good afternoon team, please see attached and below for last week's media report.

Weekly News Inquiries
Nov. 1, 2021

****This report highlights news inquiries received during the previous week****

#	Reporter	Outlet	Topic
1	Rebecca Beitsch	The Hill	Second follow-up on whether Director Neal can be interviewed for a profile piece.
2	Phillip Marcelo	Associated Press, Boston	Policy regarding IJ media interviews and whether it is a national policy.
3	Maria Sacchetti	Washington Post	Current IJ listing by IC and year of appointment.
4	Brenna Ehrlich	Rolling Stones	To confirm that respondent Shéyaa Bin Abraham-Joseph's Nov. 1 hearing got postponed.
5	Adolfo Flores	BuzzFeed	Statistics of providers who have been added to the Pro Bono Legal Service Providers List to handle MPP cases, and comment regarding complaints on MPP implementation.
6	Alyssa Aquino	Law360	First Circuit's Oct. 25, 2021, decision remanding Andrea Joy James' case to the BIA.
7	Grace Dixon	Law360	Third Circuit's Oct. 28, 2021, decision *Juliana Martirez Arreaga Bravo v. Attorney General United States.*
8	Tyche Hendricks	NPR affiliate, San Francisco	San Francisco IC visit Oct. 29 to observe DD cases and Oct. 26 to observe "returned notice" docket, and how to obtain a copy of a DAR.
9	Tal Kopan/Deepa Fernandes	San Francisco Chronicle	Whether HQ was aware of the San Francisco IC's specialized master calendar docket for "returned notices" and details, *in absentia* statisitcs, and response to advocates' due process concerns about targeting, *"…a group likely to result in mass absentia removal orders…"*

V/r,

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Zachary Lampman | Contractor
Communications and Legislative Affairs Division
Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
(b)(6) Mobile
(b)(6) Office
(b)(6)

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Nov. 1, 2021

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From: Young, Elizabeth L. (EOIR)
Sent: Wed, 1 Dec 2021 23:28:06 +0000
To: Daugherty, Daniel J (EOIR)
Cc: St Jean, Amanda (EOIR)
Subject: FW: [EXTERNAL] Re: EOIR - AILA
Attachments: AILA-SF EOIR Agenda 12.6.2021.docx

All:
I have received the attached questions for the scheduled 12/6 AILA liaison meeting. I have written in proposed answers. I have highlighted in yellow and blue (b)(5) (b)(5) Otherwise, all suggestions/changes/etc. are welcome!

Thank you!
Elizabeth

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Isabel Soto Wagner <isabel.mehrlaw@gmail.com>
Sent: Wednesday, December 1, 2021 12:30 PM
To: Misha Seay <mseay@clsepa.org>
Cc: Young, Elizabeth L. (EOIR) (b)(6); McDaniel, Scott (EOIR) (b)(6); maleeha@haq-law.com; St Jean, Amanda (EOIR) (b)(6); AILA NorCal EOIR Liaison <eoir@ailanorcal.com>; Siobhan Waldron <siobhan@ild.org>
Subject: [EXTERNAL] Re: EOIR - AILA

Hello ACIJ Young and Norcal liaisons,

We have no questions submitted by our members in the SCV chapter, and questions regarding court staff changes that we were going to raise at the meeting have already been addressed in the agenda prepared by the Norcal liaisons.

Thank you all and have a good day.

Isabel Soto, Esq.
Mehr & Soto, LLP
100 Doyle Street, Ste.A
Santa Cruz, CA 95062
Telephone 831/425-5757
Fax No. 831/425-0515

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mehrlaw.com

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On Wed, Dec 1, 2021 at 12:04 PM Misha Seay <mseay@clsepa.org> wrote:
I made one addition - question #23 about the Mendez Rojas settlement.

On Mon, Nov 29, 2021 at 2:23 PM Misha Seay <mseay@clsepa.org> wrote:
Hi ACIJ Young,

Please see the proposed agenda attached. In past years, the ACIJ would answer the questions in writing on the same document, which we would share with AILA members in pdf format. We are also happy to take notes of the answers in real time if that is easier.

We look forward to speaking next week!

Best,
Misha

--
MISHA SEAY, ESQ. | MANAGING ATTORNEY, IMMIGRATION PROGRAM
pronouns: she / her / hers

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Community Legal Services in East Palo Alto
www.clsepa.org
Phone: (650) 391-0361 | Fax: (866) 688-5204
Mailing Address: 1861 Bay Road | East Palo Alto, CA 94303

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MISHA SEAY, ESQ. | MANAGING ATTORNEY, IMMIGRATION PROGRAM
pronouns: she / her / hers
Community Legal Services in East Palo Alto
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AILA
Northern California Chapter

AILA NORCAL LIAISON QUESTIONS
DECEMBER 6, 2021
SAN FRANCISCO IMMIGRATION COURT

Master Calendar Hearings / Court Operations / Standing Orders

1. We have heard that the Sacramento Immigration Court is resuming "limited" non-detained Master Calendar Hearings in January 2022. Does the San Francisco Immigration Court have any tentative plans to resume regular Master Calendar Hearings (apart from the specialized dockets already operating)?

(b)(5)

2. What is the current status of court operations in light of COVID-19? Is the court still operating at 50% capacity, such that only 50% of court personnel can be in the office building at any given time?

(b)(5)

3. Which judges are currently hearing exclusively via Webex? For those judges who do not hear cases exclusively via Webex, is there a way to find out whether they will appear in person or via Webex in advance of the hearing, other than by calling the clerk?

(b)(5)

4. Is it possible to provide the schedule for each immigration judge at least one month in advance? E.g. EOIR recently released the November 2021 schedule (albeit part way through the month). Will EOIR continue releasing such schedules, and is it possible to have this one calendar month ahead of time for planning purposes?

(b)(5)

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5. Some Immigration Judges have their own standing orders about individual calendar hearing information, Webex and telephonic appearances, etc. Does the court have a comprehensive list of such standing orders? If not, can the court collect all individual standing orders and disseminate them to ensure that practitioners are aware of and comply with them?

(b)(5)

Rescheduled Hearings

6. Does the court have any policies or practices in place about when a case may be advanced on a Master Calendar or Individual Calendar docket? For example, does the court ensure there is a certain minimum number of business days between when the advanced hearing notice is issued and when the new hearing is scheduled?

(b)(5)

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(b)(5)

7. Would it be possible to have court clerks call or email attorneys of record to notify them of advanced or postponed hearings in cases in which the notice for such a change is particularly short?

(b)(5)

Detained Docket

8. What is the status of the detained docket at 630 Sansome? Will IJ Nelson resume hearing detained cases should Yuba County Jail be repopulated at any point?

(b)(5)

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DHS will be filing NTAs with the court shortly. IJ Nelson is currently set to hear that docket.

Returned Notice Docket

9. How often is the court holding returned notice docket hearings? Are their particular judges assigned to these hearings?

(b)(5)

Dedicated Docket

10. Which immigration judges are currently hearing cases on the dedicated docket? Will those cases remain with the same judge for the duration of the case?

(b)(5)

11. Practitioners have reported that unrepresented dedicated docket respondents are being rushed to retain counsel within a very short period of time. Some immigration judges have only given continuances of just two weeks, even though many nonprofit organizations have waitlists of several months for a consultation. Would it be helpful for the court if the non-profit community put together an affidavit or some other documentation explaining the timelines for receiving a consultation, securing full-scope legal representation, etc.?

(b)(5)

12. Practitioners have reported that some *pro se* respondents on the dedicated docket are being required to file their Form I-589 at their second Master Calendar Hearing, otherwise that relief will be deemed abandon, despite the rushed timeline outlined above. Does the court provide any guidance to immigration judges about what is an appropriate amount of time *pro se* individuals should be given to prepare and file their Form I-589?

(b)(5)

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13. Practitioners have reported that immigration judges on the dedicated docket often ask DHS to serve the Notice to Appear on unrepresented respondents and then confirm that service was made (suggesting it was procedurally regular) on the record. It is concerning to see immigration judges take on this role and assist DHS in meeting their service obligations, particularly in the case of *pro se* respondents who have greater challenges challenging improper service of the NTA.

(b)(5)

14. Is it possible to request that *pro se* respondents on the dedicated docket with humanitarian issues (e.g. health issues interfering with their ability to secure counsel and/or prepare their case) be removed from the dedicated docket?

(b)(5)

15. While the new Helpdesk and Family Group Legal Orientation Program is being set up, is it possible to encourage immigration judges to provide longer continuances given that the realistic timeline for seeking resources in the community is much longer than the continuances being granted by the judges?

(b)(5)

Pro Se Legal Services

16. Does the court have any updates about changes made at the San Francisco Immigration Court in order to facilitate more pro se legal services, particularly in light of its new contract with Immigration Center for Women and Children to establish a Family Group Legal Orientation Program?

(b)(5)

17. The settlement agreement in Nw. Immigrant Rights Project v. Sessions, No. C17-716 RAJ, 2017 WL 6492703 (W.D. Wash. Apr. 17, 2019) allowed for attorneys to assist respondents with limited legal services to unrepresented respondents in removal proceedings, such as the submission of country conditions packets, motions, memoranda, and other limited services. Does the court have any feedback on submissions of this

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nature to ensure they are properly filed and reviewed by the court?

(b)(5)

18. Similar to the above question, some nonprofit legal services providers are interested in providing limited services to respondents with upcoming merits hearings even though they are unable to accept the case for full-scope representation. Does the court have any ideas on areas of need or ways in which nonprofit attorneys can assist *pro se* individuals with their cases that would assist in creating a robust record for review? E.g. country conditions submissions, declaration preparation, appearance at the merits hearing, etc.

(b)(5)

Miscellaneous

19. What is the current status of the EOIR-42B backlog? How long can attorneys expect reserved 42B grants to be pending?

(b)(5)

20. Is ECAS still only operating in newly filed cases, or are there any previously paper ROPs that are now being moved into ECAS? We received reports of a paper ROP being scanned into the electronic system. It is not clear whether this will be happening to other paper ROPs or whether these cases were an anomalies.

(b)(5)

21. What is the court's policy on same-day submissions at a Master Calendar or Individual Hearing, particularly where one or more parties is appearing remotely? We have heard reports of some immigration judges accepting emails directly from DHS attorneys with submissions attached, even where those submissions are not being served in real time on the respondents and instead being served via mail (which by then is too late).

(b)(5)

22. Assuming there are exceptional circumstances to warrant it, are the court clerks allowed to make copies of documents that are being provided to the court or to the opposing party? If not, is it possible to put copy machines in the pro bono rooms on each floor (whether at the government's expense or not)?

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(b)(5)

23. With the *Mendez Rojas* settlement agreement deadline coming up in April 2022, some practitioners have asked for guidance on how to file notices of class membership in administratively closed cases. Can a respondent file a notice of class membership (with *no* motion attached) into an administratively closed case, or must the recalendar first? For some cases, keeping the case administratively closed but still preserving one's rights under the settlement would be preferred.

(b)(5)

Immigration Court Staff Changes

24. We have heard that IJ Simmons will be leaving the bench in San Francisco. If true, do you have an estimated end date?

(b)(5)

25. Are any other sitting judges retiring or leaving in the near future?

(b)(5)

26. Does the court plan to add anymore immigration judges to the bench in the near future?

(b)(5)

27. Are there any immigration judges coming up for their two-year probationary review? If so, we are happy to collect feedback from practitioners about those judges.

(b)(5)

28. Are there any other court staff announcements or updates?

(b)(5)

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From: Mattingly, Kathryn (EOIR)
Sent: Tue, 14 Dec 2021 14:29:13 +0000
To: Fooshe, Alexis (EOIR)
Subject: FW: [EXTERNAL] Returned Notice Docket
Attachments: Milli Atkinson response.pdf

FYI.

From: Lampman, Zachary (EOIR) (CTR) <(b)(6)
Sent: Tuesday, December 14, 2021 9:22 AM
To: Young, Elizabeth L. (EOIR) (b)(6); Mattingly, Kathryn (EOIR) (b)(6)>
Subject: RE: [EXTERNAL] Returned Notice Docket

Good morning Elizabeth,

PIO Amanda St. Jean provided me a draft that you both worked on. I sent it to OCIJ for their review and then it was approved to send out. I believe it is being physically sent out today.

Attached is a copy of the draft.

Please let me know if you have any questions or concerns.

V/r,

Zachary Lampman

From: Young, Elizabeth L. (EOIR) <(b)(6)>
Sent: Tuesday, December 14, 2021 9:16 AM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Lampman, Zachary (EOIR) (CTR) (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Kathryn and Zachary:
I'm following up on this to determine if there a draft response yet. I am happy to (b)(5) (b)(5)
Thank you!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell (b)(6)
Office – (b)(6)

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From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 9:07 AM
To: Daugherty, Daniel J (EOIR) (b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6); Weiss, Daniel H (EOIR) (b)(6); Cheng, Mary (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6) Lampman, Zachary (EOIR) (CTR) (b)(6); St Jean, Amanda (EOIR) (b)(6)
Subject: RE: [EXTERNAL] Returned Notice Docket

Hi Judge Doc - Thank you for reaching out. We handle formal correspondence for the agency and I am copying on this email Zachary Lampman who is our correspondence POC in CLAD. See below for (b)(5)

(b)(5)

We welcome ACIJ Young's suggestions too so we can pull together a draft response for final review and agency clearance. Thanks again – Kathryn

(b)(5)

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End.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Young, Elizabeth L. (EOIR) (b)(6); Weiss, Daniel H (EOIR) (b)(6); Cheng, Mary (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)>
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have (b)(5) (b)(5) Let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

AMERICAN OVERSIGHT

From: Milli Atkinson <matkinson@sfbar.org>
Date: November 2, 2021 at 4:09:58 PM PDT
To: "Young, Elizabeth L. (EOIR)" (b)(6)
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc
The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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U.S. Department of Justice
Executive Office for Immigration Review
Office of Policy

Communications and Legislative Affairs Division

5107 Leesburg Pike, Suite 1800
Falls Church, Virginia 22041

December 9, 2021

Milli Atkinson
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of the Bar Association of San Francisco
201 Mission St., Suite 400
San Francisco, CA 94105

Dear Ms. Atkinson:

Thank you for your letter dated November 2, 2021, to Assistant Chief Immigration Judge (ACIJ) Elizabeth Young regarding the docket for returned notices. Your letter has been referred to the U.S. Department of Justice, Executive Office for Immigration Review's (EOIR) Communications and Legislative Affairs Division for a response.

Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and create efficiencies through grouping like cases. Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, immigration judges make decisions based on the specific and unique factors of each case in accordance with applicable law.

We hope you find this information helpful. Please do not hesitate to contact EOIR's Communications and Legislative Affairs Division at 703-305-0289 or PAO.EOIR@EOIR.USDOJ.GOV should you have additional questions.

Sincerely,

Alexis S. Fooshe

Alexis Fooshé, Chief
Communications and Legislative Affairs Division

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From: Mattingly, Kathryn (EOIR)
Sent: Thu, 28 Oct 2021 18:08:35 +0000
To: Fooshe, Alexis (EOIR)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

FYI. Tal just wrote too, but I'm just getting out of the (b)(5) I like OCIJ's input! Still waiting for official word, but I think (b)(5) (b)(5) I'll get things ready.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 2:05 PM
To: Weiss, Daniel H (EOIR) < (b)(6)
Cc: Mattingly, Kathryn (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

(b)(5)

Doc

(b)(5)

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Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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From: Daugherty, Daniel J (EOIR) [(b)(6)]
Sent: Wednesday, October 27, 2021 8:36 PM
To: McNulty, Sheila (EOIR) <[(b)(6)]
Cc: Cheng, Mary (EOIR) [(b)(6)]
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

[(b)(5)]

Thanks
Doc

D. J. Daugherty
RDCIJ West

On Oct 27, 2021, at 4:31 PM, McNulty, Sheila (EOIR) <[(b)(6)] wrote:

Hi Judge,

[(b)(5)]

[(b)(5)] Not sure if it helps, but ….there you go!
Sheila

From: Daugherty, Daniel J (EOIR) <[(b)(6)]>
Sent: Wednesday, October 27, 2021 5:24 PM
To: McNulty, Sheila (EOIR) [(b)(6)]>
Cc: Cheng, Mary (EOIR) [(b)(6)]
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

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RDC's

(b)(5)

Draft:

(b)(5)

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

AMERICAN OVERSIGHT

Office (b)(6)
Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6) Young, Elizabeth L. (EOIR) (b)(6)
Cc: Lin, Austin (EOIR) (b)(6) >; Foster, Sean (EOIR) (b)(6) ; Fooshe, Alexis (EOIR) (b)(6)
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) I've been in meetings and tied up so I've asked the SF Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

AMERICAN OVERSIGHT

(b)(5)

End.

From KQED Inquiry:

Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 20 Jan 2022 02:11:45 +0000
To: Fooshe, Alexis (EOIR)
Subject: Fwd: [EXTERNAL] Comment on FOIA on returned notices

Hi Alexis - Just FYI. I'll get to this in the morning.

From: "Kopan, Tal" <tal.kopan@sfchronicle.com>
Date: January 19, 2022 at 8:53:47 PM EST
To: "Mattingly, Kathryn (EOIR)" <(b)(6)>
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
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Tal

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
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tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Tue, 15 Jun 2021 22:44:55 +0000
To: Margolin, Daren K. (EOIR)
Cc: Jauregui, Maria (EOIR)
Subject: RE: Returned Notice Docket

I'm on (b)(6)

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Sent: Tuesday, June 15, 2021 3:41 PM
To: McDaniel, Scott (EOIR) <(b)(6)>
Cc: Jauregui, Maria (EOIR) (b)(6)
Subject: Re: Returned Notice Docket

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Maria Jauregui
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100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164 office
(b)(6) cell
(b)(6)

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Sent: Tuesday, June 15, 2021 4:22 PM
To: Margolin, Daren K. (EOIR)
Subject: RE: Returned Notice Special Master Dockets

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Sent from my iPhone

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Cc: "Jauregui, Maria (EOIR)" (b)(6) "Clay, Michael (EOIR)" (b)(6)
Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 20 Jan 2022 15:04:23 +0000
To: Alder Reid, Lauren (EOIR); Foster, Sean (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices
Attachments: Screen Shot 2022-01-19 at 8.48.34 PM.png, Screen Shot 2022-01-19 at 8.48.24 PM.png, Screen Shot 2022-01-19 at 8.05.10 PM.png
Importance: High

Lauren/Sean – Please see inquiry below and the attached files. I pulled (b)(5)

(b)(5)

Inquiry:
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Deadline: Today, Jan. 20

Draft:
BACKGROUND:

(b)(5)

ON THE RECORD:

(b)(5)

End.

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From: Young, Elizabeth L. (EOIR)
Sent: Mon, 14 Mar 2022 19:33:34 +0000
To: McDaniel, Scott (EOIR)
Subject: Input, please:-)
Attachments: Questions for 3212022 EOIR SF-AILA meeting.docx

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

AMERICAN OVERSIGHT

- Please provide any updates on the status of the dockets of judges that have recently left the bench, including IJ Marks and IJ Jackson.

(b)(5)

- Are there any other hiring or other staff updates?

(b)(5)

- Can the Court provide an updated list of which IJs are hearing cases exclusively via WebEx (as opposed to bring physically present in their courtrooms)?

(b)(5)

- Can you provide any updates on the resumption of non-detained masters for non-dedicated docket cases? Is the Court still operating at 50% staff capacity in the courthouse at any given time? Have most IJs resumed hearing 100% of their merits hearings, or are some hearings still being cancelled for pandemic-related reasons?

(b)(5)

- Relatedly, is there a criteria for why certain cases get postponed and not others?

(b)(5)

- Can you provide information about the judges' legal assistants' responsibilities? What are things that legal assistants should be able to tell counsel or help counsel with so that things run more smoothly?

(b)(5)

- Besides the dedicated docket, are any other special masters being heard at the moment?

(b)(5)

- Have 100% of cases been removed from the status docket?

(b)(5)

- What is the status of the returned notice docket? Are there current plans to schedule any returned notice dockets in the future?

(b)(5)

- We receive many inquiries about motions to advance. It appears there are many respondents who are ready to proceed with their merits, but are unable to do so due to

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lack of docket space. Can you provide updated information about how motions to advance are being handled by the Court? Specifically, can you explain what the trial ready queue is and how it is used by the Court? How is a respondent notified that their case has been placed in the trial ready queue? How many cases are currently in the trial ready queue?

(b)(5)

- A member spoke with Leslie Ungerman in response to a PD request that was filed with OPLA in a strong 42B case. The member was seeking non-opposition from OPLA to a motion to adjudicate the case on the submissions. The member reports that Ms. Ungerman explained that her office will refuse to non-opp such requests when the qualifying relative isn't aging out, but would like to find a way to adjudicate such cases earlier, possibly at a short matter hearing. The member reports that Ms. Ungerman asked her to reach out to AILA liaisons to raise the issue with the Court, and that Ms. Ungerman indicated she would also be reaching out to the Court about the issue. Has the Court considered created these type of short matter dockets?

(b)(5)

- Minutes from the national AILA-EOIR meeting in February state that Wifi is available in all courtrooms now. Is that true in San Francisco? Will Wifi instructions be released to the immigration bar?

(b)(5)

- DHS recently announced a backlog reduction initiative. EOIR should know that DHS has explicitly said it will NOT contact respondents' counsel ahead of filing these motions to dismiss. Are IJs being instructed to wait the 10 days for counsel to respond? These motions to dismiss cannot be presumed to be uncontested. A member reports that an IJ granted DHS's motion 2 days after it was filed, not allowing the respondent a chance to oppose the motion.

(b)(5)

- In the case of a visa retrogression (like the March 2022 retrogression for EB4 SIJS case), can EOIR still adjudicate an AOS as long as it was filed when a visa was available, or will the matter have to be postponed until a visa becomes available again? Or is there some other system for locking in a priority date?

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(b)(5)

- In the past, some attorneys reported that the Court would accept E-33s for respondents whose NTAs had not yet been filed and hold onto them in a folder until the cases were officially opened. Does the Court still accept such E-33s on an informal basis? If not, is there any other way to report a change in address to EOIR so that mail goes to the correct address once the NTA is filed? Unfortunately, ICE does not always update the address properly even when changes of address are reported at ICE check-ins.

(b)(5)

- What is the status of the 42B visa backlog? Have any of the visas released on 10/1/2021 been made available by the Court? If not, why? If so, are all accounted for at this time, or what is the status?

(b)(5)

- How does the court determine which IJ to consolidate two cases before? Is there one consistent rule? E.g. before the IJ/case with the oldest NTA, or with the earliest next hearing date?

(b)(5)

- Currently, USCIS is supposed to give Afghans priority adjudications on asylum cases. Does EOIR have the same policy? If so, how is it doing so?

(b)(5)

- EOIR announced a new policy for getting EOIR records on 3/7/22 and updated the ICPM. It appears records can be requested by parties and their reps to a designated email inbox. Has SF EOIR changed the email address to which they wish to receive this ROP Review requests (as the standard email in the updated ICPM differs from those SF EOIR has used for many years)? see https://www.justice.gov/eoir/eoir-policy-manual/ii/1/5

(b)(5)

- Members report issued with USCIS scheduling biometrics appointments. What guidance, if any, have judges received about what to do when respondents have been unable to complete biometrics before the ICH? For example, continue the hearing, or hold the hearing and wait to issue their decision (if a grant) until confirmation from DHS that biometrics complete?

(b)(5)

- Members report receiving scheduling orders requesting pleadings in withholding-only proceedings, and also in cases where pleadings to the NTA have already been entered. Why is this? How does the Court determine when a scheduling order is appropriate?

(b)(5)

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(b)(5)

- Earlier this year all of the standing orders were removed from EOIR San Francisco's website. Why is that? Is the Court considering re-issuing or re-posting any standing orders?

(b)(5)

- Can you provide any updates on converting paper cases to ECAS?

(b)(5)

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 8 Nov 2021 20:50:23 +0000
To: Butler, Jeremy J. (EOIR); Caborn, Andrew J. (EOIR); Deiss, Ila C. (EOIR); Figueroa, Laura C. (EOIR); Gambill, Scott D. (EOIR); George, Amber D. (EOIR); Gordon, Louis A. (EOIR); Greene, Charles S. (EOIR); Jackson, Jacqueline J. (EOIR); Johnson, Jeremiah (EOIR); Kim, Samuel Y. (EOIR); Kirchner, Steven M. (EOIR); Levine, Shira M. (EOIR); Marks, Dana (EOIR); Masterson, Jason R. (EOIR); McCleskey, Loi L. (EOIR); Nelson, Julie L. (EOIR); O'Brien, Patrick S. (EOIR); Park, Joseph Y. (EOIR); Phan, Susan (EOIR); Price, Justin M (EOIR); Savage, Patrick S. (EOIR); Schulz, Karen W. (EOIR); Seminerio, Frank A. (EOIR); Simmons, Gregory L. (EOIR); Star, Shadee M. (EOIR); Swink, Arwen A. (EOIR); Young, Elizabeth L. (EOIR)
Cc: Beyer, John (EOIR); Budrow, Rebecca E. (EOIR); Chazin-Gray, Rachel M. (EOIR); Chin, Judy (EOIR); Fickes-Gordon, Rachael (EOIR); Fleury, Nicole A. (EOIR); Fox Trujillo, Aimee G. (EOIR); Globerson, Justin (EOIR); Kuchins, Olga (EOIR); Rajendran, Kishahnica (EOIR); Richardson, Matthew C. (EOIR); Rogstad, Cierra M. (EOIR); Schaefer, Timothy J. (EOIR); Tsui, Emerald M. (EOIR); Vu, Tiffany T. (EOIR)
Subject: November updates
Attachments: IJ Training Binder (October 2021).pdf, Litigation of Removal Proceedings of Children in Immigration Law.rtf, EOIR Speaking Engagement Procedures final 10.12.21 (004)seal signature.pdf, DM 22-01 Pro Bono.pdf

Don't forget that there is a voluntary get-together at Uno Dos Tacos after work today.

Brown bag discussions – let me know if you are interested in any of the below topics and I will try to schedule a time best for everyone involved.

- Reviewing oral decisions that are appealed (if you are a new judge and haven't done this yet OR if you are an experienced judge and want to help answer questions or give tips).
- Welcome back new IJs! Our new IJs went out to their training courts for two weeks and are back this week. Given the flexibility HQ is allowing for docket management recently, every court is doing something different. Join if you're interested in hearing how their training went and discussing docket management/practices they noticed.
- Portable DAR judge lunch/happy hour.
- DM 22-01 discusses ways in which each court should support pro bono representation – we will be creating various programs at the court based on requirements in the DM. Join if you want to get in on the ground floor of planning the details.

Speaking engagements - There is a new process for approval. See attached information but key points:

- If you are doing something in your personal capacity not related to your official duties, you are not required to seek approval – however you are encouraged to discuss with your supervisor to ensure there is no overlap with official capacity.
- Official capacity requests are made through the supervisor.
- I have found that these take a VERY long time, so if you have something you would like to do, get it to me as soon as you learn of it so we can get the process started.

Oral decisions

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- Remember to include (b)(5)
  (b)(5)

Off-calendar cases

- Scott sent out an off-calendar report last week. (b)(5)
  (b)(5)
  (b)(5) Let me know if you need help determining what to do.

Training

- **Mandatory Annual Ethics training by Nov. 12.**
- **Attorney Professionalism Compliance by Dec. 10.**
- Attached is the **IJ Training Binder** put out by the Seattle Court. I glanced at it briefly and it looks like it could be very helpful for those of you just getting to the bench, and even a great refresher for those of you who have been at it for a while to update your materials.
- LERS is putting together a few series of **advanced law and westlaw/lexis training sessions**. If you have ideas on what you would like to see in the trainings, please let me know by the end of the week.
- Several IJs and AAs attended the **OIL training** – if you are interested in viewing the materials, I have made them accessible.
- In addition, we received a great reference for **juvenile cases**; (b)(5)
  (b)(5)

PWP

- There is generally a Nov. 12 deadline to sign the next rating cycle PWP. Because IJ PWPs are still under review, (b)(5) I will keep you updated as soon as I hear anything regarding the new PWPs.

Inactive attorneys – In case you missed it. Note that these attorneys will not be taken off EOIRs system as they are simply "inactive" and not disbarred. So no warning will appear when you open in CASE.

- (b)(6)

Dedicated Docket update:

The Dedicated Docket is, (b)(5) This docket, however, is designed NOT to overwhelm any single judge – (b)(5)
(b)(5)

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(b)(5)

Aged Cases:

(b)(5)

IJ Hiring:

(b)(5)

In the news – in case you missed it, there was a paper and a podcast SF Chronicle article based on observations of the returned notice docket. (b)(5)

(b)(5)

And finally…

Make sure to tune in to the News from Court meeting with Scott M. and I tomorrow for info that impacts the full court.

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cel (b)(6)
Office –

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Executive Office for Immigration Review
Immigration Judge Training Manual

October 2021

AMERICAN OVERSIGHT

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Codes

September 2021

Alien-Related Adjournments		EAD Clock Effect
Alien to seek representation	01	Stops
Preparation - alien/attorney/representative	02	Stops
Other no-show by alien/alien's attorney or rep.	11	Stops
Other alien/alien's attorney/representative request	12	Stops
Supplement asylum application	21	Stops
Alien request for an in-person hearing	26	Stops
Consolidation with family members	30	Stops
Alien delayed records/fingerprint check	36	Stops
Illness of alien/atty rep/witness	38	Stops
Alien requested forensic analysis	42	Stops
Joint request of both parties	45	Stops
Interpreter appeared but wrong language or dialect	4D	Stops
Jurisdiction rests with the BIA	52	Stops
Alien claim to U.S. Citizenship	54	Stops
Hearing advanced by motion	5A	Neutral
Late-filed evidence (alien)	5B	Stops
DHS application process – alien initiated	7A	Stops
DHS-Related Adjournments		**EAD Clock Effect**
Preparation - DHS	03	Runs
DHS or DHS administrative file unavailable for hearing	04	Runs
Alien in custody (DHS/HHS/IHP) not presented	09	Runs
DHS request for an in-person hearing	27	Runs
DHS Action	37	Runs
Cooperating witness/law enforcement	44	Runs
New charge filed by DHS	47	Runs
Quarantine – detained cases	50	Runs
Hearing advanced by motion	5A	Neutral
Late-filed evidence (DHS)	5C	Runs
Prosecutorial Discretion	PD	Runs
Court Administrators & Advanced Users Only		**EAD Clock Effect**
Docket Management (Postpone hearing)	9A	Runs
Docket Management (Advance hearing)	9B	Neutral

IJ-Related Adjournments		EAD Clock Effect
Insufficient time to complete hearing	13	Runs
IJ determined an in-person hearing is necessary	28	Runs
IJ leave	34	Runs
IJ detail	3A	Runs
Interpreter appeared but wrong language or dialect	4C	Runs
IJ reassignment	64	Runs
Reserved decision suspension/cancellation	RD	Runs
Reserved decision	RR	Runs
Operational Adjournments		**EAD Clock Effect**
Notice sent/served incorrectly	10	Runs
MC to IC – merits hearing	17	Runs
Case transferred from non-detained to detained docket	1A	Runs
Case transferred from detained to non-detained docket	1B	Runs
To allow for scheduling of priority case	25	Runs
RC to SC merits hearing	31	Runs
Interpreter not ordered	32	Runs
Interpreter ordered, but FTA	33	Runs
Video malfunction	46	Runs
Interpreter appeared but disqualified	48	Runs
Technical malfunction (not video)	4A	Runs
Interpreter must leave	4B	Runs
ROP missing	4E	Runs
Telephonic interpreter unavailable	4F	Runs
Court closure/postponement	59	Runs
EOIR Forensic Competency Evaluation	60	Runs
Appointment of Qualified Representative	61	Runs
Judicial Competency Inquiry	62	Runs
Non-*Franco* Competency Inquiry	63	Runs
IJ completion prior to hearing	8A	Stops
IJ completion at hearing	8B	Stops
Data entry error	99	Neutral
Vacated master calendar hearing	9V	Neutral
Placed in trial queue	TQ	Neutral
Reset order	RO	Runs

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Call-Ups		
Decision of the IJ is delayed due to extenuating circumstances during a continued detention review hearing	DD	
Interlocutory appeal filed by DHS to appeal the denial of a motion for protective order	IA	
Pending IJ response to motion or request - motion for change of venue; motion for termination; request for continuance, etc.	MR	
Relief Applications	RA	
DHS to provide records checks	RC	
Pending State Department response to asylum application	SR	
Written Pleadings	WP	
Alien/Attorney/Representative to file brief (not appeal)	AB	
Status Docket	DS	
DHS to file brief (other than for appeal)	IB	
Reserved Decision	RR	
Alien/Attorney/Representative to file supporting documents	SA	
DHS to file supporting documents	SI	

Case Identifiers		
NTA not filed within 120 days of EPRD	4M	
Civil Detention Hearing	CD	
Electronic Monitoring	EM	
Franco Litigation	FL	
EOIR *Pro Bono* Representation	PB	
Protective Order	PO	
Stipulated Removal	SR	
Stipulated Removal Order – Denied	SX	
Brito Class Action Litigation	BR	
Central America 2018	C1	
Caseflow Management Process	CF	
Dedicated Docket	DD	
Status Docket	DS	
SEP-C (for child)	EC	
SEP-P (for parent)	EP	
Family Units	FA	
Interim Final Rule	IR	
Migrant Protection Protocol	MP	
Mendez-Rojas Case	MR	
Pangea Legal Services	PG	
Padilla Class Members	PL	
Presidential Proclamation Case	PP	
Reserved Suspension Decision	RD	
Reset Order Work Flow	RO	

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IMMIGRATION JUDGE WORKSHEET
TACOMA IMMIGRATION COURT

Immigration Judge: _____ **Date of Custody:** _____

Name: _____ **Attorney:** ❒ **EOIR 28 in ROP**	**DOB:**	**A** _____ **Language:** _____ **Nationality:** _____

Rights & Other Matters:
☐ Oath: Swear/Affirm 8 CFR §1240.10(a)(5) _____ (date)
☐ True & Complete Name

Pro Se
☐ Purpose: Removed from U.S.
☐ NTA Received?
☐ Received legal aide list & appeal rights 8 CFR §1240.10(a)(2), (3)
☐ Right to attorney at own expense 8 CFR §1240.10(a)(1)
☐ Reset to MC or
☐ Waiver of Counsel? _____ (date)

☐ Evidence: examine & object, present own, & cross-examine 8 CFR § 1240.10(a)(1)(4)
☐ Designate country ☐ Asy, WH, CAT ☐ Asylum w/in 1 yr/ineligible
☐ Notice to Asylum Seekers for asylum application deadline
☐ Appeal to higher court
☐ Understand Rights?
☐ NTA Exhibit 1 8 CFR § 1240.10(a)(7)

Pleadings:
Rep.
☐ Acknowledge Atty.?
☐ NTA Concede Service
☐ Waive Reading of NTA & explanation of Rights?_____(date)
☐ NTA Exhibit 1 8 CFR §1240.10(a)(7)

☐ Read & explain factual allegations & charges in NTA
8 CFR §1240.10(a)(6)

§ 212(a)( )( )( )( ) § 237( ) ( )( )( )
§ 212(a)( )( )( )( ) § 237( ) ( )( )( )
Date removability sustained:_____
☐ Factual Allegations: ☐ Admit _____ ☐ Denies _____
☐ Removability: ☐ Concedes ☐ Denies ☐ Found ☐ Sustained
☐ Country designated: _____ ☐ Alien ☐ DHS
8 CFR § 1240.10(f)
☐ Fear Return ☐ No Date Waived: _____ ☐ Yes/Basis:

Relief Questions:
☐ Date of First Entry? _____
☐ Parents or grandparents USCs? _____
☐ LPR? _____Adjust in U.S. & 212(h)?_____
☐ Visa Petition? _____
☐ Spouse ☐ LPR ☐ USC? _____
☐ Parent ☐ LPR ☐ USC? _____
☐ Child ☐ LPR ☐ USC? _____
☐ Criminal History? _____
☐ Immigration History? _____
☐ Statutory Bars? _____
☐ Victim of a Crime in U.S.?_____SIJS? _____
☐ Medical / Mental Condition? _____

Advisals/Date:
☐ Frivolous Warnings _____
☐ Biometrics _____
☐ FTA _____
☐ Address _____
☐ VD Reqs._____ / Advisals_____
☐ Reentry _____
☐ Failure to Depart Warnings _____
☐ Application Sworn & Sign _____
☐ Pre-Hearing Statement Order / ☐ Corroboration Warnings

Relief Applications:
☐ VD/Pre (120) ☐ VD/Post (60)
☐ 240A(a) E-42A ☐ 240A(b)(1) ❒ 240A(b)(2) E-42B
☐ Asylum/Withholding: ☐ 1 year, ☐ Real ID ☐ CAT
☐ 245/I-485 ☐ 212(c) I-191 ☐ 212(h)/ I-601 ☐ 212(i) ☐ 209(c)
☐ Suspension E-44 ☐NACARA ☐ TPS ☐ ABC ☐ Refugee I-602
☐ Special Immigrant Juvenile Status (Requires: abuse, neglect, or abandonment by parent(s); state court dependency finding; USCIS consent to SIJ status)
☐ Other _____
☐ Application Fee ☐ Paid ☐ Fee Waived

Order(s):
_____

Competency Findings:
☐ *Franco* Class Member
☐ No *Bona Fide* Doubt
☐ Safeguards:

Appeal Due: _____
Waived: ☐ Alien ☐ Govt. ☐Both
Reserved: ☐ Alien ☐ Govt. ☐Both

Exhibits:			
1 NTA			

M/I/B	Date:	DHS/Attorney	Interpreter/Oath	Adjourned to:	Reason:	Code:	Call Up:

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_____

IMMIGRATION JUDGE WORKSHEET
IMMIGRATION COURT, TACOMA, WA

Notes: **A** _____

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IMMIGRATION JUDGE BOND WORKSHEET
IMMIGRATION COURT

Name: _____ **Attorney:** ❒ **EOIR 28 Custody**	**DOB:**	**A** _____ **Language:** _____ **Nationality:** _____

Bond Redetermination on _____**:**

☐ Date of Custody: _____

☐ DHS Bond Amount: Notice of Custody Determination, Form I-286 _____

☐ IJ's authority begins with the service of the Warrant of Arrest & Notice to Appear on the noncitizen. 8 C.F.R. § 1236.1(a); 8 C.F.R. § 1003.14(a).

☐ IJ's authority ends with the issuance of a final administrative order of removal. 8 C.F.R. § 1236.1(d).

☐ **NTA Charge(s) of Removal:** § 212(a) ( )( )( )( ) § 237( ) ( )( )( )

AMERICAN OVERSIGHT

No Jurisdiction to Re-determine Bond

☐ **INA §§ 235(b)(1)(B)(ii), (2)(A) Arriving Noncitizens & Applicants for Admission under INA § 212**

Arriving noncitizens and noncitizens who are inadmissible under INA § 212 are subject to mandatory detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 844–45 (2018) ("In sum [INA §§ 235(b)(1) and (b)(2)] mandate detention of noncitizens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.").

☐ **INA § 236(c)(1) Detention of Criminal Noncitizens - Mandatory Detention [8 C.F.R. § 1003.19(h)(2)(i)(D)]**

The Attorney General shall take into custody any noncitizen who is:

(A) inadmissible by reason of having committed any offense covered in INA § 212(a)(2), (criminal grounds),

(B) deportable by reason of having committed any offense under:
INA § 237(a)(2)(A)(ii), (multiple CIMTs)
INA § 237(a)(2) (A)(iii), (aggravated felonies)
INA § 237(a)(2) (B), (drug offenses)
INA § 237(a)(2)(C), (firearms)
INA § 237(a)(2)(D), (misc. crimes)

(C) deportable by under § 237(a)(2)(A)(i) (one CIMT within 5 years of admission) and sentenced to greater than 1 year in prison, or

(D) inadmissible under INA § 212(a)(3)(B) (engaging in terrorist activities) or deportable under INA § 237(a)(4)(B) (presents a national security threat and/or engaging in terrorist activities).

Jurisdiction to Re-Determine Bond

☐ **INA § 236(a): Apprehension & Detention of Noncitizens [8 C.F.R. § 1236.1(d)(1)]**

A noncitizen may be arrested and detained pending a decision on whether the noncitizen is to be removed from the United States. Except as provided in subsection (c) of this section and pending such decision, the Secretary of Homeland Security or the Attorney General-

(1) may continue to detain the arrested noncitizen; or
(2) may release the noncitizen on–
(A) bond of at least $1,500 with security approved by, and containing conditions prescribed by, the Secretary of Homeland Security or the Attorney General; or (B) conditional parole.

❒ *Franco-Gonzalez v. Holder*, No. 10–02211, 2013 WL 3674492, at *10–13 (C.D.Cal. Apr. 23, 2013)

- A class of mentally incompetent noncitizens who are detained under INA §§ 235(b); 236; and 241 are entitled to bond hearings after six months of detention.
- DHS must prove "by clear and convincing evidence" that a noncitizen is a flight risk or a danger to the community to justify denial of bond.

❒ *Padilla v. ICE*, No. 18-cv-00928-MJP (W.D. WA 2018)

- Class: Detained asylum seekers initially subject to expedited removal proceedings under INA § 235(b) who were determined to have a *credible fear of persecution or torture*.
- Burden on noncitizen. (litigation still pending)

➢ Note INA § 241(a)(6): a noncitizen ordered removed who is inadmissible under § 212 or removable under § 237(a)(1)(C), 237(a)(2), or 237 (a)(4) may be detained beyond the 90-day removal period.

☐ **INA § 241(a)(5): Prolonged Detention After Removal Period Runs**

❒ *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616, 2018 WL 2688569 (N.D. Cal. June 5, 2018) (appeal filed)

- A class of individuals detained under INA § 241(a)(6) for six months (or who will be detained for six months), including individuals: (1) with an administratively final order issued pursuant to INA § 238(b): (2) in withholding-only proceedings under 8 C.F.R. § 1208.31(e); and, (3) awaiting judicial review of the Board of Immigration Appeal's denial of a motion to reopen removal proceedings.
- DHS must establish by "clear and convincing evidence" that the noncitizen is a danger or a flight risk.
- **Hearing must be recorded**
- Only one ***Aleman*** bond is required (no bond every 6 months)

❒ *Martinez Baños v. Asher*, No. C16-1454-JLR, 2018 WL 1617706 (W.D. Wash. Apr. 4. 2018) (appeal filed)

- A class of individuals "placed in withholding only proceedings under 8 C.F.R. § 1208.31(e) in the **Western District of Washington** after having a removal order reinstated."
- DHS must establish by "clear and convincing evidence" that the noncitizen is a danger or a flight risk.
- **Hearing must be recorded**
- Only one *Martinez Baños* bond required (no bond every 6 months)

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Discretionary Bonds (INA § 236(a)):

☐ **Purpose:** The purpose of the bond is to ensure the respondent will appear for future hearings.

☐ **Burden of Proof:** The noncitizen bears the burden of demonstrating that they: (1) are not a danger to persons or property OR (2) are not a flight risk; 8 C.F.R. § 1236.1(c)(8); *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006); *Matter of Urena*, 25 I&N Dec. 140 (BIA 2009); *Matter of Siniauskas*, 27 I&N Dec. 207 (BIA 2018) (an IJ should consider the nature and circumstances of the noncitizen's criminal activity, including any arrests and convictions, to determine if the noncitizen is a danger to the community, but family and community ties generally do not mitigate a noncitizen's dangerousness).

☐ **Ability to Pay**: The court must consider the bond worksheet and other evidence indicating the respondent's ability to pay a particular bond amount. *See Hernandez v. Sessions*, 872 F.3d 976 (9th Cir. 2017).

☐ **Evidence:**

*Any evidence in the record that is probative and specific can be considered. 8 C.F.R. § 1003.19(d); *see also Matter of Guerra*, 24 I&N Dec. at 40-41;
*All evidence submitted during bond hearings is **separate and apart** from any evidence submitted in the removal proceeding.
*Motion to reconsider must be 1) in writing; 2) based on materially changed circumstances. 8 C.F.R. § 1003.19(e).
*IJ may not sua sponte re-determine bond. *Matter of P-C-M-*, 20 I&N Dec. 432 (BIA 1991).

Discretionary Bond Factors: *Matter of Guerra*, 24 I&N Dec. 37 (BIA 2006).

☐ Date & Manner Entry? _____
☐ LPR? _____Adjust in U.S. & INA 212(h)?_____
☐ Visa Petition? _____
☐ Spouse ☐ LPR ☐ USC? Age _____ Health _____ Employment _____
☐ Parent(s) ☐ LPR ☐ USC? Age(s) _____ Health _____
☐ Children ☐ LPR ☐ USC? Age(s) _____ Health _____ School _____
☐ Criminal History? _____
☐ Immigration History? _____
☐ Victim of a Crime in U.S. _____
☐ Medical Conditions _____
☐ Work History _____
☐ Fixed Address _____
☐ Bond Requested _____
☐ Relief Sought: ❒ None ❒ Voluntary Departure: ❒ Pre/❒ Post Conclusion ❒ Asylum; ❒ Withholding of Removal (INA); ❒ CAT
❒ Non-LPR Cancellation; ❒ VAWA; ❒ LPR Cancellation of Removal; ❒ 212(c); ❒ Adjustment of Status; ❒ Waiver _____;
❒ Other _____; ❒ Statutory Bars _____

☐ **Bond Order(s):** _____**Date:** _____**Appeal: Waived/Reserved (A / I / B) Due** _____

A _____

☐ **Civil/Prolonged Detention: (Ninth Circuit Examples)**

❒ *Singh v. Holder*, 638 F.3d 1196, 1206–08 (9th Cir. 2011)
*Under *Singh*, DHS bears the burden of proving "by clear and convincing evidence" that a noncitizen is a flight risk or a danger to the community to justify denial of bond.
*The court must create a "contemporaneous record" –audio recording or transcript available upon request.

❒ *Rivera v. Holder*, 307 F.R.D. 539, 553 (W.D. Wash. Apr. 13, 2015)
- "Immigration Judges in **Seattle and Tacoma** presiding over bond hearings conducted pursuant to [INA § 236(a)] must . . . consider whether to grant conditional parole in lieu of imposing a monetary bond."
- Conditional parole refers to the release of an individual from custody subject to "certain conditions."

Notes: _____

AMERICAN OVERSIGHT

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
TACOMA IMMIGRATION COURT

In the Matter of: File Number: **A**

PRE-HEARING STATEMENT ORDER

This order establishes mandatory page-limitations, deadlines, and filing requirements related to your applications for relief pursuant to Immigration and Nationality Act § 240(b)(1) and 8 C.F.R. §§ 1003.21(b), 1003.31(c). Non-compliant evidence shall be given no evidentiary weight. *See Taggar v. Holder*, 736 F.3d 886, 889 (9th Cir. 2013). This order does not affect your right to seek a continuance under 8 C.F.R. § 1003.29.

DEADLINE TO FILE COUNTRY CONDITIONS EVIDENCE: Country conditions evidence in your case must be received by the immigration court at least **ten (10) calendar days prior** to the date of your individual calendar (merits) hearing as indicated on your court-issued "Notice of Hearing in Removal Proceedings."

PAGE LIMITATION: You may submit a **maximum of one-hundred-and-fifty (150) pages** of country conditions and background evidence. The most recent United States Department of State Human Rights Report and Religious Freedom Report are **exempt** from this page limitation, but the reports must still be submitted by a party. Country conditions and background evidence must be paginated and include a table of contents that—at a minimum—contains the title of each enclosed document. 8 C.F.R. § 1003.32(b).

> EXCEPTION: A party may request to exceed this order's 150-page limitation by filing a **MOTION TO EXCEED PAGE LIMITATION** at least **thirty (30) days** prior to the next scheduled individual hearing. The motion must contain a statement establishing "good cause" why an exception should be permitted.

PRE-HEARING STATEMENT
You must submit a written pre-hearing statement pursuant to 8 C.F.R. § 1003.21(b) that explains how your evidence tends to prove or disprove a material element of an application for relief. The pre-hearing statement must list all proposed particular social groups and contain citations to evidence.

CORROBORATIVE EVIDENCE FOR APPLICATIONS FOR ASYLUM, WITHHOLDING OF REMOVAL, AND PROTECTION UNDER THE CONVENTION AGAINST TORTURE: Pursuant to INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C), you are required to submit the following corroborative evidence if it is mentioned in your Form I-589 or declaration: medical, police, court, religious, or school records; identification or membership cards; and notes (or any other documents) that were left at your residence or place of employment by people who harmed or threatened you. You must also submit signed declarations from family members, friends, and acquaintances who witnessed any harm, threats, or mistreatment you experienced. If you previously filed a Form I-589, Application for Asylum and Withholding of Removal, with the United States government you must provide a copy of all prior applications. You must submit this evidence to the court if it is reasonably available. Any foreign language document must be accompanied by an English language translation. 8 C.F.R. § 1003.33. If you cannot obtain corroborative evidence, you will be given an opportunity to explain why at your individual hearing. If you fail to submit this or any other corroborative evidence requested by the court, your application for asylum, withholding of removal, or protection under the Convention Against Torture may be denied for failure to meet your burden of proof even if you provide credible testimony. *See Ren v. Holder*, 648 F.3d 1079, 1093 (9th Cir. 2011).

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CORROBORATIVE EVIDENCE FOR APPLICATIONS FOR CANCELLATION OF REMOVAL OR ADJUSTMENT OF STATUS: You bear the burden of proving that your application for cancellation of removal under INA § 240A or adjustment of status under INA § 209 or INA § 245 meets all of the eligibility requirements and that you merit a favorable exercise of the court's discretion. INA § 240(c)(4)(A). Pursuant to INA § 240(c)(4)(B), if you have been arrested, charged, or convicted of a criminal offense in the United States, you are required to submit corroborative evidence including, but not limited to: police reports; affidavits or statements of probable cause; written plea agreements; and criminal judgments. Additionally, if you have undergone a court-ordered alcohol, drug, or chemical dependency examination, you are required to provide the final report. INA § 240(c)(4)(B). You must submit this evidence to the court if it is reasonably available. If you cannot obtain corroborative evidence, you will be given an opportunity to explain why at your individual hearing. If you fail to submit this or any other corroborative evidence requested by the court, your application for discretionary relief may be denied for failure to meet your burden of proof even if you provide credible testimony. *See Ren v. Holder*, 648 F.3d 1079, 1093 (9th Cir. 2011).

PROCEDURES FOR WEBEX APPEARANCES: Attorneys and accredited representatives may appear at individual calendar hearings through Webex video conference. Because of technical and logistical limitations, Webex appearances are unavailable for bond or master calendar hearings. Attorneys and accredited representatives appearing through Webex must use a computer equipped with a microphone, video-camera, and the technical capacity to participate in an uninterrupted four (4) hour hearing. Attorneys and accredited representatives are strongly encouraged to wear headphones during Webex hearings because this helps to eliminate audio-feedback, which can degrade the quality of the court's audio recording.

To appear through Webex, Respondent's attorney or accredited representative must file a **MOTION FOR WEBEX APPEARANCE** at least **fourteen (14) calendar days prior** to the individual calendar hearing, which identifies every witness who will appear through Webex and a proffer of expected testimony

If an immigration judge grants a Motion for Webex Appearance, the attorney or accredited representative may use the hyperlink, listed below, which corresponds to the Immigration Judge assigned to Respondent's case. Once the WebEx link is entered into an internet browser, the attorney will have the capability to hear and see all the other hearing participants.

Judge Scala: https://eoir.webex.com/meet/ACIJ.Scala

Judge Odell: https://eoir.webex.com/meet/IJ.Odell

Judge Fitting: https://eoir.webex.com/meet/IJ.Fitting

Judge Floyd: https://eoir.webex.com/meet/IJ.Floyd

Date: _____ Immigration Judge: _____

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) ELECTRONIC SERVICE (E)

TO: [ ] ALIEN [ ] ALIEN c/o Custodial Officer [ ] ALIEN's ATTY./REP. [ ] DHS

DATE:_____ BY: COURT STAFF _____

AMERICAN OVERSIGHT

NOTICE OF CRIMINAL AND CIVIL CONSEQUENCES FOR FAILURE TO DEPART

The court has denied your applications for relief and ordered you removed from the United States. The law requires the court to inform you of civil and criminal penalties that could be levied against you if you fail to depart the United States. INA § 240(c)(5); 8 C.F.R. § 1240.13(d).

CIVIL PENALTIES FOR FAILURE TO DEPART

Pursuant to INA § 274D, the Department of Homeland Security shall fine you not more than $813 per day, *see* 8 C.F.R. § 280.53, for each day that you:

(1) willfully fail or refuse to:
  (A) depart the United States pursuant to a final order of removal;
  (B) make timely application in good faith for travel or other documents necessary for departure;
  (C) present for removal at the time and place required by the Attorney General; or

(2) conspire to or take any action designed to prevent or hamper your departure pursuant to a final order of removal

CRIMINAL AND CIVIL PENALTIES FOR FAILURE TO DEPART

Pursuant to INA § 243(a)(1), any alien who is subject to a final order of removal by reason of being a member of any of the classes described in INA § 237(a), who:

(A) willfully fails or refuses to depart from the United States within a period of 90 days from the date of the final order of removal under administrative processes, or if judicial review is had, then from the date of the final order of the court,

(B) willfully fails or refuses to make timely application in good faith for travel or other documents necessary to the alien's departure,

(C) connives or conspires, or takes any other action, designed to prevent or hamper or with the purpose of preventing or hampering the alien's departure pursuant to such, or

(D) willfully fails or refuses to present himself or herself for removal at the time and place required by the Attorney General pursuant to such order,

shall be fined under Title 18 of the United States Code, or imprisoned not more than 4 years (or 10 years if you are a member of any of the classes described in INA § 237(a)(1)(E), (2), (3), or (4)), or both. However, you are not subject to these penalties for "any proper steps for the purpose of securing cancellation of or exemption from such order of removal or for the purpose of securing the alien's release from incarceration or custody." INA § 243(a)(2).

AMERICAN OVERSIGHT

Removability & Burdens of Proof

1. General Burden of Proof

In removal proceedings, the Department of Homeland Security bears the burden to prove a respondent is not a citizen. *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153 (1923), *overruled on other grounds by INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). Once non-citizenship is established, the burden is on the respondent to show the time, place, and manner of entry. INA § 291.

2. Applicant for Admission

A noncitizen who is an applicant for admission to the United States must demonstrate they are clearly and beyond doubt entitled to admission and are not otherwise inadmissible under INA § 212 or "[are] lawfully present in the United States pursuant to a prior admission." INA § 240(c)(2)(A); 8 C.F.R. §§ 1240.8(a), (c)

3. Deportable Noncitizens

The Department of Homeland Security has the burden of establishing by "clear and convincing evidence that, in the case of an alien who has been admitted to the United States, the alien is deportable." INA § 240(c)(3)(A); *Woodby v. INS*, 385 U.S. 276, 285 (1966).

4. Lawful Permanent Residents Seeking Admission

In general, "[a]n alien lawfully admitted for permanent residence in the United States shall not be regarded as seeking an admission into the United States." INA § 101(a)(13)(C). However, lawful permanent residents returning from international travel are regarded as seeking admission to the United States if the DHS establishes by "clear and convincing evidence" that the respondent comes within an enumerated provision in INA § 101(a)(13)(C). INA § 240(c)(3); *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011). The enumerated provisions are:

(i) has abandoned or relinquished that status,
(ii) has been absent from the United States for a continuous period in excess of 180 days,
(iii) has engaged in illegal activity after having departed the United States,
(iv) has departed from the United States while under legal process seeking removal of the alien from the United States, including removal proceedings under this chapter and extradition proceedings,
(v) has committed an offense identified in INA § 212(a)(2) of this title, unless since such offense the alien has been granted relief under section 212(h) or 240A(a) of this title, or
(vi) is attempting to enter at a time or place other than as designated by immigration officers or has not been admitted to the United States after inspection and authorization by an immigration officer.

INA § 101(a)(13)(C)

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5. Applicant for Relief

The applicant has the burden of establishing that they satisfy the applicable statutory eligibility requirements for relief and, "with respect to any form of relief that is granted in the exercise of discretion, that [they] merit[] a favorable exercise of discretion." INA § 240(c)(4)(A). If "the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the [applicant] shall have the burden of proving by a preponderance of the evidence that such grounds to not apply." 8 C.F.R. § 1240.8(d); *see Budiono v. Lynch*, 837 F.3d 1042, 1047–48 (9th Cir. 2016). An [applicant] bears the burden proving eligibility for cancellation of removal under INA § 240A(b)(1), including that they have not committed a disqualifying crime of moral turpitude. *Pereida v. Wilkinson*, 141 S.Ct. 754 (2021).

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VOLUNTARY DEPARTURE IN REMOVAL PROCEEDINGS

	PRE-CONCLUSION VD INA §240B(a); 8 C.F.R. §1240.26(b)	**CONCLUSIONOF PROCEEDINGS VD INA §240B(b); 8 C.F.R. §1240.26(c)**
Time Period	Maximum up to 120 days.	Maximum up to 60 days.
Timing of Request	R must make request for VD prior to or at master calendar hearing at which case is initially scheduled for a merits hearing. Must also be granted by IJ within 30 days after that master calendar hearing.	R may make request up until conclusion of proceedings.
Arriving Aliens/ Physical Presence	R may not be an arriving alien (no required period of physical presence).	R must have been physically present in the U.S. for at least one year immediately preceding service of a valid NTA. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).
Pleadings/Relief/ Appeal	R must concede removability, waive/withdraw other requests for relief, & waive appeal (except denial of VD).	R may contest removability, litigate additional requests for relief, & reserve appeal (except time of VD). 8 C.F.R. § 1240.26(g).
Bars	Barred if convicted for an offense that is an aggravated felony INA § 237(a)(2)(A)(iii) or removable under INA § 237(a)(4) (security & related grounds).	Barred if convicted for an offense that is an aggravated felony INA § 237(a)(2)(A)(iii) or removable under INA § 237(a)(4) (security & related grounds). INA § 240B(b)(1)(C)
Good Moral Character	No GMC requirement (but still discretionary).	R must demonstrate GMC for at least five years immediately preceding the VD application. 8 C.F.R. § 1240.26(C)(1)(ii).
Departure at Own Expense	Yes. INA §240B(a)(1); *but see Matter of Arguelles*, 22 I&N Dec. 811, (BIA 1999).	8 CFR § 1240.26(c)(1)(iv) requires R to prove that he has the means & willing to depart immediately.
Bond/Conditions	IJ may impose a bond. R also must satisfy any other conditions that the IJ imposes to ensure timely departure.	Mandatory VD bond of at least $500, to be paid within 5 business days of entry of VD order; May not be waived by IJ; except under 18. R must satisfy any other conditions IJ imposes to ensure timely departure.
Travel Document	R must present a valid travel document (unless with DHS, or is not required by country departing to). IJ's order may provide for presentation of travel document up to 60 days.	R must present valid travel document for inspection by the DHS *before* VD is granted.
Discretion	R must merit a favorable exercise of discretion.	R must merit a favorable exercise of discretion.
Prior VD Grant	R is barred if prior grant of VD in removal proceedings after having been found inadmissible per INA §212(a)(6)(A); exception battered spouse.	R is barred if prior grant of VD in removal proceedings after having been found inadmissible per INA § 212(a)(6)(A)); exception battered spouse.
By Stipulation	Yes, only to overcome problems with timing of request.	No.

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NOTICE TO RESPONDENTS GRANTED VOLUNTARY DEPARTURE

You have been granted the privilege of voluntarily departing from the United States of America. The Court advises you that, if you fail to voluntarily depart the United States within the time period specified, a removal order will automatically be entered against you. Pursuant to section 240B(d) of the Immigration and Nationality Act, you will also be subject to the following penalties:

1. You will be subject to a civil penalty of not less than $1,000 and not more than $5,000; and
2. You will be ineligible, for a period of 10 years, to receive cancellation of removal, adjustment of status, registry, voluntary departure, or a change of nonimmigrant status.

The Court further advises you that:

[ ] You have been granted pre-conclusion voluntary departure.

1. If you file a motion to reopen or reconsider during the voluntary departure period, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. § 1240.26(b)(3)(iii).
2. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of $3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

[ ] You have been granted post-conclusion voluntary departure.

1. If the Court set any additional conditions, you were advised of them, and were given an opportunity to accept or decline them. As you have accepted them, you must comply with the additional conditions. 8 C.F.R. § 1240.26(c)(3).
2. The Court set a specific bond amount. You were advised of the bond amount, and were given an opportunity to accept or decline it. As you have accepted it, you have a duty to post that bond with the Department of Homeland Security, Immigration and Customs Enforcement, Field Office Director within 5 business days of the Court's order granting voluntary departure. 8 C.F.R. § 1240.26(c)(3)(i).
3. If you have reserved your right to appeal, then you have the absolute right to appeal the decision. If you do appeal, you must provide to the Board of Immigration Appeals, within 30 days of filing an appeal, sufficient proof of having posted the voluntary departure bond. The Board will not reinstate the voluntary departure period in its final order if you do not submit timely proof to the Board that the voluntary departure bond has been posted. 8 C.F.R. § 1240.26(c)(3)(ii).
4. If you do not appeal and instead file a motion to reopen or reconsider during the voluntary departure period, the period allowed for voluntary departure will not be stayed, tolled, or extended, the grant of voluntary departure will be terminated automatically, the alternate order of removal will take effect immediately, and the

AMERICAN OVERSIGHT

penalties for failure to depart voluntarily under section 240B(d) of the Act will not apply. 8 C.F.R. §§ 1240.26(c)(3)(iii), (e)(1).

5. There is a civil monetary penalty if you fail to depart within the voluntary departure period. In accordance with the regulation, the Court has set the presumptive amount of $3,000 (or _____ instead of the presumptive amount). 8 C.F.R. § 1240.26(j).

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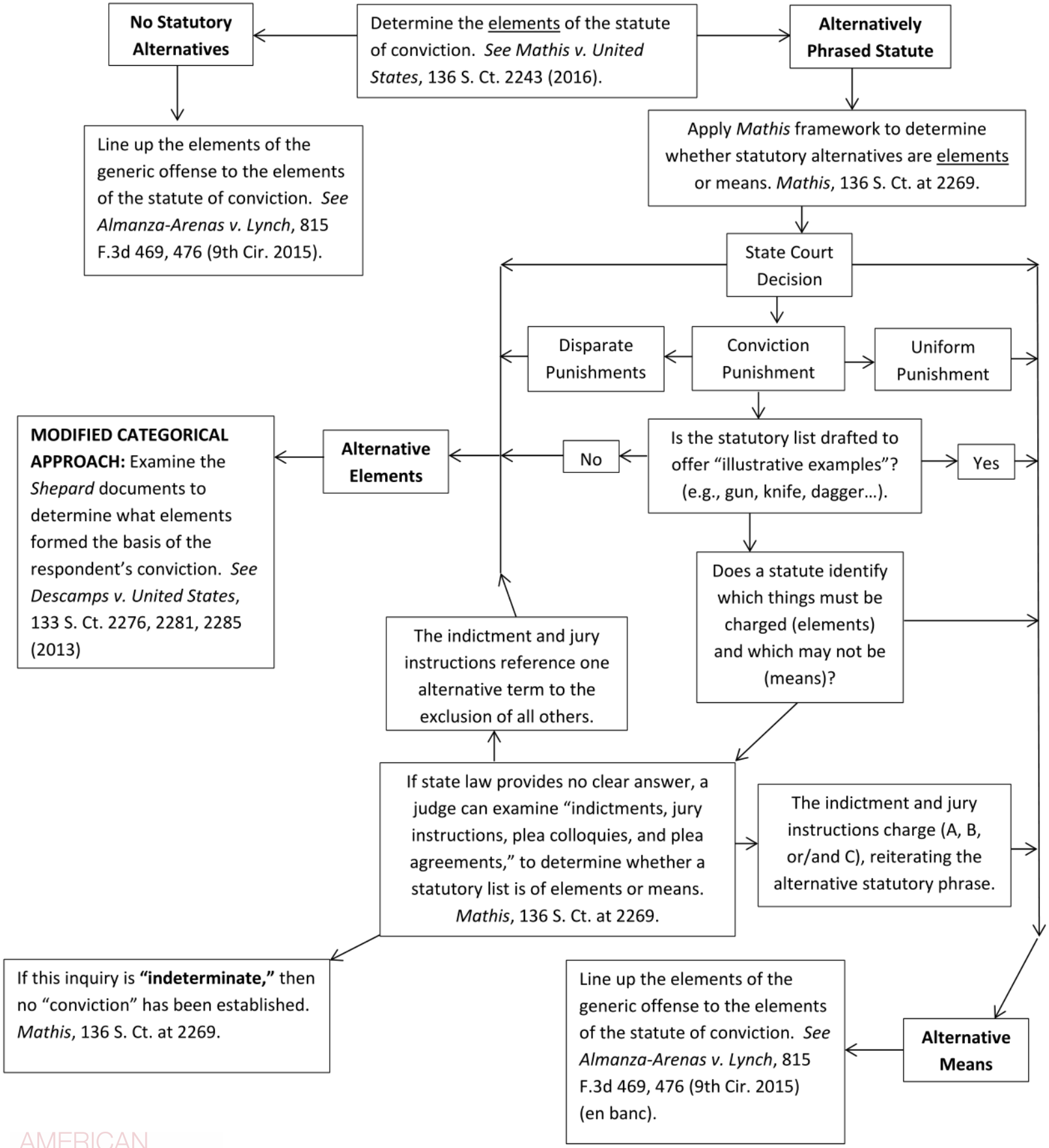
Categorical Approach: Alternatively Phrased Statute Reference Guide



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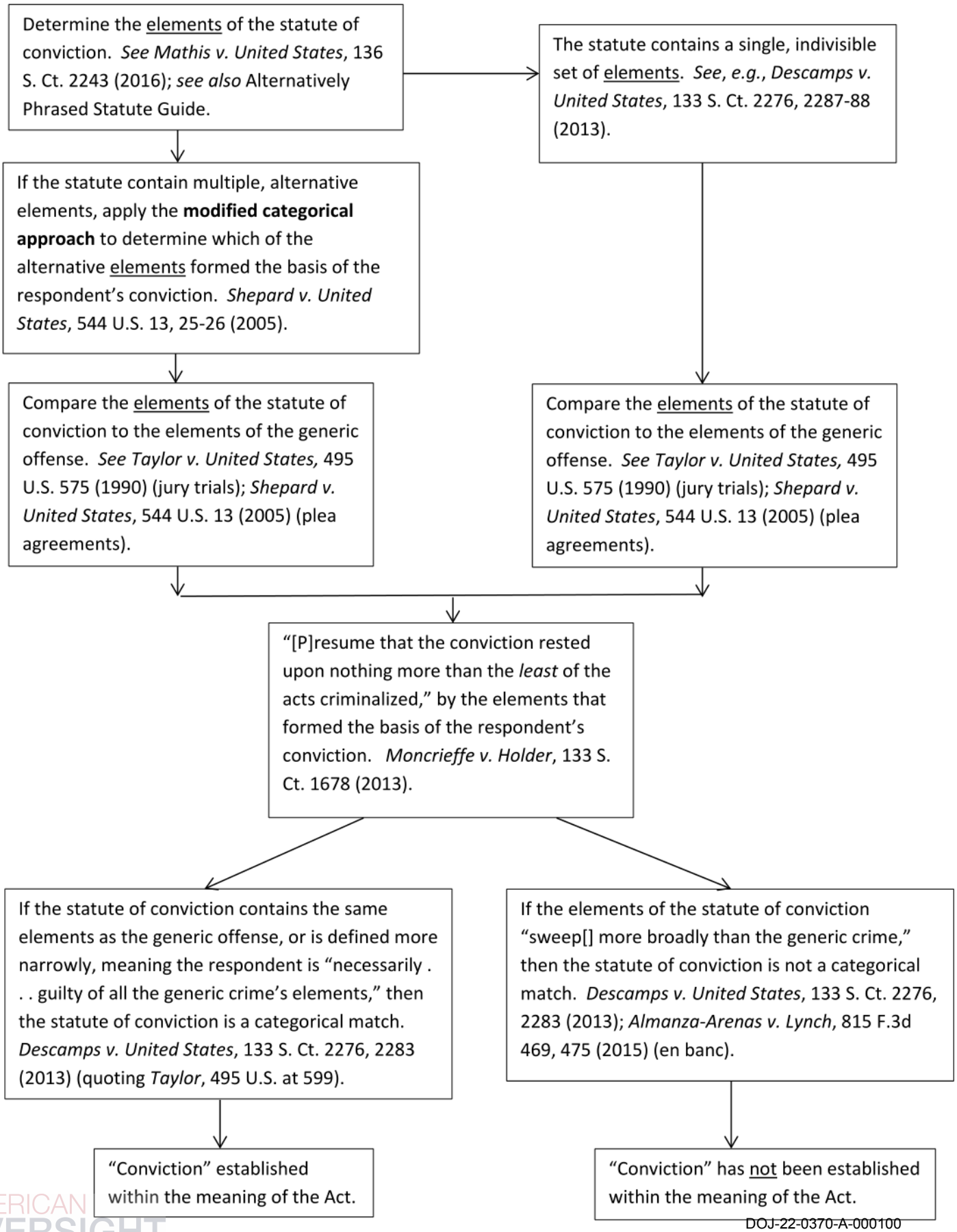
Overview of the Categorical Approach



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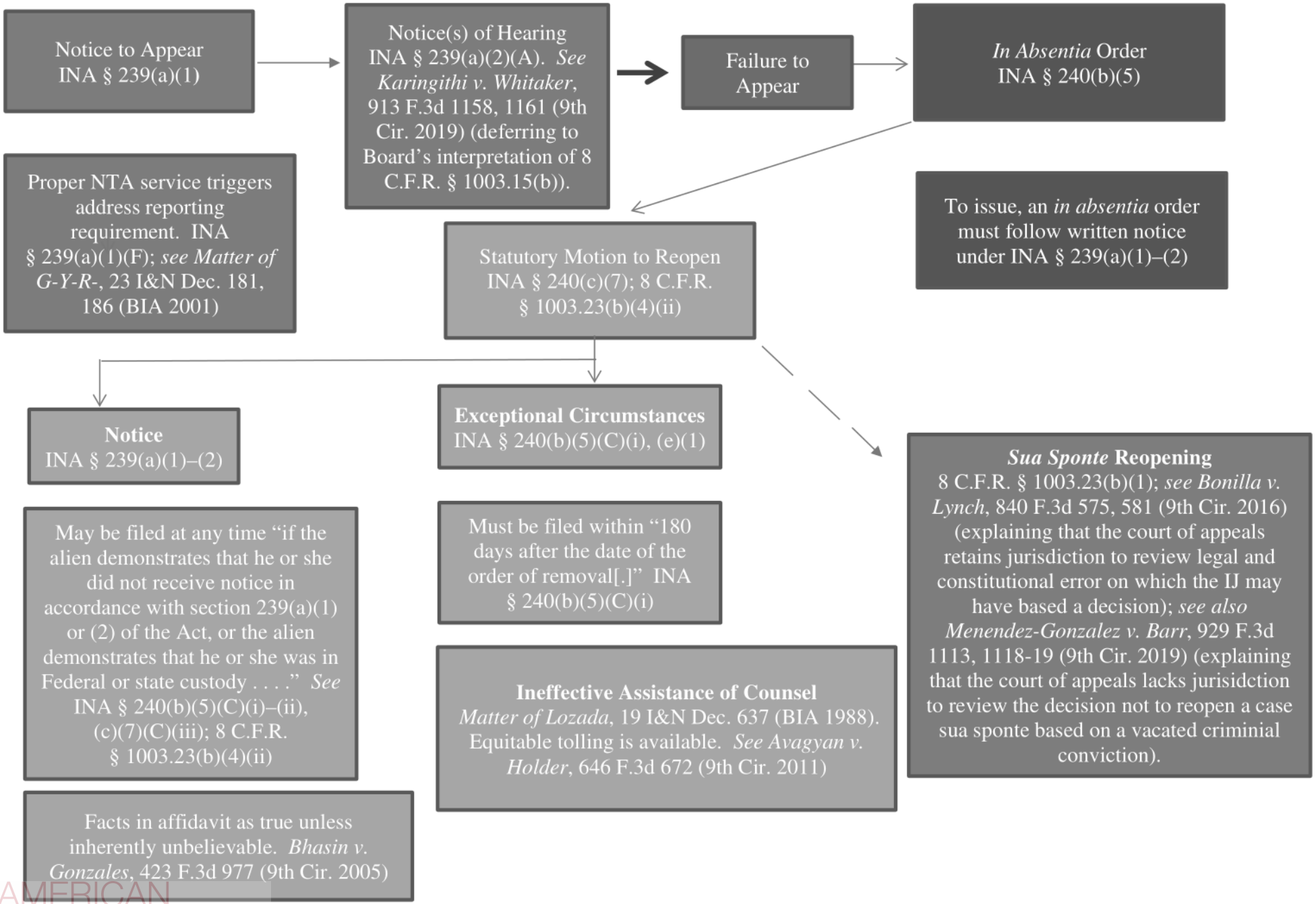
What is a Motion to Reopen and Rescind an *In Absentia* Order?



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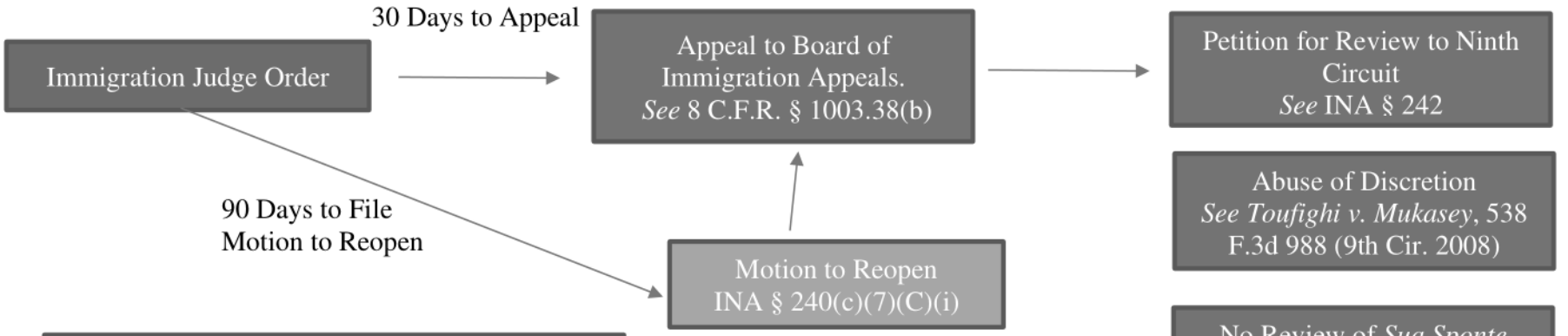
Motion to Reopen After Final Administrative Order of Removal



Asylum or Withholding: Changed Country Conditions
INA § 240(c)(7)(C)(ii) (no time limit for motion to reopen); *see Najmabadi v. Holder*, 597 F.3d 983, 986 (9th Cir. 2010) (discussing grounds for denying a motion to reopen).

Adjudicated/Unadjudicated Form I-130 (Visa Petition)
See Singh v. Holder, 771 F.3d 647 (9th Cir. 2014); *Tadevosyan v. Holder*, 771 F.3d 647 (9th Cir. 2014); *Matter of Velarde-Pacheco*, 23 I&N Dec. 253 (BIA 2002).

Prima Facie Eligible for Relief Sought. *See Ordonez v. INS*, 345 F.3d 777 (9th Cir. 2003).

Abuse of Discretion
See Toufighi v. Mukasey, 538 F.3d 988 (9th Cir. 2008)

No Review of *Sua Sponte* Decision, *see Ekimian v. INS*, 803 F.3d 1153, 1160 (9th Cir. 2002), except for errors of law or constitutional interpretation. *See Bonilla v. Lynch*, 828 F.3d 1052 (9th Cir. 2016).

Review of IJ Decision if BIA adopts it in whole. *See Abebe v. Gonzales*, 432 F.3d 1037, 1039 (9th Cir. 2005).

Review of BIA & IJ decision is BIA adopts IJ's but adds separate reasoning. *Kaur v. Ashcroft*, 388 F.3d 734 (9th Cir. 2004)

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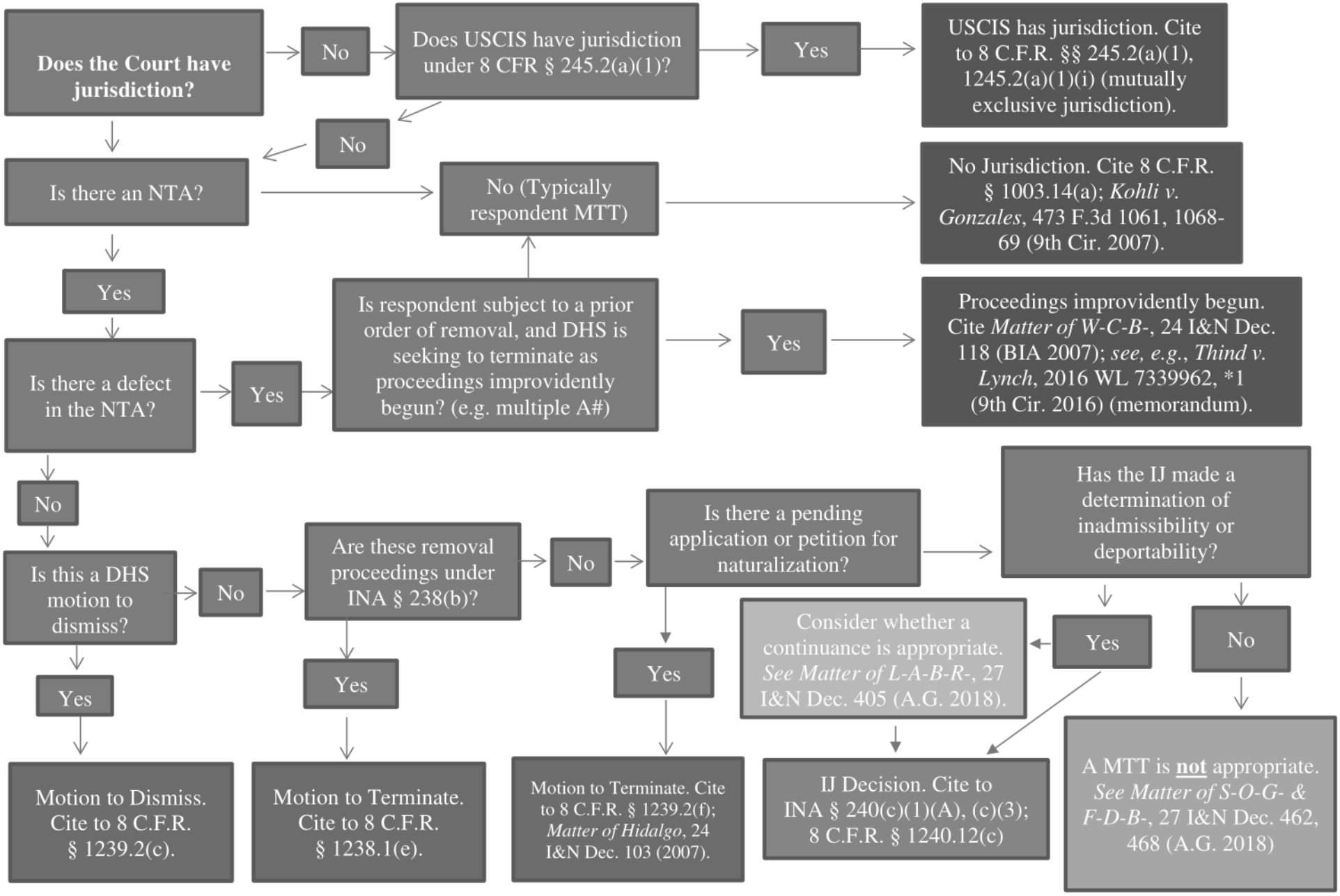
What is the statutory/ regulatory basis of this Motion to Terminate?



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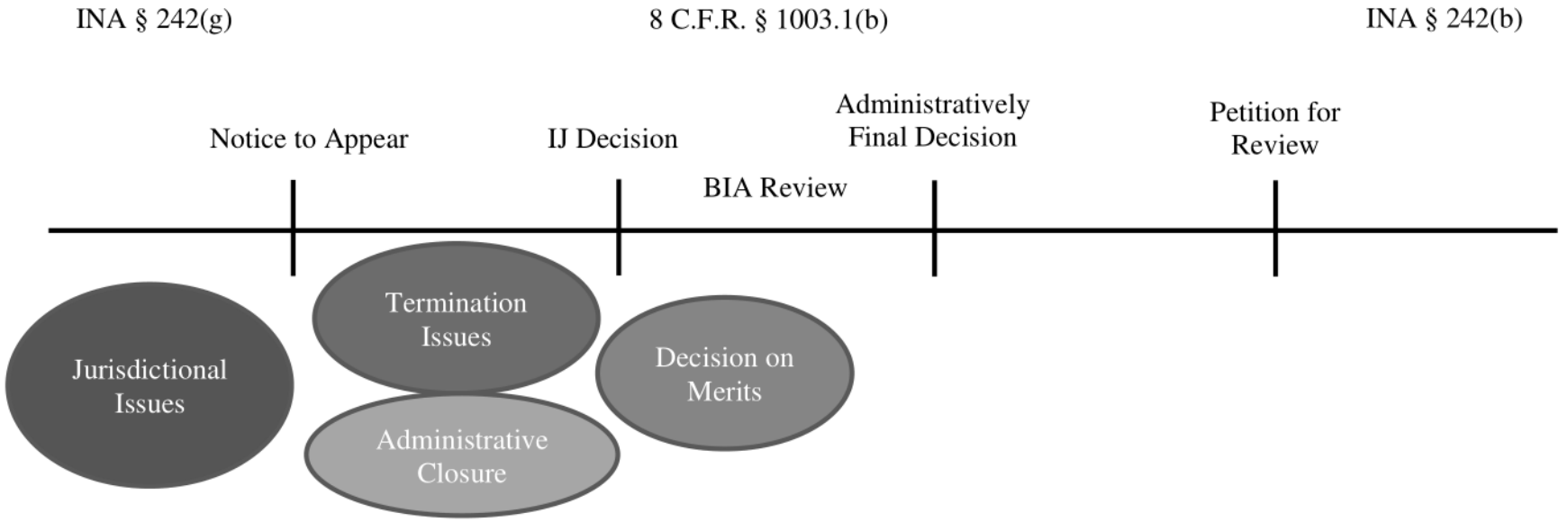
Motion to Terminate & Appellate Review Timeline



Summary of the Immigration Judge's Termination Authority

The IJ "is without authority to terminate deportation proceedings so long as enforcement officials of the [DHS] choose to initiate proceedings against a deportable alien and prosecute those proceedings to a conclusion." *Lopez-Telles v. INS*, 564 F.2d 1302, 1304 (9th Cir. 1977); *see Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462, 468 (A.G. 2018). However, the IJ has authority to terminate proceedings where the court lacks jurisdiction. *See Kohli v. Gonzales*, 473 F.3d 1061, 1068-69 (9th Cir. 2007). An IJ also has authority to terminate proceedings under 8 C.F.R. § 1238.1(e), if the alien is subject to removal under INA § 238, or under 8 C.F.R. § 1239.2(f), if the alien has an application or pending petition for naturalization. *See Hanggi v. Holder*, 563 F.3d 378, 384 (8th Cir. 2009). Additionally, after a motion by DHS, an IJ may dismiss a notice to appear and end proceedings; the respondent may not file a motion to dismiss. 8 C.F.R. § 1239.2(c); *see, e.g., Sanchez Lobato v. Holder*, 445 F. App'x 990 (9th Cir. 2011) (memorandum) ("the IJ did not err in denying [petitioner's] motion to terminate proceedings and reissuance of the notice to appear because the IJ lacked the authority to grant the motion.").

The Ninth Circuit lacks jurisdiction to "hear any cause or claim by or on behalf of any alien arising from the decision of or action by the [Secretary of Homeland Security] to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter." INA § 242(g); *see Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 598-99 (9th Cir. 2002). In effect, this means that the Ninth Circuit is precluded from reviewing an IJ's decision on a motion to terminate unless one of the regulatory grounds to terminate applies or the respondent is not removable as charged. The BIA, as in *Matter of W-A-F-C-*, 26 I&N Dec. 880 (BIA 2016), has authority to review an IJ's decision to terminate. *See* 8 C.F.R. § 1003.1(b) (discussing BIA's appellate jurisdiction).

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Script for Group Initial Master Hearings

1. **Group Hearing - Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

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(b)(5)

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(b)(5)

Reentry Warnings:

(b)(5)

Change of Address Advisal:

(b)(5)

Failure to Appear Warnings:

(b)(5)

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4. **Call Each Case:**

(b)(5)

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5. **Pleadings**

(b)(5)

6. **Country of removal**

(b)(5)

7. **Relief Checklist**

(b)(5)

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8. **Advisals Regarding Relief**

(b)(5)

If they have the application ready to file:

(b)(5)

If I-589 is filed:

(b)(5)

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(b)(5)

If they do NOT have the application(s) ready to file:

(b)(5)

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THE FOLLOWING ADVISALS MAY BE GIVEN IF RESPONDENT IS ELIGIBLE FOR A FORM OF RELIEF, BUT DOES NOT WANT TO APPLY. THIS WILL MAKE A BETTER RECORD IF RESPONDENT WAIVES HIS/HER RIGHT TO APPLY:

A. Asylum, Withholding, and CAT:

(b)(5)

B. Non-LPR Cancellation of Removal:

(b)(5)

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(b)(5)

C. LPR Cancellation of Removal:

(b)(5)

D. Adjustment of Status (INA § 245(a)):

(b)(5)

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(b)(5)

E. Adjustment of Status under INA § 245(i)

(b)(5)

F. *Negrete* Waiver: Consult with mentor

G. Voluntary Departure or Removal Order:

(b)(5)

H. Voluntary Departure Granted:

(b)(5)

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I. Removal Order:

(b)(5)

Failure to Depart Warnings:

(b)(5)

J. Appeal Rights:

(b)(5)

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Script for Single, Pro Se, Initial Master Hearings

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

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(b)(5)

Reentry Warnings:

(b)(5)

Change of Address Advisal:

(b)(5)

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Failure to Appear Advisal:

(b)(5)

4. **Acknowledgment of Rights and Election of Right to Representation:**

(b)(5)

Th

5. **Pleadings:**

(b)(5)

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(b)(5)

6. **Country of removal**

(b)(5)

7. **Relief Checklist: (review the worksheet)**

(b)(5)

8. **Advisals Regarding Relief**

(b)(5)

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(b)(5)

If they have the application ready to file:

(b)(5)

If I-589 is filed:

(b)(5)

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(b)(5)

If they do NOT have the application(s) ready to file:

(b)(5)

9. Voluntary Departure or Removal Order:

(b)(5)

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(b)(5)

10. Removal Order:

(b)(5)

11. Appeal Rights:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

Script for Represented Initial Master Hearing

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

4. **Pleadings:**

(b)(5)

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(b)(5)

5. **Designate country of removal:**

(b)(5)

6. **Relief Checklist: (Review the worksheet)**

(b)(5)

7. **Applications for Relief from Removal:**

(b)(5)

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(b)(5)

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Script for Continued Pro Se Master Hearing

(b)(5)

AMERICAN OVERSIGHT

Script for Continued Represented Master Hearing

(b)(5)

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Script for Bond Hearing Pro Se

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

4. **Determine Court's Jurisdiction**

5. **Address Evidentiary Submissions**

6. **Bond Questions:**

(b)(5)

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(b)(5)

7. **Announce Ruling:** (no oral decision necessary)

(b)(5)

8. **Appeals:**

(b)(5)

Failure to Appear Warnings:

(b)(5)

Change of Address:

(b)(5)

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Script for Withholding-Only or Asylum-Only Initial Master Hearing

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

4. **Acknowledgment of Rights and Election of Right to Representation:**

(b)(5)

5. **Filing Applications:**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

Failure to Appear:

(b)(5)

Change of Address:

(b)(5)

Reentry Warnings:

(b)(5)

AMERICAN OVERSIGHT

Script for Credible Fear Review Hearing

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

4. **Acknowledgment of Rights and Election of Right to Representation:**

(b)(5)

5. **Hold Credible Fear Review Hearing:**

AMERICAN OVERSIGHT

(b)(5)

6. **Announce Decision:**

(b)(5)

AMERICAN OVERSIGHT

Script for Reasonable Fear Review Hearings

1. **Initial Matters:**

(b)(5)

2. **Administer Oath:**

(b)(5)

3. **Rights Advisals:**

(b)(5)

4. **Acknowledgment of Rights and Election of Right to Representation:**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

5. **Hold the Reasonable Fear Review Hearing:**

(b)(5)

6. **Announce Decision:**

(b)(5)

AMERICAN OVERSIGHT

Script for Individual Hearing

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

Advisals if Appeal is Reserved:

(b)(5)

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Script for *in absentia* removal proceedings[1]

(b)(5)

If a respondent fails to appear at a reset master calendar hearing:

(b)(5)

[1] The notice standard for deportation proceedings is different.

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(b)(5)

If a respondent fails to appear at an individual merits hearing:

(b)(5)

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[Transcriber, please use the oral decision format and heading for the Tacoma, Washington, Immigration Court.]

In the Matter of: **[Respondent's Name]** Respondent	File Number: **A** In Removal Proceedings

Charge:

Applications: Asylum, Withholding of Removal, and Protection under the Convention Against Torture

Oral Decision of the Immigration Judge

I. Factual and Procedural History

The Department of Homeland Security (DHS) initiated removal proceedings against Respondent, **[Respondent's Name]**, by filing a Notice to Appear (NTA) with the Tacoma, Washington, Immigration Court on **[DATE]**. Exh. 1.

[Explain when the charge of removability was sustained.]

[Explain when applications of relief were filed.]

II. Evidence

The evidence in the record consists of respondent's [witnesses] testimony and **[exhibits 1 through ___]**. The court considered all evidence in the record even if not explicitly mentioned in this decision.

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III. Analysis

A. Credibility

An applicant filing for relief from removal bears the burden of convincing the court that their evidence is credible. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).

[Make Credibility Finding] The court finds the respondent/applicant/witness credible. For example: Respondent provided consistent, candid and forthright testimony. Or, the court finds the respondent/applicant/witness incredible for the following reasons: list reasons and provide analysis.

B. Statutory and Regulatory Bars to Asylum/Withholding [*Only If Relevant*}

1. One Year Bar

An application for asylum must be "filed within 1 year after the date of the alien's arrival in the United States[,]" unless changed or extraordinary circumstances justify the delay in filing an application. INA § 208(a)(2)(B), (D).

[Explain whether "changed circumstances" or an "exceptional situation" listed in 8 C.F.R. § 1208.4(a)(4), (5) justifies the untimely asylum application. If no exception to the one year bar applies, explain that the application must be denied pursuant to INA § 208(b)(2)(B)].

2. Particularly Serious Crime Bar

An applicant convicted of a particularly serious crime is ineligible for withholding of removal or withholding of removal under the Convention Against Torture. INA § 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2). Where an alien has not been convicted of an aggravated felony with an aggregate term of imprisonment exceeding five years, the court may conduct a case-specific analysis of the facts and circumstances of the applicant's convictions to determine if they were

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particularly serious. *See Delgado v. Holder*, 648 F.3d 1095, 1102–04 (9th Cir. 2011) (en banc). The court's analysis is guided by *Matter of N–A–M–*, 24 I&N Dec. 336, 342 (BIA 2007), and the modified *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982), factors. *See Anaya-Ortiz v. Holder*, 594 F.3d 673, 679 (9th Cir. 2010). Such factors include, "the nature of the conviction, the circumstances and underlying facts of the conviction, [and] the type of sentence imposed[.]" *Matter of Frentescu*, 18 I&N Dec. at 247.

[Analyze: (1) elements of statute of conviction; (2) describe the facts and circumstances of the underlying crime; (3) identify any criminal penalties (probation, jail, post-conviction classes, sex offender registration, etc.)]

[State particularly serious crime finding]. This finding renders respondent ineligible for asylum, withholding of removal under INA § 241(b)(3), and withholding under the Convention Against Torture. INA §§ 208(b)(2)(A)(ii), 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2).

C. Asylum

To qualify for a grant of asylum, an applicant bears the burden of demonstrating that he or she meets the statutory definition of a refugee. INA §§ 101(a)(42)(A), 208(b)(1)(A). The Act defines the term "refugee" as any person who is outside his or her country of nationality who is unable or unwilling to return to, and is unable or unwilling to avail himself or herself of the protection of that country because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A); 8 C.F.R. § 1208.13(b).

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1. Past Persecution

[Decide whether Respondent established past persecution and briefly explain why or why not. Address the burden shifting of rebuttable presumption of future persecution to DHS if Respondent establishes past persecution.]

2. Protected Ground

[Identify Respondent's proposed social groups. Explain whether they are: (1) socially distinct; (2) defined with particularity; and (3) comprised of members who share an immutable characteristic.]

[Identify another other protected ground (race, religion, nationality, political opinion) and briefly explain when Respondent became associated with it, if relevant].

3. On Account Of/Nexus

[Explain whether Respondent was harmed "on account of" a protected ground. *See Parussimova v. Mukasey*, 555 F.3d 734, 740–42 (9th Cir. 2009) (explaining that "the protected ground cannot play a minor role in the alien's past mistreatment or fears of future mistreatment. That is, it cannot be incidental, tangential, superficial, or subordinate to another reason to harm.")].

4. Unable or Unwilling to Protect

[Briefly explain whether the government was unable or unwilling to protect Respondent by discussing any efforts to contact their government and any response.]

5. Presumption of Well-Founded Fear

[If Respondent established past persecution on account of a protected ground, explain whether DHS established by a *preponderance* of the evidence that "internal relocation" would be "reasonable" or that there has been "a fundamental change in

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circumstances" such that Respondent no longer has a well-founded fear of persecution.]

6. Well-Founded Fear of Future Persecution

Even in the absence of past persecution, Respondent may be eligible for asylum based on a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b)(2). A respondent has a well-founded fear of persecution if: (1) she or he fears persecution in the country of nationality on account of race, religion, nationality, membership in a particular social group, or political opinion; (2) there is a reasonable possibility of suffering such persecution if she or he were to return to that country; and (3) she or he is unable or unwilling to return to that country because of such fear. 8 C.F.R. § 1208.13(b)(2)(i).

[Discuss whether, in the absence of past persecution, Respondent has a well-founded fear of future persecution. Repeat analysis for protected ground, nexus, and relocation.]

D. Withholding of Removal

1. Cases without a Cognizable PSG or Other Protected Ground

[If denying asylum due to a lack of a *cognizable social group* or other protected ground, include the following language denying withholding of removal under INA § 241(b)(3):] Because Respondent failed to establish a protected characteristic or membership in a particular social group, the asylum and withholding of removal claims in this case necessarily fail. *See Parussimova v. Mukasey*, 555 F.3d 734, 740 (9th Cir. 2009) (asylum claim fails without a nexus to a protected ground); *Sanjaa v. Sessions*, 863 F.3d 1161, 1164 (9th Cir. 2017) (withholding of removal claim fails without a nexus to a protected ground).

2. Cases with a Cognizable PSG or Other Protected Ground

[If denying asylum/withholding in the Ninth Circuit due to *nexus*, then you must

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consider the lower "a reason" causation standard set forth in *Barajas-Romero*.]

To qualify for withholding of removal, an applicant must show that his life or freedom would be threatened because of a protected ground if he were to return to the country of removal. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (explaining that the nexus requirement for withholding of removal includes weaker motives that the "one central reason" asylum standard). An applicant may establish eligibility for withholding of removal through either a presumption that their life or freedom would be threatened based on past persecution or an independent showing of a clear probability of future persecution.

[Conduct withholding of removal analysis here.]

E. Convention Against Torture

Protection under Convention Against Torture is mandatory relief if the requirements are met. 8 C.F.R. §§ 1208.16(c), 1208.18. To be eligible for relief under the CAT, an applicant must show "that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). "Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2). To qualify, torture must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1).

The court must consider all evidence relevant to the likelihood of future torture, including but not limited to: past torture inflicted upon the applicant; evidence that the applicant could relocate to another part of the country where it is unlikely he will be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in **[country of removal]**. 8 C.F.R. § 1208.16(c)(3).

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[In one or two sentences, summarize Respondent's fear of torture.] In order to meet their burden of proof under the Convention Against Torture, Respondent must show that each element in a hypothetical chain of events is "more likely than not" to occur. *See Matter of J–F–F–*, 23 I&N Dec. 912 (A.G. 2006).

In this case, the evidence in the record **[does / does not]** establish that Respondent experienced torture in **[country of removal]**. *See Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010) ("the existence of past torture is ordinarily the principal factor on which we rely") (internal quotation omitted).

[Analyze country conditions evidence and Respondent's risk of torture based on country conditions evidence and testimony. Explain that internal relocation is simply one factor to consider with all other evidence. No party has the burden to prove internal relocation under 8 C.F.R. § 1208.16(c)(3). *See Maldonado v. Lynch*, 786 F.3d 1155, 1163 (9th Cir. 2015).]

In considering and weighing the evidence in the record, the court finds that respondent **[has/ has not]** not shown that the individual risk of torture in this case is "more likely than not" **[or / and]** that any future harm would occur with the consent or acquiescence of a government official. *See Alphonsus v. Holder*, 705 F.3d 1031, 1049 (9th Cir. 2013) ("Despite the troubling country reports, the record evidence does not compel the conclusion that [Petitioner] himself will be, more likely than not, *tortured* upon his return.") (emphasis in original). Accordingly, Respondent **[has / has not]** not demonstrated eligibility for relief and his application for protection under the Convention Against Torture must be **[granted / denied]**. 8 C.F.R. § 1208.16(c)(2).

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F. Post-Conclusion Voluntary Departure

At the conclusion of removal proceedings, the court may allow an alien to voluntarily depart the United States at his own expense in lieu of removal. INA § 240B(b)(1). The alien must (1) have been physically present in the United States for at least one year preceding the date the NTA was served; (2) have been a person of good moral character for at least five years preceding his application; (3) not be deportable under § 237(a)(2)(A)(iii) or § 237(a)(4) of the Act; and (4) have established by clear and convincing evidence that he has the means to depart the United States and intends to do so. INA § 240B(b)(1)(A)–(D). Voluntary departure is discretionary, and the pertinent factors in the exercise of discretion include Respondent's immigration and criminal history, length of residence in and ties to the United States, the existence of any United States citizen or legal permanent resident family members, and humanitarian factors. *Matter of Seda*, 17 I&N Dec. 550, 554–55 (BIA 1980).

[Conduct Analysis of Factors]

In light of the foregoing, the following orders shall enter:

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Orders

Respondent's application for asylum under INA § 208(b)(1) is _____.

Respondent's application for withholding of removal under INA § 241(b)(3) is _____ _____.

Respondent's application for protection under the Convention Against Torture is_____ _____.

Respondent's application for voluntary departure is _____.

The court **ORDERS** Respondent removed to **[Country of Removal]**. **[*Necessary* if granting withholding of removal or protection under CAT]**

Date:

_____
[Your Name]
Immigration Judge

[Transcriber this is the end of the oral decision. Please return to the question and answer format.]

[Explain Appeal Rights]

You have the right to appeal this decision, which must be received by the Board of Immigration Appeals within 30 calendar days after the mailing of this order. The address for the Board of Immigration Appeals is listed the appeal packet. A copy of your appeal must also be provided to the Department of Homeland Security. You have the right to an attorney of your own choosing during his appeal at no expense to the United States government. Any appeal must be accompanied by a filing-fee, but a fee-waiver is available.

Your appeal must be *received* by the Board of Immigration Appeals on **[Provide Appeal Date]**. This means that you must complete and mail your appeal to the Board of Immigration Appeals so that it arrives at the Board of Immigration Appeals by **[Repeat Appeal Date]**.

[Provide Failure to Depart Warnings]

Because the court denied your applications for relief and ordered you removed from the United States, the law requires the court to inform you of civil and criminal penalties that could be levied against you if you fail to depart the United States. INA § 240(c)(5); 8 C.F.R. § 1240.13(d). You are advised that you could be fined up to $___ per day for each day that you willfully impede or conspire to impede your removal. If you are removable for a reason listed in INA § 237(a), you may be fined, imprisoned for up to ten years, or both for willfully failing to depart the United States or refusing to appear for your removal. You are being provided a copy of criminal and civil consequences for failing to depart the United States. **[*Serve Advisals*]**

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Addendum of Law: Asylum, Withholding, and Convention Against Torture

The following statements of law are hereby incorporated into the Immigration Judge's oral decision. These statements are not the sole legal basis for the decision and are meant to be read in conjunction with any law cited in the oral decision itself.

I. Credibility and Sustaining the Burden

An applicant has the burden of proof to establish eligibility for relief, and may do so through testimony that is credible and persuasive. INA § 240(c)(4). In making a credibility determination, the court considers the totality of the circumstances, including the "demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence," as well as any other relevant factors. *Id.*

However, "[i]t's not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021). An applicant's testimony must also be persuasive to meet their burden of proof. INA § 240(c)(4) (listing "persuasive" in the conjunctive); *Ming Dai*, 141 S. Ct. at 1680. Though credibility is "closely bound" to persuasiveness, credible testimony is not dispositive of persuasiveness, and an applicant's credible testimony shall not be "deemed-true-or-credible." *Ming Dai*, 141 S. Ct. at 1681. Instead, the Immigration Judge should consider conflicting evidence in the record and determine whether this evidence outweighs the applicant's version of events. *Id.* ("Faced with conflicting evidence, it seems likely that a reasonable adjudicator could find the unfavorable account more persuasive than the favorable version in both cases."). When the conflicting evidence outweighs the applicant's credible testimony, the applicant's testimony may not be persuasive.

II. Corroboration

An applicant's own testimony, without corroborating evidence, may be sufficient proof if that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for their fear of persecution. INA § 208(b)(1)(A)(ii). However, where the court is not persuaded by the applicant's otherwise credible testimony, the court must put the applicant on notice that they need to produce corroborative evidence and provide the respondent "an opportunity to either provide that corroboration or explain why he cannot do so." *Ren v. Holder*, 648 F.3d 1079, 1091–92 (9th Cir. 2011) (interpreting INA § 208(b)(1)(B)(ii)); *see also Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015). In order for the applicant to sustain their burden of proof, "[w]here the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii); *Aden v. Holder*, 589 F.3d 1040–1044 (9th Cir. 2009).

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III. Asylum

As a threshold matter, an applicant must prove by clear and convincing evidence that their asylum application was filed within one year of the date of their last arrival into the United States. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). If the applicant files after the one-year deadline, they must show to the satisfaction of the Court that they qualify for an exception to the filing deadline. *Id*.

To qualify for asylum, an applicant must establish that they are a refugee as defined in section 101(a)(42) of the Act. A refugee is a person who is "unable or unwilling" to return to their country of origin because of past persecution or a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA § 101(a)(42)(A), INA § 208(b)(1)(A). The applicant must demonstrate that the protected ground was or will be "at least one central reason" for the claimed persecution. INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208, 212 (BIA 2007). Persecution requires an applicant show an incident or incidents rising to the level of persecution on account of a protected ground that were committed by the government or forces the government is unable or unwilling to control. *See Navas v. INS*, 217 F.3d 646, 655–56 (9th Cir. 2000); 8 C.F.R. § 1208.13(b)(1).

To establish past persecution, the applicant must demonstrate that they suffered persecution in their country of nationality or, if stateless, in their country of last habitual residence, on account of an actual or imputed protected ground, and that they are unable or unwilling to return to, or avail themselves of the protection of, that country because of such persecution. 8 C.F.R. § 1208.13(b)(1). If past persecution is established, a presumption arises that the applicant has a well-founded fear of future persecution on the basis of their original claim. *Id.* The DHS may rebut this regulatory presumption by showing by a preponderance of the evidence that the applicant's fear is no longer well-founded due to a fundamental change in circumstances or that the applicant could avoid future persecution by relocating to another part of the country and that it would be reasonable to expect the applicant to do so. *Id*.; *see also Mendoza-Pablo v. Holder*, 667 F.3d 1308, 1312–13 (9th Cir. 2012) ("Once past persecution is established, the burden then shifts to the Government to rebut this presumption . . . .").

Where an applicant is unable to establish past persecution, the applicant may nevertheless be entitled to relief if they prove the existence of a well-founded fear of future persecution. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 430–31 (1987). A well-founded fear of future persecution can be established by demonstrating a subjectively genuine and objectively reasonable fear of future persecution. *See Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1062 (9th Cir. 2017). Where past persecution has not been established, the applicant bears the burden of establishing that internal relocation would not be reasonable. 8 C.F.R. § 1208.13(b)(3)(i).

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Finally, an applicant must establish that he or she is not statutorily barred from asylum and that he or she warrants a grant of asylum as a matter of discretion. *See* INA §§ 208(b)(1)(A), 240(c)(4)(A); *Kalubi v. Ashcroft*, 364 F.3d 1134, 1137 (9th Cir. 2004).

IV. Withholding of Removal

Withholding of removal requires the applicant to objectively establish that it is "more likely than not" that the applicant's race, religion, nationality, membership in a particular social group, or political opinion would be "a reason" his "life or freedom would be threatened" in the future. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (holding that "a reason" is "a less demanding standard than 'one central reason'" standard for asylum). The "clear probability" standard required for withholding of removal is more stringent than the "well-founded fear" standard for asylum. *Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000).

A finding of past persecution gives rise to a presumption of future persecution sufficient to establish eligibility for withholding of removal. 8 C.F.R. § 1208.16(b)(1)(i). In the absence of past persecution, an applicant bears the burden of demonstrating that it is "more likely than not" that his life or freedom would be threatened in the future because of the applicant's race, religion, nationality, membership in a particular social group, or political opinion and internal relocation is not reasonable. *See* 8 C.F.R. §§ 1208.16(b)(2), (3)(i); *see also INS v. Stevic*, 467 U.S. 407, 429–30 (1984). If the applicant does not fear persecution by the government, the applicant must establish a clear probability of persecution from individuals the government is unable or unwilling to control. *Nehad v. Mukasey*, 535 F.3d 962, 972 (9th Cir. 2008); *Matter of McMullen*, 17 I&N Dec. 542, 548 (BIA 1980).

In the absence of past persecution, an applicant may establish eligibility for withholding of removal by demonstrating, through "credible, direct, and specific evidence in the record of facts," that it is more likely than not that his life or freedom would be threatened in the future because of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. *Duarte de Guinac v. INS*, 179 F.3d, 1156, 1159 (9th Cir. 1999); 8 C.F.R. § 1208.16(b)(2). An applicant may establish a well-founded fear of persecution if there is a reasonable probability that they would be singled out individually for persecution or if there is a "pattern or practice" of persecution of "similarly situated" persons. 8 C.F.R. § 1208.13(b)(2)(iii). An applicant cannot show a clear probability of future persecution if the court "finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.16(b)(2).

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V. Convention Against Torture

Unlike asylum or withholding, there are no mandatory bars to an applicant seeking deferral of removal under the Convention Against Torture. *Lopez-Cardona v. Holder*, 662 F.3d 1110, 1113–14 (9th Cir 2011). An applicant for protection under the Convention Against Torture bears the burden of proving that it is "more likely than not that he would be tortured if removed to the proposed country of removal." *See Azanor v. Ashcroft*, 364 F.3d 1013, 1018 (9th Cir. 2004); 8 C.F.R. § 1208.16(c)(2). In other words, the respondent must meet a "clear probability" standard. *Zhang v. Ashcroft*, 388 F.3d 713, 721–22 (9th Cir. 2004).

Torture is defined as the intentional infliction of severe physical or mental pain or suffering based on discrimination of any kind, or for the purpose of obtaining information or a confession, or to punish for an act or suspected act, or to intimidate or coerce any person or third party. 8 C.F.R. § 1208.18(a)(1)); *Villegas v. Mukasey*, 523 F.3d 984 (9th Cir. 2008) (construing the intent requirement under 8 C.F.R. § 1208.18(a)(5) to require a showing that the government actor "specifically intended" to torture the respondent by "inflict[ing] severe physical or mental pain or suffering"); *see also Matter of J-E-*, 23 I&N Dec. 291, 298 (BIA 2002). "Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2). The pain and suffering associated with torture must be inflicted with the consent, acquiescence of, or at the instigation of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). A public official "acquiesces" in acts of torture by a private party when they are previously aware of activity constituting torture and breach their legal responsibility to intervene to prevent such activity because they are unable or unwilling to oppose it. 8 C.F.R. § 1208.18(a)(7); *Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014).

In assessing whether it is more likely than not that an applicant will be tortured in the proposed country of removal, the court may consider: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information in the country of removal. 8 C.F.R § 1208.16(c)(3); *see also Maldonado v. Lynch*, 786 F.3d 1155, 1162-64 (9th Cir. 2015) (en banc) (explaining that no one factor under 8 C.F.R. 1208.16(c)(3) is determinative). The credible testimony of an applicant may be sufficient without corroboration to sustain his burden under the CAT, and evidence of country conditions "can play a decisive role in determining eligibility." *Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004); 8 C.F.R. § 1208.16(c)(2). However, an applicant cannot meet his burden to establish eligibility for protection under the CAT by stringing together a series of suppositions. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (BIA 2006). Instead, the applicant must show "specific grounds" indicating that he would be personally at risk. *J-E-*, 23 I&N Dec. at 917.

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An applicant who is entitled to protection under the Convention Against Torture, but is subject to the provisions for mandatory denial of withholding of removal under 8 C.F.R. 1208.16(c)(2), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured. 8 C.F.R. 1208.17(a).

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[Transcriber, please use the oral decision format and heading for the Tacoma, Washington, Immigration Court]

In the Matter of: **[Applicant's Name]** Applicant	File Number: **A** In Withholding-Only Proceedings

Applications: Withholding of Removal and Protection under the Convention Against Torture

Oral Decision of the Immigration Judge

I. Factual and Procedural History

Applicant, **[Applicant's Name]**, is a native and citizen of **[list home country]**. On **[Date]**, the Department of Homeland Security (DHS) filed a Form I-863, Notice of Referral to Immigration Judge, notifying the court that Applicant is subject to a prior order of removal and referring Applicant for withholding-only proceedings. 8 C.F.R. § 1208.31(e). Applicant filed a Form I-589, Application for Asylum and for Withholding of Removal on **[Date of Application]**.

II. Evidence

The evidence in the record consists of Applicant's [witnesses] testimony and exhibits **[1 through___]**. The court considered all evidence in the record even if not explicitly mentioned in this decision.

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III. Analysis

A. Credibility

An applicant filing for relief from removal bears the burden of convincing the court that their evidence is credible. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).

[Make Credibility Finding for Applicant and each witness.]

B. Withholding of Removal

[*Barajas-Romero* is Ninth Circuit standard only. Otherwise use "on account of" standard.] To qualify for withholding of removal, an applicant must show that his life or freedom would be threatened because of a protected ground if he were to return to the country of removal. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (explaining that the nexus requirement for withholding of removal includes weaker motives than the "one central reason" asylum standard). An applicant may establish eligibility for withholding of removal through either a presumption that their life or freedom would be threatened based on past persecution or an independent showing of a clear probability of future persecution. *Tamang v. Holder*, 598 F.3d 1083, 1091 (9th Cir. 2010); 8 C.F.R. § 1208.16(b)(1)–(2). The applicant must

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meet his burden by presenting sufficient objective evidence to establish the likelihood of persecution. *Zehatye v. Gonzales*, 453 F.3d 1182, 1190 (9th Cir. 2006).

1. Past Persecution

[Explain whether the past harm Applicant experienced constitutes persecution and, if so, whether the government was unable or unwilling to protect Applicant.]

[*Barajas* may not apply to the regulatory presumption. Discuss nexus standard with mentor judge.]

2. Protected Ground

[Identify Applicant's proposed social groups. Explain whether they are: (1) socially distinct; (2) defined with particularity; and (3) comprised of members who share an immutable characteristic.]

[Identify another other protected ground (race, religion, nationality, political opinion) and briefly explain when Applicant became associated with it, if relevant.]

3. Because of

[Explain whether Applicant was harmed "because of" a protected ground.]

4A. Presumption of Well-Founded Fear

[If Applicant is entitled to a presumption of a well-founded fear, explain whether DHS established by a *preponderance* of the evidence that "internal relocation" would be "reasonable" under the 8 C.F.R. § 1208.16(b)(3) factors or that there has been "a

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fundamental change in circumstances" such that Applicant no longer has a well-founded fear of persecution.]

4B. Well-Founded Fear in the Absence of Past Persecution

[Explain whether Applicant established that their life or freedom would be threatened "because of" a protected ground.]

C. Convention Against Torture

Protection under Convention Against Torture is mandatory relief if the requirements are met. 8 C.F.R. §§ 1208.16(c), 1208.18. To be eligible for relief under the CAT, an applicant must show "that it is more likely than not that he or she would be tortured if removed to the proposed country of removal." 8 C.F.R. § 1208.16(c)(2). "Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2). To qualify, torture must be "inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity." 8 C.F.R. § 1208.18(a)(1).

The court must consider all evidence relevant to the likelihood of future torture, including but not limited to: past torture inflicted upon the applicant; evidence that the applicant could relocate to another part of the country where it is unlikely he will be tortured; gross, flagrant, or mass violations of human rights; and other relevant information regarding conditions in **[country of removal]**. 8 C.F.R. § 1208.16(c)(3).

[In one or two sentences, summarize Respondent's fear of torture.] In order to meet their burden of proof under the Convention Against Torture, Applicant must show that each element in a hypothetical chain of events is "more likely than not" to occur. *See Matter of J–F–F–*, 23 I&N Dec. 912 (A.G. 2006).

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In this case, the evidence in the record **[does / does not]** establish that Applicant experienced torture in **[country of removal]**. *See Edu v. Holder*, 624 F.3d 1137, 1145 (9th Cir. 2010) ("the existence of past torture is ordinarily the principal factor on which we rely") (internal quotation omitted).

[Analyze country conditions evidence and Respondent's risk of torture based on country conditions evidence and testimony. Explain that internal relocation is simply one factor to consider with all other evidence. No party has the burden to prove internal relocation under 8 C.F.R. § 1208.16(c)(3). *See Maldonado v. Lynch,* 786 F.3d 1155, 1163 (9th Cir. 2015).]

In considering and weighing the evidence in the record, the court finds that Applicant **[has/ has not]** not shown that the individual risk of torture in this case is "more likely than not" **[or / and]** that any future harm would occur with the consent or acquiescence of a government official. *See Alphonsus v. Holder*, 705 F.3d 1031, 1049 (9th Cir. 2013) ("Despite the troubling country reports, the record evidence does not compel the conclusion that [Petitioner] himself will be, more likely than not, *tortured* upon his return.") (emphasis in original). Accordingly, Applicant **[has / has not]** not demonstrated eligibility for relief and his application for protection under the Convention Against Torture must be **[granted / denied]**. 8 C.F.R. § 1208.16(c)(2).

In light of the foregoing, the following orders shall enter:

Orders

Applicant's application for withholding of removal under INA § 241(b)(3) is _____.

Applicant's application for protection under the Convention Against Torture is _____.

Applicant's case shall be returned to the Department of Homeland Security for removal pursuant to 8 C.F.R. § 1208.31(g)(1).

Date: _____

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[Your Name]
Immigration Judge

[Transcriber this is the end of the oral decision. Please return to the question and answer format.]

[Explain Appeal Rights]

You have the right to appeal this decision, which must be received by the Board of Immigration Appeals within 30 calendar days after the mailing of this order. The address for the Board of Immigration Appeals is listed the appeal packet. A copy of your appeal must also be provided to the Department of Homeland Security. You have the right to an attorney of your own choosing during his appeal at no expense to the United States government. Any appeal must be accompanied by a filing-fee, but a fee-waiver is available.

Your appeal must be *received* by the Board of Immigration Appeals on **[Provide Appeal Date]**. This means that you must complete and mail your appeal to the Board of Immigration Appeals so that it arrives at the Board of Immigration Appeals by **[Repeat Appeal Date]**.

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Addendum of Law: Withholding and Convention Against Torture

The following statements of law are hereby incorporated into the Immigration Judge's oral decision. These statements are not the sole legal basis for the decision and are meant to be read in conjunction with any law cited in the oral decision itself.

I. Credibility and Sustaining the Burden

An applicant has the burden of proof to establish eligibility for relief, and may do so through testimony that is credible and persuasive. INA § 240(c)(4). In making a credibility determination, the court considers the totality of the circumstances, including the "demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence," as well as any other relevant factors. *Id.*

However, "[i]t's not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021). An applicant's testimony must also be persuasive to meet their burden of proof. INA § 240(c)(4) (listing "persuasive" in the conjunctive); *Ming Dai*, 141 S. Ct. at 1680. Though credibility is "closely bound" to persuasiveness, credible testimony is not dispositive of persuasiveness, and an applicant's credible testimony shall not be "deemed-true-or-credible." *Ming Dai*, 141 S. Ct. at 1681. Instead, the Immigration Judge should consider conflicting evidence in the record and determine whether this evidence outweighs the applicant's version of events. *Id.* ("Faced with conflicting evidence, it seems likely that a reasonable adjudicator could find the unfavorable account more persuasive than the favorable version in both cases."). When the conflicting evidence outweighs the applicant's credible testimony, the applicant's testimony may not be persuasive.

II. Corroboration

An applicant's own testimony, without corroborating evidence, may be sufficient proof if that testimony is believable, consistent, and sufficiently detailed to provide a plausible and coherent account of the basis for their fear of persecution. INA § 208(b)(1)(A)(ii). However, where the court is not persuaded by the applicant's otherwise credible testimony, the court must put the applicant on notice that they need to produce corroborative evidence and provide the respondent "an opportunity to either provide that corroboration or explain why he cannot do so." *Ren v. Holder*, 648 F.3d 1079, 1091–92 (9th Cir. 2011) (interpreting INA § 208(b)(1)(B)(ii)); *see also Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015). In order for the applicant to sustain their burden of proof, "[w]here the trier of fact determines that the applicant should provide evidence that corroborates otherwise credible testimony, such evidence must be provided unless the applicant does not have the evidence and cannot reasonably obtain the evidence." INA § 208(b)(1)(B)(ii); *Aden v. Holder*, 589 F.3d 1040–1044 (9th Cir. 2009).

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III. Withholding of Removal

Withholding of removal requires the applicant to objectively establish that it is "more likely than not" that the applicant's race, religion, nationality, membership in a particular social group, or political opinion would be "a reason" his "life or freedom would be threatened" in the future. INA § 241(b)(3)(A); *Barajas-Romero v. Lynch*, 846 F.3d 351, 359 (9th Cir. 2017) (holding that "a reason" is "a less demanding standard than 'one central reason'" standard for asylum). The "clear probability" standard required for withholding of removal is more stringent than the "well-founded fear" standard for asylum. *Navas v. INS*, 217 F.3d 646, 663 (9th Cir. 2000).

A finding of past persecution gives rise to a presumption of future persecution sufficient to establish eligibility for withholding of removal. 8 C.F.R. § 1208.16(b)(1)(i). In the absence of past persecution, an applicant bears the burden of demonstrating that it is "more likely than not" that his life or freedom would be threatened in the future because of the applicant's race, religion, nationality, membership in a particular social group, or political opinion and internal relocation is not reasonable. *See* 8 C.F.R. §§ 1208.16(b)(2), (3)(i); *see also INS v. Stevic*, 467 U.S. 407, 429–30 (1984). If the applicant does not fear persecution by the government, the applicant must establish a clear probability of persecution from individuals the government is unable or unwilling to control. *Nehad v. Mukasey*, 535 F.3d 962, 972 (9th Cir. 2008); *Matter of McMullen*, 17 I&N Dec. 542, 548 (BIA 1980).

In the absence of past persecution, an applicant may establish eligibility for withholding of removal by demonstrating, through "credible, direct, and specific evidence in the record of facts," that it is more likely than not that his life or freedom would be threatened in the future because of the applicant's race, religion, nationality, membership in a particular social group, or political opinion. *Duarte de Guinac v. INS*, 179 F.3d, 1156, 1159 (9th Cir. 1999); 8 C.F.R. § 1208.16(b)(2). An applicant may establish a well-founded fear of persecution if there is a reasonable probability that they would be singled out individually for persecution or if there is a "pattern or practice" of persecution of "similarly situated" persons. 8 C.F.R. § 1208.13(b)(2)(iii). An applicant cannot show a clear probability of future persecution if the court "finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so." 8 C.F.R. § 1208.16(b)(2).

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IV. Convention Against Torture

Unlike asylum or withholding, there are no mandatory bars to an applicant seeking deferral of removal under the Convention Against Torture. *Lopez-Cardona v. Holder*, 662 F.3d 1110, 1113–14 (9th Cir 2011). An applicant for protection under the Convention Against Torture bears the burden of proving that it is "more likely than not that he would be tortured if removed to the proposed country of removal." *See Azanor v. Ashcroft*, 364 F.3d 1013, 1018 (9th Cir. 2004); 8 C.F.R. § 1208.16(c)(2). In other words, the respondent must meet a "clear probability" standard. *Zhang v. Ashcroft*, 388 F.3d 713, 721–22 (9th Cir. 2004).

Torture is defined as the intentional infliction of severe physical or mental pain or suffering based on discrimination of any kind, or for the purpose of obtaining information or a confession, or to punish for an act or suspected act, or to intimidate or coerce any person or third party. 8 C.F.R. § 1208.18(a)(1)); *Villegas v. Mukasey*, 523 F.3d 984 (9th Cir. 2008) (construing the intent requirement under 8 C.F.R. § 1208.18(a)(5) to require a showing that the government actor "specifically intended" to torture the respondent by "inflict[ing] severe physical or mental pain or suffering"); *see also Matter of J-E-*, 23 I&N Dec. 291, 298 (BIA 2002). "Torture is an extreme form of cruel and inhuman treatment and does not include lesser forms of cruel, inhuman or degrading treatment or punishment that do not amount to torture." 8 C.F.R. § 1208.18(a)(2). The pain and suffering associated with torture must be inflicted with the consent, acquiescence of, or at the instigation of a public official or other person acting in an official capacity. 8 C.F.R. § 1208.18(a)(1). A public official "acquiesces" in acts of torture by a private party when they are previously aware of activity constituting torture and breach their legal responsibility to intervene to prevent such activity because they are unable or unwilling to oppose it. 8 C.F.R. § 1208.18(a)(7); *Garcia-Milian v. Holder*, 755 F.3d 1026, 1034 (9th Cir. 2014).

In assessing whether it is more likely than not that an applicant will be tortured in the proposed country of removal, the court may consider: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant, or mass violations of human rights within the country of removal; and other relevant information in the country of removal. 8 C.F.R § 1208.16(c)(3); *see also Maldonado v. Lynch*, 786 F.3d 1155, 1162-64 (9th Cir. 2015) (en banc) (explaining that no one factor under 8 C.F.R. 1208.16(c)(3) is determinative). The credible testimony of an applicant may be sufficient without corroboration to sustain his burden under the CAT, and evidence of country conditions "can play a decisive role in determining eligibility." *Zhang v. Ashcroft*, 388 F.3d 713, 721 (9th Cir. 2004); 8 C.F.R. § 1208.16(c)(2). However, an applicant cannot meet his burden to establish eligibility for protection under the CAT by stringing together a series of suppositions. *Matter of J-F-F-*, 23 I&N Dec. 912, 917-18 (BIA 2006). Instead, the applicant must show "specific grounds" indicating that he would be personally at risk. *J-E-*, 23 I&N Dec. at 917.

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An applicant who is entitled to protection under the Convention Against Torture, but is subject to the provisions for mandatory denial of withholding of removal under 8 C.F.R. 1208.16(c)(2), shall be granted deferral of removal to the country where he or she is more likely than not to be tortured. 8 C.F.R. 1208.17(a).

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[Transcriber, please use the oral decision format and heading for the Tacoma, Washington, Immigration Court]

In the Matter of:

[Respondent's Name]

Respondent

File Number: **A**
In Removal Proceedings

Charge:

Applications: Voluntary Departure

Oral Decision of the Immigration Judge

I. Factual and Procedural History

Respondent, **[Respondent's Name]**, is a native and citizen of _____ (see Exhibit 1). Respondent arrived in the United States without admission or parole on or about **[DATE]**. The Department of Homeland Security (DHS or the Department) issued a Notice to Appear (NTA) and charged the respondent with removability under Section 212(a)(6)(A)(i) of the Immigration and Nationality Act (INA), as an alien present in the United States without being admitted or paroled (Exhibit 1). At an initial master calendar on **[DATE]**, the court explained respondent's rights in removal proceedings. Respondent appeared unrepresented (or represented by counsel).

The court continued the case to give respondent an opportunity to retain an attorney (or review the Notice to Appear with his attorney, and present any applications for relief). At the reconvened hearing on **[DATE]** respondent stated that they wished to represent themselves and proceed without an attorney. As a result, the court found respondent made a knowing, intelligent and voluntary right to counsel and the court proceeded to take pleadings. Respondent (respondent's attorney) conceded service of the NTA. Respondent admitted (or denied) allegations one through

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___ in the NTA, and admitted/denied the charge of removal under INA Section 212(a)(6)(A)(i). Based on the totality of the evidence, including respondent's admission to allegations and concession to the charge of removal, the court finds respondent removable as charged.

Respondent designated _____ as the country of removal. (Or respondent declined to designate a country of removal). DHS recommended _____. The court directed **[Country of Removal]**. Respondent indicated that he had no fear of returning to **[Country of Removal]**, and gave up the opportunity to apply for asylum, withholding of removal, and protection under the Convention Against Torture on **[DATE]**. The court found respondent made a knowing, intelligent and voluntary waiver of the opportunity to apply for asylum withholding of removal and protection under the Convention Against Torture.

II. Analysis

A. Address other relief

[Explain why respondent is ineligible based on how they answered the court's questions or explain that the court advised respondent and they waived their right to apply other forms of relief.]

1. No visa petitions
2. Not victim of a violent crime
3. Ineligible for 42B
4. No AOS
5. Respondent filed no applications for relief.

B. Address Voluntary Departure

1. Respondent is eligible (ineligible) for pre/post conclusion VD.
2. Discuss weighing of positive/negative factors. *See Matter of Arguelles-Campos,* 22 I&N Dec. 811 (BIA 1999).

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3. State that court denied VD as a matter of discretion or as a matter of law.

C. Conclude that respondent is ineligible for any other forms of relief and order removal to _____.

III. ORDER

The court **ORDERS** respondent's removal from the United States to **[Country of Removal]** on the charge contained in the Notice to Appear.

Date:

_____
[Your Name]
Immigration Judge

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Voluntary Departure

Pre-conclusion Voluntary Departure

Prior to the completion of proceedings, the Immigration Judge may, in their discretion, allow an applicant to voluntarily depart the United States at their own expense in lieu of removal. INA § 240B(a)(1); 8 C.F.R. § 1240.26(b)(1)(i). The applicant must (1) make such request prior to or at the master calendar hearing at which the case is initially calendared for a merits hearing; (2) make no additional requests for relief (or if such requests have been made, such requests are withdrawn prior to any grant of voluntary departure pursuant to this section); (3) concede removability; (4) waive appeal of all issues; and (4) have not been convicted of an aggravated felony, and not be deportable under INA § 237(a)(4) (security provisions).
8 C.F.R. § 1240.26(b)(1)(i).

The Immigration Judge may not grant pre-conclusion voluntary departure beyond 30 days after the master calendar hearing at which the case is initially calendared for a merits hearing, except pursuant to a stipulation from the DHS. *See* 8 C.F.R. § 1240.26(b)(1)(ii).

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Voluntary Departure

Post-conclusion Voluntary Departure

At the conclusion of removal proceedings, the Immigration Judge may, in their discretion, allow an applicant to voluntarily depart the United States at his or her own expense in lieu of removal. INA § 240B(b)(1); *Matter of Arguelles-Campos*, 22 I&N Dec. 811, 817 (BIA 1999). The applicant must (1) have been physically present in the United States for at least one year preceding the date the NTA was served; *see Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021); *see also Posos-Sanchez v. Garland*, 3 F.4th 1176, 1184 (9th Cir. 2021) (holding that continuous presence will continue to accrue until a single and complete NTA is provided to the noncitizen); (2) have been a person of good moral character for at least five years preceding the application; (3) not be deportable under section 237(a)(2)(A)(iii) or section 237(a)(4) of the Immigration and Nationality Act; and (4) have established, by clear and convincing evidence, that they have the means to depart the United States. INA § 240B(b)(1)(A)–(D).

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[Transcriber, please use the oral decision format and heading for the Tacoma, Washington, Immigration Court.]

In the Matter of: **[Respondent's Name]** Respondent	File Number: **A** In Removal Proceedings

Charge:

Application: Cancellation of Removal for Certain Lawful Permanent Residents

Oral Decision of the Immigration Judge

I. Factual and Procedural History

The Department of Homeland Security (DHS) initiated removal proceedings against Respondent, **[Respondent's Name]**, by filing a Notice to Appear (NTA) with the Tacoma, Washington, Immigration Court on **[DATE]**. Exh. 1. The NTA **[summarize factual allegations contained in the NTA]**. *Id.* Based on those allegations, the NTA charges Respondent with removability under Immigration and Nationality Act (INA) § **[INA Section]**, as an alien who **[read or summarize ground of removability].**

[Explain when the charge of removability was sustained]

[Explain when applications of relief were filed]

II. Evidence

The evidence in the record consists of respondent's [witnesses] testimony and exhibits **[1 through___]**. The court considered all evidence in the record even if not explicitly mentioned in this decision.

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III. Analysis

A. Credibility

An applicant filing for relief from removal bears the burden of convincing the court that their evidence is credible. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).

[Make Credibility Finding for Respondent and each witness.]

B. Cancellation of Removal for Certain Permanent Residents

A lawful permanent resident is eligible for cancellation of removal if he or she: (1) has been lawfully admitted for permanent residence for not less than five years; (2) has resided in the United States continuously for seven years after having been admitted in any status; and (3) has not been convicted of any aggravated felony. INA § 240A(a). An alien bears the burden of proof when seeking all forms of relief, INA § 240(c)(4), including that they have not committed a disqualifying crime. *Pereida v. Wilkinson*, 141 S.Ct. 754 (2021).

[Discuss any statutory eligibility issues, including, but not limited to, the stop-time rule. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). Continue to next paragraph if there are none.]

In this case, there is no dispute that Respondent satisfied these statutory requirements. Thus, the only disputed issue is whether Respondent warrants a grant of cancellation of removal in the exercise of the court's discretion. INA § 240(c)(4)(A)(ii); *see Matter of C-V-T-*, 22 I&N Dec. 7, 10 (BIA 1998). This analysis requires the court to balance the positive and negative factors to determine whether a grant of cancellation of removal is in the best interests of this country.

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Matter of C-V-T-, 22 I&N Dec. at 11 (citing *Matter of Marin*, 16 I&N Dec. 581, 584–85 (BIA 1978)).

Positive factors include family ties with the United States, particularly the existence of United States citizen minor children. *Matter of Arreguin*, 21 I&N Dec. 38, 41 (BIA 1995); *see also Matter of C-V-T-*, 22 I&N Dec. at 11 (citing *Matter of Marin*, 16 I&N Dec. at 584–85). Other positive factors include residency of long duration in the United States, especially when its inception occurred at a young age; evidence of hardship to the applicant and his family if removal occurs; history of employment; existence of property or business ties; evidence of value and service to the community; proof of genuine rehabilitation if a criminal record exists; and other evidence attesting to the applicant's good moral character. *Matter of C-V-T-*, 22 I&N Dec. at 11 (*citing Matter of Marin*, 16 I&N Dec. at 584–85). Factors indicating rehabilitation include the lack of commission of any additional crimes, enrollment in and attendance at rehabilitation programs, statements of remorse, and letters of good character. *Yepes-Prado v. INS*, 10 F.3d 1363, 1372 n.19 (9th Cir. 1993); *see also Georgiu v. INS*, 90 F.3d 374, 376–77 (9th Cir. 1996). While a showing of rehabilitation is not required, it is a factor to be considered in the exercise of discretion. *Matter of Edwards*, 20 I&N Dec. 191, 196 (BIA 1990).

[Conduct Discretionary Analysis]

[Explain whether the court is granting or denying relief.]

Accordingly, the following orders shall enter:

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III. Orders

IT IS ORDERED that Respondent's application for cancellation of removal under INA § 240A(a) is _____.

[If granting relief, you may mention this is a one-time benefit].

[If denying relief,] The court **ORDERS** Respondent removed to _____.

Date:

_____
[Your Name]
Immigration Judge

[Transcriber this is the end of the oral decision. Please return to the question and answer format.]

[Explain Appeal Rights]

You have the right to appeal this decision, which must be received by the Board of Immigration Appeals within 30 calendar days after the mailing of this order. The address for the Board of Immigration Appeals is listed the appeal packet. A copy of your appeal must also be provided to the Department of Homeland Security. You have the right to an attorney of your own choosing during his appeal at no expense to the United States government. Any appeal must be accompanied by a filing-fee, but a fee-waiver is available.

[Provide Failure to Depart Warnings]

Because the court denied your applications for relief and ordered you removed from the United States, the law requires the court to inform you of civil and criminal penalties that could be levied against you if you fail to depart the United States. INA § 240(c)(5); 8 C.F.R. § 1240.13(d). You are advised that you could be fined up to $___ per day for each day that you willfully impede or conspire to impede your removal. If you are removable for a reason listed in INA § 237(a), you may be fined, imprisoned for up to ten years, or both for willfully failing to depart the United States or refusing to appear for your removal. You are being provided a copy of criminal and civil consequences for failing to depart the United States. **[*Serve Advisals*]**

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Addendum of Law: Cancellation of Removal for Lawful Permanent Residents

I. Credibility and Sustaining the Burden

An applicant has the burden of proof to establish eligibility for relief, and may do so through testimony that is credible and persuasive. INA § 240(c)(4). In making a credibility determination, the court considers the totality of the circumstances, including the "demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence," as well as any other relevant factors. *Id.*

However, "[i]t's not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021). An applicant's testimony must also be persuasive to meet their burden of proof. INA § 240(c)(4) (listing "persuasive" in the conjunctive); *Ming Dai*, 141 S. Ct. at 1680. Though credibility is "closely bound" to persuasiveness, credible testimony is not dispositive of persuasiveness, and an applicant's credible testimony shall not be "deemed-true-or-credible." *Ming Dai*, 141 S. Ct. at 1681. Instead, the Immigration Judge should consider conflicting evidence in the record and determine whether this evidence outweighs the applicant's version of events. *Id.* ("Faced with conflicting evidence, it seems likely that a reasonable adjudicator could find the unfavorable account more persuasive than the favorable version in both cases."). When the conflicting evidence outweighs the applicant's credible testimony, the applicant's testimony may not be persuasive.

II. Cancellation of Removal for Lawful Permanent Residents

The court may cancel the removal of any noncitizen who is inadmissible or deportable if the applicant (1) has lawfully been admitted for permanent residence for not less than five years; (2) has resided in the United States continuously for seven years after having been admitted in any status; and (3) has not been convicted of any aggravated felony. INA § 240A(a); 8 C.F.R. § 1229b(a). The applicant has the burden to prove by a preponderance of the evidence "all aspects of their eligibility" for relief. *Pereida v. Wilkinson*, 141 S. Ct. 754 (2021) (holding that any "lingering uncertainty" or "ambiguity" as to whether the applicant committed a disqualifying offense will result in the applicant being unable to meet their burden); INA § 240(c)(4); 8 C.F.R. § 1240.8(d). In addition to satisfying the three statutory eligibility requirements, an applicant for cancellation of removal must demonstrate that they warrant such relief as a matter of discretion. *Matter of C-V-T-,* 22 I&N Dec. 7, 13–14 (BIA 1998).

Any period of continuous residence or continuous physical presence in the United States terminates upon the earlier of the following: (1) when the applicant is served with a Notice to Appear; or (2) when the applicant commits an offense referred to in INA § 212(a)(2) that renders the applicant inadmissible to the United States under INA § 212(a)(2) or removable from the

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United States under INA §§ 237(a)(2) or 237(a)(4). INA § 240A(d)(1). However, an NTA that lacks the time or place of the removal proceedings is deficient and cannot stop the accrual of a period of continuous residence. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1479 (2021) (citing *Pereira v. Sessions*, 138 S. Ct. 2105, 2113–14 (2018)). But, when a noncitizen commits an INA § 212(a)(2) offense during the initial seven years of residence and is later rendered inadmissible as a result of the offense, the accrual of a period of continuous residence terminates at the commission of the offense without respect to the date of the conviction. *See Barton v. Barr*, 140 S. Ct. 1442, 1449 (2020).

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[Transcriber, please use the oral decision format and heading for the Tacoma, Washington, Immigration Court.]

In the Matter of: **[Respondent's Name]** Respondent	File Number: **A** In Removal Proceedings

Charge:

Application: Cancellation of Removal for Certain Non-Permanent Residents

Oral Decision of the Immigration Judge

I. Factual and Procedural History

The Department of Homeland Security (DHS) initiated removal proceedings against Respondent, **[Respondent's Name]**, by filing a Notice to Appear (NTA) with the Tacoma, Washington, Immigration Court on **[DATE]**. Exh. 1. The NTA **[summarize factual allegations contained in the NTA]**. *Id.* Based on those allegations, the NTA charges Respondent with removability under Immigration and Nationality Act (INA) § **[INA Section]**, as an alien who **[read or summarize ground of removability].**

[Explain when the charge of removability was sustained.]

[Explain when applications of relief were filed.]

II. Evidence

The evidence in the record consists of respondent's [witnesses] testimony and exhibits **[1 through___].** The court considered all evidence in the record even if not explicitly mentioned in this decision.

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III. Analysis

A. Credibility

An applicant filing for relief from removal bears the burden of convincing the court that their evidence is credible. *See* INA §§ 208(b)(1)(B)(iii), 241(b)(3)(C).

[Make Credibility Finding for Respondent and each witness.]

B. Cancellation of Removal for Certain Non-Permanent Residents

A nonpermanent resident is eligible for cancellation of removal if he or she: (1) has been physically present in the United States for a continuous period of not less than ten years immediately preceding the application; (2) has been a person of good moral character during such period; (3) has not been convicted of an offense under section 212(a)(2), 237(a)(2), or 237(a)(3) of the Act; and (4) establishes that removal would result in exceptional and extremely unusual hardship to his spouse, parent, or child, who is a citizen of the United States or an alien admitted for lawful permanent residence. INA § 240A(b)(1). An alien bears the burden of proving eligibility for cancellation of removal under INA § 240A(b)(1), including that they have not committed a disqualifying crime. *Pereida v. Wilkinson*, 141 S.Ct. 754 (2021).

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1. Continuous Physical Presence

[Explain when respondent entered the United States and whether he established 10 years of continuous physical presence. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).]

2. Good Moral Character

[Explain whether respondent is precluded from establishing good moral character under INA § 101(f). If not, briefly explain whether respondent has good moral character.]

3. Exceptional and Extremely Unusual Hardship

To establish exceptional and extremely unusual hardship, an alien must demonstrate that his qualifying spouse, parent, or child would suffer hardship that is substantially beyond that which would ordinarily be expected when a close family member leaves the country. *Matter of Monreal–Aguinaga*, 23 I&N Dec. 56, 65 (BIA 2001). Generally, chronic medical conditions of Respondent's qualifying relatives that are under control do not give rise to exceptional or extremely unusual hardship absent additional evidence of hardship. *See Matter of Andazola-Rivas*, 23 I&N Dec. 319, 324 (BIA 2002) (finding that a chronic condition "apparently under control" did not establish an exceptional or extremely usual hardship when view cumulatively with other evidence).

[Explain whether or not Respondent established an exceptional and extremely usual hardship to a qualifying relative.]

4. Discretion

In addition to the aforementioned statutory factors, the court must decide whether Respondent warrants a grant of cancellation of removal in the exercise of the court's discretion.

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INA § 240(c)(4)(A)(ii); *see Matter of C-V-T-*, 22 I&N Dec. 7, 10 (BIA 1998). This analysis requires the court to balance the positive and negative factors to determine whether a grant of cancellation of removal is in the best interests of this country. *Matter of C-V-T-*, 22 I&N Dec. at 11 (citing *Matter of Marin*, 16 I&N Dec. 581, 584–85 (BIA 1978)).

Positive factors include family ties with the United States, particularly the existence of United States citizen minor children. *Matter of Arreguin*, 21 I&N Dec. 38, 41 (BIA 1995); *see also Matter of C-V-T-*, 22 I&N Dec. at 11 (citing *Matter of Marin*, 16 I&N Dec. at 584–85). Other positive factors include residency of long duration in the United States, especially when its inception occurred at a young age; evidence of hardship to the applicant and his family if removal occurs; history of employment; existence of property or business ties; evidence of value and service to the community; proof of genuine rehabilitation if a criminal record exists; and other evidence attesting to the applicant's good moral character. *Matter of C-V-T-*, 22 I&N Dec. at 11 (*citing Matter of Marin*, 16 I&N Dec. at 584–85). Factors indicating rehabilitation include the lack of commission of any additional crimes, enrollment in and attendance at rehabilitation programs, statements of remorse, and letters of good character. *Yepes-Prado v. INS*, 10 F.3d 1363, 1372 n.19 (9th Cir. 1993); *see also Georgiu v. INS*, 90 F.3d 374, 376–77 (9th Cir. 1996). While a showing of rehabilitation is not required, it is a factor to be considered in the exercise of discretion. *Matter of Edwards*, 20 I&N Dec. 191, 196 (BIA 1990).

[Conduct Discretionary Analysis]

[Explain whether the court is granting or denying cancellation of removal.]

C. Voluntary Departure

At the conclusion of removal proceedings, the court may allow an alien to voluntarily depart the United States at his own expense in lieu of removal. INA § 240B(b)(1). The alien must

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(1) have been physically present in the United States for at least one year preceding the date the NTA was served; (2) have been a person of good moral character for at least five years preceding his application; (3) not be deportable under § 237(a)(2)(A)(iii) or § 237(a)(4) of the Act; and (4) have established by clear and convincing evidence that he has the means to depart the United States and intends to do so. INA § 240B(b)(1)(A)–(D). Voluntary departure is discretionary, and the pertinent factors in the exercise of discretion include the respondent's immigration and criminal history, length of residence in and ties to the United States, the existence of any United States citizen or legal permanent resident family members, and humanitarian factors. *Matter of Seda*, 17 I&N Dec. 550, 554–55 (BIA 1980).

[Conduct analysis and explain whether the court is granting voluntary departure.]

Accordingly, the following orders shall enter:

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III. Orders

IT IS ORDERED that Respondent's application for cancellation of removal under INA § 240A(b) is _____. [If granting relief, you may mention this is a one-time benefit].

It is **FURTHER ORDERED** that Respondent's application for voluntary departure is _____.

[If denying relief,] The court **ORDERS** Respondent removed to _____.

Date:

_____
[Your Name]
Immigration Judge

[Transcriber this is the end of the oral decision. Please return to the question and answer format.]

[Explain Appeal Rights]

You have the right to appeal this decision, which must be received by the Board of Immigration Appeals within 30 calendar days after the mailing of this order. The address for the Board of Immigration Appeals is listed the appeal packet. A copy of your appeal must also be provided to the Department of Homeland Security. You have the right to an attorney of your own choosing during his appeal at no expense to the United States government. Any appeal must be accompanied by a filing-fee, but a fee-waiver is available.

[Provide Failure to Depart Warnings]

Because the court denied your applications for relief and ordered you removed from the United States, the law requires the court to inform you of civil and criminal penalties that could be levied against you if you fail to depart the United States. INA § 240(c)(5); 8 C.F.R. § 1240.13(d). You are advised that you could be fined up to $___ per day for each day that you willfully impede or conspire to impede your removal. If you are removable for a reason listed in INA § 237(a), you may be fined, imprisoned for up to ten years, or both for willfully failing to depart the United States or refusing to appear for your removal. You are being provided a copy of criminal and civil consequences for failing to depart the United States. **[*Serve Advisals*]**

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Addendum of Law: Cancellation of Removal for Certain Nonpermanent Residents

I. Credibility and Sustaining the Burden

An applicant has the burden of proof to establish eligibility for relief, and may do so through testimony that is credible and persuasive. INA § 240(c)(4). In making a credibility determination, the court considers the totality of the circumstances, including the "demeanor, candor, [and] responsiveness of the applicant or witness, the inherent plausibility of the applicant's or witness's account, the consistency between the applicant's or witness's written and oral statements . . . the internal consistency of each such statement, the consistency of such statements with other evidence," as well as any other relevant factors. *Id.*

However, "[i]t's not always the case that credibility equals factual accuracy, nor does it guarantee a legal victory." *Garland v. Ming Dai*, 141 S. Ct. 1669, 1681 (2021). An applicant's credible testimony must also be persuasive to meet their burden of proof. INA § 240(c)(4)(B) (listing "persuasive" in the conjunctive); *Ming Dai*, 141 S. Ct. at 1680. Though credibility is "closely bound" to persuasiveness, credible testimony is not dispositive of persuasiveness, and an applicant's credible testimony shall not be "deemed-true-or-credible." *Ming Dai*, 141 S. Ct. at 1681. Instead, the Immigration Judge should consider conflicting evidence in the record and determine whether this evidence outweighs the applicant's version of events. *Id.* ("Faced with conflicting evidence, it seems likely that a reasonable adjudicator could find the unfavorable account more persuasive than the favorable version in both cases."). When the conflicting evidence outweighs the applicant's credible testimony, the applicant's testimony may not be persuasive.

II. Cancellation of Removal for Certain Nonpermanent Residents

The court may cancel the removal of any nonpermanent resident if the applicant (1) has been physically present in the United States for a continuous period of not less than ten years immediately preceding the application; (2) has been a person of good moral character during such period; (3) has not been convicted of an offense under INA §§ 212(a)(2), 237(a)(2), or 237(a)(3); and (4) establishes that removal would result in exceptional and extremely unusual hardship to their United States citizen or lawful permanent resident spouse, parent, or child. INA § 240A(b)(1). The applicant has the burden to prove by a preponderance of the evidence "all aspects of their eligibility" for relief. *Pereida v. Wilkinson*, 141 S. Ct. 754 (2021) (holding that any "lingering uncertainty" or "ambiguity" as to whether the applicant committed a disqualifying offense will result in the applicant being unable to meet their burden); INA § 240(c)(4); 8 C.F.R. § 1240.8(d). If the applicant is statutorily eligible, the court must determine whether the applicant warrants relief as a matter of discretion. 8 C.F.R. § 1240.8(d); *see Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998) (citing *Matter of Marin*, 16 I&N Dec. 581, 584–85 (BIA 1978));.

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(1) **Continuous Physical Presence**

To be eligible for cancellation of removal, an applicant must demonstrate ten years of continuous physical presence immediately preceding the date of such application. INA § 240A(b)(1)(A). A period of continuous presence ends when the applicant commits an offense referred to in INA § 212(a)(2) that renders the applicant inadmissible to the United States under INA § 212(a)(2) or removable from the United States under INA §§ 237(a)(2) or 237(a)(4). INA § 240A(d)(1). However, a Notice to Appear that lacks the time and/or the place of the removal proceeding is deficient and cannot stop the accrual of a period of continuous residence. *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1479 (2021) (citing *Pereira v. Sessions*, 138 S. Ct. 2105, 2113–14 (2018)).

(2) Good Moral Character

Good moral character during the ten-year period is calculated backwards from the date on which the cancellation of removal application is finally adjudicated by the Immigration Judge. *Castillo-Cruz v. Holder*, 581 F.3d 1154, 1162 (9th Cir. 2009) (citing *Matter of Ortega-Cabrera*, 23 I&N Dec. 793, 798 (BIA 2005)). The INA lists certain categories of individuals who are statutorily barred from establishing good moral character, as well as a catchall provision that permits the court to find an applicant does not possess good moral character even when none of these categories apply. INA § 101(f). In determining whether the applicant has met their burden, the Court must balance the negative and positive factors in the record regarding their good moral character. *See Torres-Guzman v. INS*, 804 F.2d 531, 533–34 (9th Cir. 1986).

(3) Exceptional and Extremely Unusual Hardship

To establish "exceptional and extremely unusual hardship," an applicant must demonstrate that their qualifying relatives would suffer hardship that is "'substantially' beyond the ordinary hardship that would be expected when a close family member leaves" the country. *Matter of Monreal-Aguinaga*, 23 I&N Dec. 56, 62 (BIA 2001); *see also Matter of Gonzalez Recinas*, 23 I&N Dec. 467, 470 (BIA 2002); *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 324 (BIA 2002). In making this determination, courts may consider a variety of factors, including, but not limited to, the age, health, the availability of medical care in the country of removal, financial hardship, and circumstances of the qualifying relatives. *Matter of J-J-G-*, 27 I&N Dec. 808, 811–13 (BIA 2020) (explaining, to the extent that a claim is based on the health of a qualifying relative, the applicant needs to establish that the relative has a serious medical condition and, if the qualifying relative is accompanying the applicant to the country of removal, that adequate medical care for the claimed condition is not reasonably available in that country.); *Recinas*, 23 I&N Dec. at 468–72. Where no individual factor alone would suffice, the cumulative effect of several factors may support a finding of an exceptional and extremely unusual hardship. *Recinas*, 23 I&N Dec. at 472–73.

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Special Rule Cancellation of Removal under INA § 240A(b)(2)

An applicant is eligible for special rule cancellation of removal under INA § 240A(b)(2), also known as the Violence Against Women Act ("VAWA"), if the applicant establishes that: (1) they were battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen or legal permanent resident; (2) the applicant is not inadmissible under INA §§ 212(a)(2) or 212(a)(3), is not deportable under INA §§ 237(a)(1)(G) or 237(a)(2)-(4)—the requirement not to be deportable under INA § 237(a)(2)(E) may be waived when the conditions outlined in INA § 237(a)(7) are met; is not subject to INA § 237(a)(5), and has not been convicted of an aggravated felony; (3) the applicant has been physically present in the United States for a continuous period of not less than three years immediately preceding the date of the application; (4) the applicant has been a person of good moral character during such period; and (5) the applicant's removal would result in extreme hardship to themselves, their child, or their parent. INA § 240A(b)(2)(A). The applicant must also demonstrate that they warrant the relief as a matter of discretion. *See Matter of A-M-*, 25 I&N Dec. 66, 76–78 (BIA 2009).

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Adjustment of Status under INA § 245(a)

To be eligible for adjustment of status, an applicant must (1) have been inspected and admitted or paroled into the United States, (2) apply for adjustment, (3) be admissible to the United States under INA § 212, and (4) have an immediately available visa. *See* INA § 245(a); *see also* 8 C.F.R. § 1245.2(a)(1) (granting the Immigration Judge exclusive authority to adjudicate applications for adjustment of status filed by noncitizens, other than arriving noncitizens, in removal proceedings); *see Matter of Pinzon*, 26 I&N Dec. 189, 191 (BIA 2013) (holding that a noncitizen that enters the United States and alludes inspection by claiming to be a U.S. citizen cannot be considered to be have been inspected or admitted); *see also Matter of Quilantan*, 25 I&N Dec. 285, 293 (BIA 2010) (citing *Matter of Areguillin,* 17 I&N Dec. 308, 310 (BIA 1980)) (holding that when the respondent establishes they were "waived through" at a point of entry after presenting themselves for inspection to an immigration officer, that individual has been admitted). Once eligibility is established, the court may grant adjustment of status in the exercise of discretion. *See Matter of Arai*, 13 I&N Dec. 494 (BIA 1970).

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Adjustment of Status under INA § 245(i)

To adjust status under INA § 245(i), an applicant must be (1) physically present in the United States, (2) entered the United States without inspection, (3) is the beneficiary of a visa petition filed before April 30, 2001, and (4) has paid the $1,000 application fee. *See* INA § 245(i)(1)(A)–(C). Once the applicant satisfies these criteria, the Attorney General may adjust their status if they are (a) admissible to the United States for permanent residence and (b) eligible to receive an immigrant visa (c) that is immediately available to them at the time they filed the application. *See* INA § 245(i)(2); 8 C.F.R. § 1245.10(a)(1)(i); *see also Matter of Estrada*, 26 I&N Dec. 180, 184 (BIA 2013) ("[A]liens who became the spouse or child of such principal grandfathered aliens on or before April 30, 2001, and who met the requirements of section 203(d) of the Act qualify as derivative grandfathered aliens."). Finally, the applicant must demonstrate they merit a favorable exercise of discretion. *See* 8 C.F.R. § 1240.8(d); *Ridore v. Holder*, 696 F.3d 907, 920 n.5 (9th Cir. 2012) (listing examples of positive and negative factors an IJ should consider in exercising their discretion). *See also Matter of Arai*, 13 I&N Dec. 494, 495 (BIA 1970) (discussing the discretionary standard in the context of applications for adjustment of status).

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INA § 212(h) Waiver

Under INA § 212(h), the respondent may apply for a discretionary waiver for certain grounds of inadmissibility found within INA § 212(a)(2), in order to apply or reapply "for a visa, for admission to the United States, or adjustment of status." INA §§ 212(a)(2)(A)(i)(I), 212(h); 8 C.F.R. § 1245.1(f); *see also Matter of Abosi*, 24 I&N Dec. 204, 206 (BIA 2007). It is the respondent's burden to establish that they are eligible for a waiver of inadmissibility. *Matter of Rajah*, 25 I&N Dec. 127, 132 (BIA 2009).

There are three ways to qualify for a 212(h) waiver:

1. The "activities" that rendered the respondent inadmissible occurred more than 15 years prior to their application for a visa, admission, or adjustment of status, the respondent's admission is not contrary to the national welfare, safety, or security, and the respondent is rehabilitated;

2. Denial of the respondent's admission would result in "extreme hardship" to their United States citizen or lawful permanent resident parent, spouse, son, or daughter; or

3. The respondent is a VAWA self-petitioner

INA § 212(h)(1). In addition, the court must balance the adverse factors evidencing the respondent's undesirability as a permanent resident with the social and humane considerations presented on their behalf to determine whether the grant of relief in the exercise of discretion appears to be in the best interests of this country. INA § 212(h)(2); *Matter of Mendez*, 21 I&N Dec. 296 (BIA 1996)

Respondents who entered into the United States as lawful permanent residents and were subsequently convicted of an aggravated felony are statutorily ineligible to apply for a waiver of inadmissibility under INA § 212(h). *Compare* INA § 212(h)*, with Negrete-Ramirez v. Holder*, 741 F.3d 1047, 1050, 1053–54 (9th Cir. 2014) (holding the language of INA § 212(h) is unambiguous and that the aggravated felony bar to seeking this waiver applies only to noncitizens who were admitted in LPR status at the time of admission at a port of entry). Further, a respondent convicted of a controlled substance offense may qualify for a waiver under INA § 212(h) only if the offense involved "a single offense of simple possession of 30 grams or less of marijuana." INA § 212(h).

If the waiver is for a violent or dangerous crime, the respondent must meet a more restrictive standard and demonstrate that removal would result in "exceptional and extremely unusual hardship." *Matter of Jean*, 23 I&N Dec. 373, 383 (A.G. 2002); *see* 8 C.F.R. § 1212.7(d); *see also Matter of L-O-G-*, 21 I&N Dec. 413, 415 (BIA 1996) (discussing "extreme hardship" and "exceptional and extremely unusual hardship" standards). Moreover, depending on the gravity of the respondent's underlying criminal offense, a showing of extraordinary circumstances may still be insufficient to warrant a favorable exercise of discretion under INA § 212(h)(2). *See* 8 C.F.R. § 1212.7(d); *see also Jean*, 23 I&N Dec. at 383, *aff'd*, *Jean v. Gonzales*, 452 F.3d 392–98 (5th Cir. 2006) (denying adjustment of

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status to an individual convicted of second degree manslaughter and reversing the Board's decision which overly focused on the family's hardship without considering the severity of the offense).

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Assigned / Inherited a Case
Under the regulations, the "new Immigration Judge shall familiarize himself or herself with the record in the case and shall state for the record that he or she has done so." 8 C.F.R § 1240.1(b).

Additional Charges of Removability
Additional or substituted charges of removability may be lodged by DHS in writing at any time during the removal proceedings. 8 C.F.R. § 1003.30. [Typically using a Form I-261].

Administrative Closure
As stated in *Matter of W-Y-U-*, 27 I&N Dec. 17, 17–18 (BIA 2017):

> "Administrative closure . . . is used to temporarily remove a case from an Immigration Judge's active calendar or from the Board's docket." *Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012). It is a docket management tool that is used to temporarily pause removal proceedings. *Id.* at 690, 694. Administrative closure is not a form of relief from removal and does not provide an alien with any immigration status. After a case has been administratively closed, either party may move to recalendar it before the Immigration Court . . . or to reinstate the appeal before the Board. *See id.* at 695 & n.5.

When deciding whether to grant administrative closure, an immigration judge should consider the following factors:

> (1) the reason administrative closure is sought; (2) the basis for any opposition to administrative closure; (3) the likelihood the respondent will succeed on any petition, application, or other action he or she is pursuing outside of removal proceedings; (4) the anticipated duration of the closure; (5) the responsibility of either party, if any, in contributing to any current or anticipated delay; and (6) the ultimate outcome of removal proceedings . . . when the case is recalendared.

W-Y-U-, 27 I&N Dec. at 18 (citing *Avetisyan*, 25 I&N Dec. at 696). In addition, the primary consideration is "whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits." *Id.* at 20.

Admission of Evidence
The test for admission of evidence in immigration proceedings is whether the evidence is probative and its admission is fundamentally fair. *Espinoza v. INS*, 45 F.3d 308, 310 (9th Cir. 1995); *see also Matter of Grijalva*, 19 I&N Dec. 713, 721–22 (BIA 1988).

Aggravated Felony: Pre-1988
The Ninth Circuit held that a conviction obtained prior to November 18, 1988, the date the Anti-Drug Abuse Act was enacted, cannot be the basis of a removal for an aggravated felony under the INA. *See Ledezma-Galicia v. Holder*, 636 F.3d 1059, 1079–80 (9th Cir. 2010).

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"Alien"
With the exception when "quoting a statute, regulation, legal opinion, court order, or settlement agreement," the term "alien" should be substituted in the following method:

Previous	Current
Alien	Respondent, applicant, petitioner, beneficiary, migrant, noncitizen, or non-U.S. citizen
Undocumented alien or illegal alien	Undocumented noncitizen, undocumented non-U.S. citizen, or undocumented individual
Unaccompanied alien child	Unaccompanied noncitizen child, unaccompanied non-U.S. citizen child, or UC

OPPM 21-27.

Applicant for Relief / Burden of Proof
The respondent/applicant bears the burden of proving all the facts required to establish his or her eligibility. 8 C.F.R. § 1240.8(d).

Admission
Defined as "the lawful entry of the alien into the United States after inspection by an immigration officer." INA § 101(a)(13)(A).

"Applicant for admission"
"[A]n alien present in the United States who has not been admitted or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters)[.]" INA § 235(a)(1).

Authentication of documents
"Documents may be authenticated in immigration proceedings through any recognized procedure, such as those required by INS regulations or by the Federal Rules of Civil Procedure. The procedure specified in 8 C.F.R. § 287.6 provides one, but not the exclusive method." *Khan v. INS*, 237 F.3d 1143, 1144 (9th Cir. 2001) (per curiam) (internal quotation marks and citations omitted). Thus, the IJ erred by refusing to allow Jiang to authenticate the foreign documents through his own testimony. *See Vatyan v. Mukasey*, 508 F.3d 1179, 1183 (9th Cir. 2007) (holding that the IJ must consider a petitioner's testimony as evidence that is relevant to the issue of a document's authenticity). And the IJ also erred by refusing to accept as evidence the attestation in the Notarial Certificate without consular certification, in violation of Federal Rule of Civil Procedure 44(a)(2)(C)(ii) (permitting the lack of a foreign record "to be evidenced by an attested summary with or without a final certification").

Bond

Refer to *Bond Worksheet*

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Burden of Proof

A. Arriving Noncitizens

DHS must prove by clear and convincing evidence that the respondent is an arriving noncitizen. Whether a noncitizen is an "applicant for admission" is answered by reference to the definition at section 101(a)(13). If DHS proves that the respondent is an arriving noncitizen, the respondent must prove that they are clearly and beyond a doubt entitled to be admitted and are not inadmissible under INA § 212. INA § 240(c)(2)(A). 8 C.F.R. § 1240.8(b).

B. Noncitizens Present without Admission or Parole

DHS must prove by clear and convincing evidence that the respondent is a noncitizen. Once it has been established that the respondent is a noncitizen, the respondent must prove by clear and convincing evidence that they are lawfully present in the United States pursuant to a prior admission. INA § 240(c)(2)(B); 8 C.F.R. § 1240.8(c). To meet this requirement the respondent must generally prove the time, place, date, and manner of their entry into the United States. *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010) (finding a respondent was admitted after the car she was riding in was waved through the port of entry and the immigration officer did not ask her anything).

C. Admitted Noncitizens

DHS must prove by clear and convincing evidence that the respondent is subject to removal as charged. No decision on deportability shall be valid unless it is based upon reasonable, substantial, and probative evidence. INA § 240(c)(3)(A).

Citizenship

DHS has the burden of establishing the respondent is a noncitizen by clear, unequivocal, and convincing evidence. *Woodby v. INS*, 385 U.S. 276, 277 (1966). "There are 'two sources of citizenship, and two only: birth and naturalization.'" *Miller v. Albright*, 118 S.Ct. 1428 (1998) (quoting *United States v. Wong Kim Ark*, 18 S.Ct. 456 (1898)).

Evidence of foreign birth gives rise to a rebuttable presumption of non-citizenship, and the burden then shifts to the respondent to prove citizenship by producing substantial credible evidence. *Matter of Baires-Larios*, 24 I&N Dec. 467, 468 (BIA 2008).

Collateral Attacks

The respondent may not collaterally attack the legitimacy of an otherwise valid state or federal criminal conviction in immigration proceedings. *See Matter of Ponce De Leon-Ruiz*, 21 I&N Dec. 154 (BIA 1996, 1997; A.G. 1997). While the respondent is free to pursue his collateral attack in the proper court, the mere fact that they are doing so does not justify a continuance in their immigration proceedings. *See Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996) (Collateral attacks upon an applicant's conviction "do not operate to negate the finality of [the] conviction unless and until the conviction is overturned."). Filing for post-conviction relief in a state court does not render the conviction as non-final for immigration purposes. *See Matter of Cardenas Abreu*, 24 I&N Dec. 795, 802 n. 8 (BIA 2009). The IJ "cannot go behind the judicial record to determine the guilt or innocence of the alien." *Madrigal-Calvo*, 21 I&N Dec. at 327.

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Continuance (General)

Matter of L-A-B-R-, 27 I&N Dec. 405 (A.G. 2018)

- An IJ may grant a motion for a continuance of removal proceedings only "for good cause shown." 8 C.F.R. § 1003.29.
- The good-cause standard is a substantive requirement that limits the discretion of IJs and prohibits them from granting continuances for any reason or no reason at all.
- The good-cause standard requires consideration and balancing of multiple relevant factors when a respondent/applicant requests a continuance to pursue collateral relief from another authority—for example, a visa from DHS. *See Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009).
- When a respondent/applicant requests a continuance to pursue collateral relief, the IJ must consider primarily the likelihood that the collateral relief will be granted and will materially affect the outcome of the removal proceedings. *See also Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020) (the noncitizen's prima facie eligibility for relief and whether it will materially affect the outcome of the case are not dispositive, especially if other factors—including the uncertainty as to when relief will be approved or become available—weigh against granting a continuance).
- The IJ should also consider relevant secondary factors, which may include the respondent's/applicant's diligence in seeking collateral relief, DHS's position on the motion for continuance, concerns of administrative efficiency, the length of the continuance requested, the number of hearings held and continuances granted previously, and the timing of the continuance motion.

Continuance (U-visa)

Matter of Sanchez Sosa, 25 I&N Dec. 807 (BIA 2012)

In determining whether good cause exists to continue removal proceedings to await the adjudication of a noncitizen's pending U nonimmigrant visa petition, an IJ should consider:

- DHS's position on the noncitizen's motion to continue;
- Whether the underlying visa petition is prima facie approvable; and
- The reason for the continuance and other procedural factors.

To establish prima facie eligibility for a U nonimmigrant visa, a noncitizen must have suffered substantial physical or mental abuse as the innocent victim of a qualifying crime for which the noncitizen has been, is being, or will be helpful to law enforcement, which ordinarily requires an approved law enforcement certification.

A noncitizen who has filed a prima facie approvable petition for a U visa with the United States Citizenship and Immigration Services will ordinarily warrant a favorable exercise of discretion for a continuance for a reasonable period of time.

Note: District Courts may review U-Visa denials. This can factor into whether a continuance should be granted or lead to prolonged detention issues. *Perez Perez v. Wolf*, 2019 WL 6224421 (9th Cir. Nov. 22, 2019).

Continuance (T-visa)

Determinations for eligibility for T nonimmigrant status are within the sole jurisdiction and discretion of DHS. 8 C.F.R. §§ 212.16, 214.11; *Matter of G-F-*, 26 I&N Dec. 88, 92 (BIA 2013).

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A noncitizen subject to a final order of removal with a bona fide pending application for T nonimmigrant status may request an administrative stay of removal from the DHS should the USCIS approve the visa application. *See* INA § 237(d); 8 C.F.R. § 214.1 l(d)(1)(ii).

Note: Where a respondent is granted a T-visa, the Immigration Judge may terminate proceedings. 8 C.F.R. § 214.11(d)(9)(ii) (providing that a noncitizen with an approved T visa, who is the subject of a removal order issued by the Department of Justice, "may seek cancellation of such order by filing a motion to reopen and terminate proceedings with the immigration judge or the Board. ICE may agree, as a matter of discretion, to join such motion to overcome any applicable time and numerical limitations of 8 C.F.R. §§ 1003.2 and 1003.23.").

Continuous Physical Presence

Evidence that a noncitizen who had the right to a hearing before an Immigration Judge was fingerprinted and/or photographed before being allowed to voluntarily depart is not enough, in itself, to demonstrate a waiver of the right to a hearing or to show a process of sufficient formality to break continuous physical presence. *Matter of Castrejon-Colino*, 26 I&N Dec. 667 (BIA 2015); *Matter of Garcia-Ramirez*, 26 I&N Dec. 668 (BIA 2015).

Conviction Pre-September 30, 1996 & INA § 237(a)(2)(E)

An offense can be one "described" in INA § 237(a)(2)(E) only if the conviction for that offense occurred after September 30, 1996. *Matter of Gonzalez-Silva*, 24 I&N Dec. 218, 220 (BIA 2007); *see also* IIRIRA § 350(b), 110 Stat. at 3009-640 (stating that the amendment applies to convictions occurring after the date of enactment). This can effect a noncitizen's eligibility for cancellation of removal under INA § 240A(b)(1)(C).

Credibility

The respondent's/applicant's applications are subject to the credibility provisions of the REAL ID Act. *Matter of S-B-*, 24 I&N 42, 43 (BIA 2006) (finding all applications filed after May 11, 2005 subject to the REAL ID Act); *see also Shrestha v. Holder*, 590 F.3d 1034, 1041 (9th Cir. 2010) (explaining the REAL ID Act standards for credibility determinations).

Department of State Country Report

The State Department report is "the most appropriate and perhaps the best resource for information on political situations in foreign nations." *Kazlauskas v. INS*, 46 F.3d 902, 906 (9th Cir. 1995).

Discretion

The respondent has the burden of proving that he satisfies the applicable eligibility requirements and merits a favorable exercise of discretion. INA § 240(c)(4)(A); *Matter of C-V-T-*, 22 I&N Dec. 7 (BIA 1998).

Exceptional and Extremely Unusual Hardship

To establish "exceptional and extremely unusual hardship," the applicant must show that his or her qualifying relative would suffer hardship substantially beyond that which would ordinarily result from the applicant's removal. *See Matter of Monreal*, 23 I&N Dec. 56, 59 (BIA 2001) (finding that the qualifying relatives were healthy and would suffer hardship that was not substantially different from that expected from the removal of any noncitizen with close family

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members in the United States). Yet, the alien need not show that such hardship would be unconscionable. *Id*. at 61. Only hardship to the applicant's qualifying relative is considered. INA § 240A(b)(1)(D). However, hardship to the applicant's may be evaluated insofar as it affects their qualifying spouse, parent, or child. *Matter of Monreal*, 23 I&N Dec. at 63.

Factors to be considered in determining the level of hardship include the qualifying relative's age, health, length of residence in the United States, and family and community ties in the United States and abroad. *Matter of Monreal*, 23 I&N Dec. at 63. A lower standard of living, diminished educational opportunities, poor economic conditions, and other adverse country conditions in the country of removal are also relevant factors, but will generally be insufficient, in and of themselves, to support a finding of exceptional and extremely unusual hardship. *Matter of Andazola-Rivas*, 23 I&N Dec. 319, 323-324 (BIA 2002); *Matter of Monreal*, 23 I&N Dec. at 63. However, all hardship factors should be considered in the aggregate to determine whether the qualifying relative will suffer hardship that is exceptional and extremely unusual. *Matter of Monreal*, 23 I&N Dec. at 64. *See generally Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001) (evaluating the hardship standard under the former suspension of deportation statute).
For example, the Board has determined that diminished educational and economic opportunities in the country of removal, when combined with the financial burden on the adult respondent, who was sole financial provider for her six U.S. citizen children, the children's unfamiliarity with the language in the country of removal, the lawful residence of the respondent's immediate family in this country, and the lack of family ties in the country of removal, among other factors, cumulatively rendered the hardship "well beyond that which is normally experienced in most cases of removal." *Matter of Recinas*, 23 I&N Dec. 467, 472 (BIA 2002).

Extreme Hardship
Often seen in Special Rule Cancellation of Removal under INA § 240A(b)(2) and Suspension of Deportation under former-INA § 244 (pre-April 1, 1997). *See Matter of Cervantes*, 22 I&N Dec. 560 (BIA 1999).
Extreme hardship is evaluated on a case-by-case basis, taking into account the particular facts and circumstances of each case. *See* 8 C.F.R. §§ 1240.58(b), (c) (listing out factors) [editor's note: very helpful list of factors].

Former Immigration and Naturalization Service
The functions of the INS were transferred to the DHS on March 1, 2003, pursuant to the Homeland Security Act of 2002, Pub. L. No. 107-296, 116 Stat. 2135. As part of the restructuring, the regulations were reorganized into separate chapters for the DHS and the Executive Office for Immigration Review ("EOIR"). *See* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 Fed. Reg. 9824 (Feb. 28, 2003).

Good moral character – cancellation of removal under INA § 240A(b)(1)(B)
The ten-year period of good moral character is calculated backward from the date on which the final administrative decision is entered by the Immigration Judge or the Board. *Matter of Garcia*, 24 I&N Dec. 179 (BIA 2007).

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Good moral character – statutory bar under INA § 101(f)
Evidence of two or more convictions for driving under the influence during the relevant period establishes a presumption that the applicant lacks good moral character under INA § 101(f). *Matter of Castillo-Perez*, 27 I&N Dec. 664 (A.G. 2019).

One Year Bar for Asylum before April 1, 1997
Applicants who filed for asylum before April 1, 1997 are not barred by the one-year asylum application deadline. *See* 8 C.F.R. §§ 208.13(c)(2)(ii); 1208.13(c)(1), (2).

One Year Filing Deadline (Asylum)
An applicant seeking protection in the United States as a refugee by filing for asylum must do so within one year of his last arrival in the United States. INA §208(a)(2)(B). If the applicant can show a material change in circumstances or that extraordinary circumstances caused the delay in filing, the limitations period will be tolled. *See* INA §208(a)(2)(D); 8 C.F.R. § 1208.4(a)(4) & (5). [Please note: An individual who establishes *Mendez-Rojas* class membership shall be deemed to have timely filed an asylum application. Policy Memorandum 21-01.]
Unfamiliarity with the asylum process does not constitute a changed or extraordinary circumstance, as described in 8 C.F.R. § 208.4(a)(4)-(5). *See Antonio-Martinez v. INS*, 317 F.3d 1089, 1093 (9th Cir. 2003) ("As a general rule, ignorance of the law is no excuse.").

Petty Offense Exception
An applicant who has been convicted of a crime involving moral turpitude that falls within the "petty offense" exception in INA § 212(a)(2)(A)(ii)(II) is not ineligible for cancellation of removal under INA § 240A(b)(1)(C).

REAL ID Act
The "REAL ID Act of 2005" apply to applications filed on or after May 11, 2005.

Telephonic Testimony
IJ erred in refusing to allow telephonic testimony. *See Zolotukhin V. Gonzales*, 427 F.3d 1073, 1076 (9th Cir. 2005); *Biggs v. INS*, 55 F.3d 1398, 1401-02 (9th Cir. 1995).

Termination
Matter of S-O-G- & F-D-B-, 27 I&N Dec. 462 (A.G. 2018)

- Consistent with *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), IJs have no inherent authority to terminate or dismiss removal proceedings.
- IJs may dismiss or terminate removal proceedings only under the circumstances expressly identified in the regulations, see 8 C.F.R. § 1239.2(c), (f), or where DHS fails to sustain the charges of removability against a respondent, *see* 8 C.F.R. § 1240.12(c).
- IJ's general authority to "take any other action consistent with applicable law and regulations as may be appropriate," 8 C.F.R. § 1240.1(a)(1)(iv), does not provide any additional authority to terminate or dismiss removal proceedings beyond those authorities expressly set out in the relevant regulations.
- To avoid confusion, IJs and the Board should recognize and maintain the distinction between a dismissal under 8 C.F.R. § 1239.2(c) and a termination under 8 C.F.R. § 1239.2(f).

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Unaccompanied Noncitizen Child – currently enjoined by *J.O.P. v. U.S. Dep't of Homeland Sec.*, 338 F.R.D. 33, 65 (D. Md. 2020)

An Immigration Judge has initial jurisdiction over an asylum application filed by a respondent who was previously determined to be an unaccompanied noncitizen child but who turned 18 before filing the application. *Matter of M-A-C-O-,* 27 I&N Dec. 477 (BIA 2018).

Visa Waiver Program

An Immigration Judge does not have jurisdiction to determine that the applicant was no longer admitted pursuant to the Visa Waiver Program, to terminate proceedings under INA §217, and to recommence proceedings under INA §240. It is well established that Immigration Judges only have the authority to consider matters that are delegated to them by the Attorney General and the Immigration and Nationality Act. *See* 8 C.F.R. §1003.10(b); *Matter of A-W-*, 25 I&N Dec. 45, 46 (BIA 2009). According to 8 C.F.R. §1208.2(c)(1)(iv) , Immigration Judges have exclusive jurisdiction over asylum.

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Asylum / Withholding

General Violence

Asylum is not available to victims of indiscriminate violence, unless they are singled out on account of a protected ground. *See Ochave v. INS*, 254 F.3d 859, 865 (9th Cir. 2001) *Matter of Sanchez and Escobar*, 19 I&N Dec. 276, 288 (BIA 1985) (noting that fear of generalized conditions of crimes and violence is not a valid basis for a well-founded fear of future harm).

An applicant's desire to be free from harassment by criminals motivated by theft or random violence by gang members bears no nexus to a protected ground. *Gormley v. Ashcroft*, 364 F.3d 1172, 1177 (9th Cir. 2004) (holding that random criminal acts bore no nexus to a protected ground).

Fear of harm by criminals or gangs do not "establish that the alien belongs to a 'particular social group' within the meaning of INA §101(a)(42)(A) of the Act." *Arteaga v. Mukasey*, 511 F.3d 940 (9th Cir. 2007).

An asylum applicant's fear of harm, resulting from general conditions of violence and civil unrest affecting the home country's populace as a whole does not constitute a "well-founded fear of persecution" within the meaning of the Act. *Zetino v. Holder*, 622 F.3d 1007 (9th Cir. 2010).

Harm / Threats

The individuals who threatened the respondent did not physically harm the respondent or menace him with imminent serious harm or death such that the threats alone would rise to the level of persecution. *Lim v. INS*, 224 F.3d 929, 936 (9th Cir. 2000) (threats standing alone constitute past persecution in only a small category of cases, and only when the threats are so menacing as to cause significant actual suffering or harm); *Hoxha v. Ashcroft*, 319 F.3d 1179, 1182 (9th Cir. 2003) (harassment, threats, and one beating unconnected with any particular threat did not constitute past persecution)

Revenge / Personal Vendetta

Potential personal retribution does not qualify as harm on account of a protected ground. *See Molina-Morales v. INS*, 237 F.3d 1048, 1052 (9th Cir. 2001) (holding that harm as a result of a personal vendetta is not persecution on account of a protected ground); *see also Madrigal v. Holder*, 716 F.3d 499, 506 (9th Cir. 2013) ("motivated by personal retribution will not give rise to a valid asylum claim.").

Fear of revenge based upon a personal dispute against the respondent does not constitute persecution on account of a protected ground *See Matter of T-*, 20 I&N Dec. 571 (BIA 1992); *Matter of Pierre*, 15 I&N Dec. 461 (BIA 1975).

Particular Social Group

A particular social group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014).

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Under *Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 191 (BIA 2018), the applicant for asylum is required to clearly indicate on the record before the Immigration Judge the exact delineation of any proposed particular social group.

Particular Social Groups in the Ninth Circuit[1]

- *Aguilar-Osorio v. Garland*, No. 19-73000, 2021 WL 958203 (9th Cir. Mar. 15, 2021) (rejecting "witnesses who…could testify against gang members based upon what they witnessed")
- *Rivera v. Barr*, 806 F. App'x 600 (9th Cir. May 27, 2020) (rejecting "Mexican women unable to leave their relationships")
- *Perez v. Barr*, 803 F. App'x 132, 133–34 (9th Cir. April 27, 2020) (rejecting "victims of domestic violence in Mexico" as not immutable; rejecting "persons with serious and chronic mental illness in Mexico" as insufficiently particular)
- *Lopez-De Flores v. Barr*, 799 F. App'x 521 (9th Cir. March 30, 2020) (rejecting "all Salvadoran women" and "small business merchants in El Salvador")
- *Conde Quevedo v. Barr*, 947 F.3d 1238 (9th Cir. 2020) (finding "people who report the criminal activity of gangs to police" was not a PSG in this case but may be in others)
- *Barbosa v. Barr*, 926 F.3d 1053, 1059–60 (9th Cir. 2019) (rejecting "individuals returning to Mexico [from] the United States [who] are believed to be wealthy")
- *Martinez Salgado v. Barr*, No. 18-72205 (9th Cir. Nov. 21, 2019) (mem.) ("Honduran witnesses to MS-13's criminal activities who fail to abide by the gang's demands" is not cognizable)
- *Sanjaa v. Sessions,* 863 F.3d 1161, 1164 (9th Cir. 2017) (finding no persecution on account of a political opinion when the police officer was attacked because of his drug-trafficking investigations)
- *Reyes v. Lynch*, 842 F.3d 1125, 1138 (9th Cir. 2016) (former members of the Mara 18 gang in El Salvador who have renounced their membership, lacked social distinction)
- *Ramirez-Munoz v. Lynch*, 816 F.3d 1226, 1228–29 (9th Cir. 2016) (perceived wealthy Americans do not constitute a particular social group)
- *Mendoza-Alvarez v. Holder*, 714 F.3d 1161, 1165 (9th Cir. 2013) ("[A]n inadequate healthcare system is not persecution and is not harm inflicted because of membership in a particular social group.")
- *Delgado-Ortiz v. Holder*, 600 F.3d 1148, 1151-52 (9th Cir. 2010) ("returning Mexicans from the United States" is too broad to qualify as a cognizable social group)
- *Escalante-Jimenez v. Holder*, 511 Fed. Appx. 634 (9th Cir. 2013) (Salvadoran nationals who are returning from the United States after a very long period and who are thus perceived as vulnerable, wealthy and holding a conflicting political opinion by the gang is too broad and lacks both particularity and social visibility to qualify as a particular social group)
- *Ventura v. Holder*, 459 F. App'x 663, 634-35 (9th Cir. 2011) ("immigrants returning to their home country after living in the United States do not comprise a cognizable social group.")

[1] Please note that many of these cases were decided prior to *M-E-V-G-* and *W-G-R-*. Exercise caution.

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- *Barrios v. Holder*, 581 F.3d 849, 854-55 (9th Cir. 2009) (rejecting young men in Guatemala who was targeted for gang recruitment but refused to join")
- *Ramos-Lopez v. Holder*, 563 F.3d 855, 858-62 (9th Cir. 2009) (rejecting young Honduran men who was recruited by gangs and refused to join)
- *Donchev v. Mukasey*, 553 F.3d 1206, 1220 (9th Cir. 2009) Rejecting Bulgarian applicant's claim that he was in a particular social group as a "friend of the Roma people."
- *Santos-Lemus v. Mukasey*, 542 F.3d 738, 744-46 (9th Cir. 2008) (applicant's proposed social group of young Salvadoran men who resist gang violence lacks both particularity and social visibility and thus is not a social group)
- *Arteaga v. Mukasey*, 511 F3d 940, 945-46 (9th Cir. 2007) (membership in violent criminal gang was not membership in a social group)
    - Specifically holding that a tattooed applicant's membership in a violent criminal gang was not "social group" membership for withholding of removal purposes because the characteristic of being a gang member, which includes the shared experience of engaging in violent criminal activity, was "materially at war" with other innate characteristics found to form other protected social groups.
- *Ochoa v. Gonzales*, 406 F.3d 1166, 1171 (9th Cir. 2005) (business owners in Colombia who rejected demands by narco-traffickers to participate in illegal activity was too broad a category to qualify as a particular social group);
- *Molina-Estrada v. INS*, 293 F.3d 1089, 1095 (9th Cir. 2002) (evidence did not compel a finding that Guatemalan applicant was persecuted on account of family membership)
- *Cruz-Navarro v. INS*, 232 F.3d 1024, 1028-29 (9th Cir. 2000) (persecution because a person is a member of the military is not persecution on account of a statutory ground)
- *Grava v. INS*, 205 F.3d 1177, 1181 (9th Cir. 2000) ("[M]ilitary officials cannot claim political persecution arising solely from the performance of their duties.")
- *Pedro-Mateo v. INS*, 224 F.3d 1147, 1050-51 (9th Cir. 2000) (Kanjobal Indians comprising large percentage of population in a given area not a particular social group)
- *Li v. INS*, 92 F.3d 985, 987 (9th Cir. 1996) (persons of low economic status in China not a particular social group)
- *Arriaga-Barrientos v. INS*, 937 F.2d 411, 414 (9th Cir. 1991) (former servicemen in Guatemalan military not a particular social group)
- *Estrada-Posados v. INS*, 924 F.2d 916, 919 (9th Cir. 1991) (family not a particular social group); *De Valle v. INS*, 901 F.2d 787, 792-93 (9th Cir. 1990) (family members of Salvadoran military deserter not a particular social group)

Particular Social Groups in the Board of Immigration Appeals

- *Matter of S-E-G-*, 24 I&N Dec. 579, 583 (BIA 2008) (young Salvadoran men who resist recruitment in gangs are not members of a particular social group)
- *Matter of E-A-G-*, 24 I&N Dec. 591, 596 (BIA 2008) (gang membership, whether perceived or real, does not form the basis for inclusion in a cognizable social group)
- *Matter of A-M-E- & J-G-U-*, 24 I&N Dec. 69, 74-76 (BIA 2007) (holding that affluent Guatemalans were neither sufficiently socially visible in Guatemalan society, nor defined with enough particularity, to constitute a particular social group);

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- *Matter of Acosta*, 19 I&N Dec. 211, 234 (BIA 1985), *overruled on other grounds by Matter of Mogharrabi*, 19 I&N Dec. 439 (BIA 1987) (holding that a taxi cooperative in El Salvador was not a particular social group because the group's defining characteristics were not immutable).

Particularly Serious Crime

The court must conduct a case-by-case analysis to determine whether a conviction, other than an aggravated felony resulting in a sentence of at least five years, constitutes a particularly serious crime. *Blandino-Medina v. Holder*, 712 F.3d 1338, 1344-45 (9th Cir. 2013).

Crimes Against Persons:

Crimes against persons are more likely to be categorized as particularly serious crimes. *See Matter of N-A-M*, 24 I&N Dec. 336, 343 (BIA 2007); *Matter of L-S-*, 22 I&N Dec. 645, 649 (BIA 1999); *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982).

Drugs: *Matter of Y-L- Factors*

An applicant convicted by final judgment of a particularly serious crime is barred from a grant of asylum, withholding of removal, and withholding of removal under the Convention Against Torture. INA §§ 208(b)(2)(A)(ii); 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2). In *Matter of Y-L-*, 23 I&N Dec. 270 (A.G. 2002), the Attorney General created a presumption that aggravated felony illicit drug trafficking offenses are particularly serious crimes. The Ninth Circuit upheld the Attorney General's authority to create this "extraordinarily strong presumption that drug trafficking offenses are particularly serious crimes." *Miguel-Miguel v. Gonzales*, 500 F.3d 941, 947 (9th Cir. 2007). This presumption can be rebutted only in extraordinary, extenuating, and compelling cases where the petitioner can show

> at a *minimum*: (1) a very small quantity of controlled substance; (2) a very modest amount of money paid for the drugs in the offending transaction; (3) merely peripheral involvement by the alien in the criminal activity, transaction, or conspiracy; (4) the absence of any violence or threat of violence, implicit or otherwise, associated with the offense; (5) the absence of any organized crime or terrorist organization involvement, direct or indirect, in relation to the offending activity; and (6) the absence of any adverse or harmful effect of the activity or transaction on juveniles.

Matter of Y-L-, 21 I&N Dec. at 276-77 (emphasis in original); *see also Miguel-Miguel*, 500 F.3d at 946-47 (quoting *Matter of Y-L-*, 23 I&N Dec. at 276-77).

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Motions in Immigration Court

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I. Effective Motions Practice

A. Introduction

Fair and efficient adjudication of motions is essential to a high-functioning immigration court system, but it can be an especially challenging aspect of being an immigration judge (IJ) because motions are rarely litigated in formal hearings or in iterative filings that narrow contested issues. Moreover, the regulations, statutes, and case law related to immigration court motions may be dissimilar from those you encountered in other courts and tribunals throughout your career. Even if you practiced extensively in immigration courts, developing a system to adjudicate motions in a timely manner can be challenging given the high volume of motions you will be expected to adjudicate in addition to time spent conducting hearings. The information contained in this guide will provide you with a basic framework to help you review, analyze, and rule on the motions before you. However, it is not intended as an exhaustive treatise on the nuanced differences in law that exist between the circuits. You are strongly encouraged to consult with Judicial Law Clerks, Attorney Advisors, and other Immigration Judges at your duty court to identify unique aspects of the law related to motions in your circuit.

During any free time you have during the course of your training at headquarters or your designated field court, LERS strongly recommends that you review circuit-specific decisions related to motions to reopen and develop a motions-management system that enables you to hit the ground running. Please remember to consult with your colleagues at your duty court because some—but not all—courts use Judicial Law Clerks and Attorney Advisors to screen and advise judges on motions.

B. Filing and Formatting Rules

1. OCIJ Practice Manual

EOIR publishes and periodically updates a Policy Manual for immigration practitioners. The OCIJ (Office of the Chief Immigration Judge) Practice Manual is included in the Policy Manual. OCIJ will email you when updates are issued. The provisions related to motions are contained in Chapter 5. *See* OCIJ Practice Manual, Chapter 5 (Dec. 28, 2020). The practice manual describes the basic contours of practice before an immigration court, but the failure to comply with the practice manual is generally not a basis to automatically reject a filing unless the failure violates a clear regulatory requirement, such as the failure to include a certificate of service on an opposing party. *See* OCIJ Practice Manual, Chapter 3.1(d)(i) (discussing defective filings subject to rejection by court staff). If a filing is rejected, it is returned to the moving party with a standard form that identifies the reasons the filing was rejected. A rejected filing is not placed in the record of proceeding.

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2. Pre-Decisional Motions vs. Post-Decisional Motions

There are many types of motions in immigration court but only two temporal settings when they may be filed. All motions that precede a final decision on the merits are pre-decisional motions. 8 C.F.R. § 1003.23(a). The time and numerosity limitations that IIRIRA imposed on post-decisional motions do *not* apply—a party may file many pre-decisional motions. If a pre-decisional motion is filed and a timely response is not made by the opposing party then the motion may be deemed unopposed. 8 C.F.R. § 1003.23(a).

Any motion filed after your final decision on the merits—for example, a decision granting cancellation of removal or, alternatively, denying all relief and ordering an alien removed—is a post-decisional motion. 8 C.F.R. § 1003.23(b). The majority of this outline grapples with the statutory framework for these motions. The most important thing to know about post-decisional motions is that there are time and number limitations and that, like all good legal rules, there are exceptions.

3. Filing and Replying to Motions

Motions filed in advance of master calendar hearings in non-detained cases are due fifteen (15) days prior to a master calendar hearing and thirty (30) days prior to an individual hearing; motions in detained cases are required to be filed by the deadline set by the immigration judge. OCIJ Practice Manual, Chapter 3.1(b)(1)-(2). The practice manual sets the default deadline to reply to motions at ten (10) days, OCIJ Practice Manual, Chapter 5.7(c), but the regulations give individual judges the discretion to "set and extent time limits for the making of motions and replies thereto" of any pre-decisional motion. 8 C.F.R. § 1003.23(a). Thus, untimely motions will be accepted by court staff and marked as "untimely," requiring you to decide whether or not to accept it. In general, immigration judges accept untimely filings but may assign them little or no evidentiary weight: this enables the Court of Appeals to review your decision while recognizing that you are not omniscient and cannot read hundreds of pages during a hearing before rendering a decision.

4. Place of Filing

Both the Board of Immigration Appeals and the Immigration Courts may consider and rule on motions to reopen and motions to reconsider. 8 C.F.R. § 1003.2(a)–(c), 1003.23(b)(2)–(3). The Board may only decide motions in cases where it has jurisdiction. 8 C.F.R. § 1003.2(a); *see* BIA Practice Manual, Chapter 5.2(a), (Dec. 22, 2020). The Board's practice manual contains a useful diagram to ascertain who has jurisdiction over a particular motion. *Id.* at Appendix J.

5. Filing Fees

A motion to reopen or a motion to reconsider must be accompanied by proof that a filing fee was paid to the Department of Homeland Security. 8 C.F.R.

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§§ 1003.23(b)(1)(ii), 1107.7(a)(3). The fee for a motion is $110. 8 C.F.R. § 1103.7(b)(2). An immigration judge "has the discretion to waive a fee for a motion or application for relief upon a showing that the filing party is unable to pay the fee." 8 C.F.R. § 1003.24(c).

6. Improperly Styled Motions

The court may re-construe an improperly styled motion based on its underlying purpose. *See Mohammed v. Gonzales*, 400 F.3d 785, 792–93 (9th Cir. 2005); *Matter of Cerna*, 20 I&N Dec. 399 (BIA 1991).

II. Motions to Reopen

The Illegal Immigration and Immigrant Responsibility Act of 1996 (IIRIRA), 110 Stat. 3009–546, "codified certain rules, earlier prescribed by the Attorney General, governing the reopening process." *Kucana v. Holder*, 558 U.S. 233, 236 (2010). IIRIRA enables "[a]n alien [to] file one motion to reopen proceedings . . . within 90 days of the date of entry of a final administrative order of removal." INA § 240(c)(7)(A), (C); 8 C.F.R. § 1003.23(b)(1), (3). Failure to comply with the statutory time and number requirements is a sufficient basis to deny a statutory motion to reopen. However, the 90 day time limit is subject to equitable tolling and does not apply to a motion to reopen and rescind an in absentia order following a failure to appear in immigration court nor does it apply to a motion to reopen to apply for asylum or withholding of removal. INA § 240(c)(7)(C)(ii) (deadline to reopen based on changed country conditions), (iii) (deadline to file a motion to reopen based on a failure to appear).

A. Legal Standards

1. Standard of Proof: Prima Facie

The party moving to reopen proceedings must establish prima facie eligibility for the relief sought. 8 C.F.R. § 1003.23(b)(3). "The prima face case standard for a motion to reopen . . . requires the applicant to produce objective evidence showing a 'reasonable likelihood,' that he can establish that [he is entitled to relief]." *Guo v. Ashcroft*, 386 F.3d 556, 563 (3d Cir. 2004) (quoting *Sevoian v. Ashcroft*, 290 F.3d 166, 173 n.5 (3d Cir. 2002)). "A 'reasonable likelihood' means showing a realistic chance that the [moving party] can at a later time establish that [relief] should be granted." *Smith v. Holder*, 627 F.3d 427, 437 (1st Cir. 2010) (internal quotation omitted). However, "[t]he Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief." 8 C.F.R. § 1003.23(b)(3).

2. Grounds to Deny a Motion to Reopen

There are three independent grounds to deny a motion to reopen. *See INS v. Abudu*, 485 U.S. 94, 104–05 (1988). A motion to reopen may be denied: (1) if the movant

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has not established a prima facie case for the underlying relief sought; (2) if the movant has not produced previously unavailable, material evidence; or (3) in cases where the ultimate relief sought is discretionary, the immigration judge may jump "over the two threshold concerns (prima facie case and new evidence/reasonable explanation), and simply determine that even if they were met, the movant would not be entitled to the discretionary grant of relief." *Abudu*, 485 U.S. at 105. A motion may also be denied as untimely or duplicative, but those IIRIRA limitations are not applicable to all situations. INA § 240(c)(7)(A).

Additionally, INA § 241(a)(5) prohibits an immigration judge from reopening removal proceedings once the underlying removal order has been reinstated. *See Cuenca v. Barr*, 941 F.3d 1213, 1221 (9th Cir. 2019) ("we join the Fifth and Seventh Circuits in concluding that [INA § 241(a)(5) bar reopening a removal order that has been reinstated following an alien's unlawful reentry into the United States.").

3. Standard of Review

The Board of Immigration Appeals reviews an immigration judge's findings of fact for clear error, while the exercise of discretion is reviewed de novo. 8 C.F.R. § 1003.1(d)(3)(i), (ii). The Courts of Appeals review the Board's decision to deny a motion for abuse of discretion. *Zhao v. U.S. Dept. of Justice*, 265 F.3d 83, 93 (2d Cir. 2001). The Board abuses its discretion when its decision "provides no rational explanation, inexplicably departs from established policies, is devoid of any reasoning, or contains only summary or conclusory statements; that is to say, where the Board has acted in an arbitrary and capricious manner." *Id.* at 93 (internal quotations and citations omitted).

B. Failure to Appear

An alien who fails to appear in immigration court after proper service of a Notice to Appear and a Notice of Hearing informing the alien of the time and place of proceedings, "shall be ordered removed in absentia if [the Department of Homeland Security] establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and that the alien is removable[.]" INA § 240(b)(5). So-called "in absentia orders" are common in non-detained dockets. Although the failure to appear provisions in the Act contain many statutory cross-references, the legal mechanics of these provisions are straightforward: there are a few factual predicates that must be met before an in absentia order can issue and there are several statutory provisions that let an alien rescind an in absentia order altogether. *See* INA § 240(b)(5)(C) (recession of order). The factual predicates are limited and straightforward.

Before an in absentia order can issue, an alien must have been served with a Form I-862, Notice to Appear, that informed her of the consequences of failing to appear at an immigration hearing, INA § 240(b)(5), as well as the obligation to inform the

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Attorney General of any change of the alien's address or telephone number, INA § 239(a)(1)(F). Additionally, the alien must have been provided notice of the time and place of their hearing. INA § 239(c). Although a Notice to Appear may indicate a time and place of a hearing that information is usually conveyed to the respondent in a subsequent court-issued Notice of Hearing mailed by staff through the Postal Service or served on the respondent in-person during a hearing. *See Karingithi v. Whitaker*, 913 F.3d 1158 (9th Cir. 2019). If these basic requirements are not met, an alien cannot be removed in absentia even if they fail to appear at a scheduled hearing. *Cf.* 239(c) ("Service by mail under this section shall be sufficient if there is proof of attempted delivery to the last address provided by the alien[.]"). In almost all cases, evidence of these three predicates will be contained in the Record of Proceeding and the government will move to proceed in absentia under INA § 240(b)(5), requiring you to enter an order removing the respondent from the United States in absentia.

An in absentia order has significant consequences for an alien, who "shall not be eligible for relief under section 240A, 240B, 245, 248, or 249 for a period of 10 years after the date of the entry of the final order of removal." INA § 240(b)(7). As a result, in absentia orders are frequently challenged by a Motion to Reopen and Rescind an In Absentia Order, although these filings are frequently styled improperly.

Generally, a motion to reopen and rescind an in absentia order will seek to reopen proceedings because of: (1) a lack of notice about the time and place of the hearing where the in absentia order was entered; (2) exceptional circumstances that prevented the alien from appearing at their hearing; or (3) an exceptional situation that warrants the exercise of the court's *sua sponte* authority. If an in absentia order is rescinded, the respondent reenters removal proceedings and may pursue any application for relief.

If an alien files a Motion to Reopen and Rescind an In Absentia Order, their removal from the United States is automatically stayed until the court rules on the pending motion. INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(i). The automatic stay provision will frequently elude the attorneys who appear before you and they will file a separate motion to stay removal—there is no need to rule on this motion because the stay is already in effect. That said, it is important to note that an automatic stay is not issued after the filing of any other motion to reopen or reconsider—for example, a motion to reopen based on your sua sponte authority alone should be accompanied by a separate motion for a stay of removal if the alien's removal from the United States is imminent.

1. Reopening for Lack of Notice

At the outset, it is important to note that hearing notices issued in "deportation proceedings," prior to the effective date of IIRIRA, were required by former INA § 242(B) to be sent by *certified* mail, creating a "strong presumption" of effective

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service. *Matter of G-Y-R-*, 23 I&N Dec. 181, 184–85 (BIA 2001). IIRIRA eliminated this requirement, so hearing notices are no longer mailed using certified mail. As a result, the IJ should review the ROP to determine what legal regime applies (pre- or post-IIRIRA) and how strong the presumption of delivery is: strong for certified mail, but merely a presumption for notices sent through regular mail. One other note: the charging documents in so-called "deportation proceedings" (pre-IIRIRA) was called an Order to Show Cause. Thus, the type of charging document contained in the record will inform you about what legal regime applies to the Motion to Reopen and Rescind before you.

a. Rebutting Presumption of Certified Mail Delivery

There is a strong presumption of notice of a removal hearing if a hearing notice is sent by certified mail and "there is proof of attempted delivery and notification of certified mail[.]" *Matter of Grijalva*, 21 I&N Dec. 27, 37 (BIA 1995). That presumption may be "overcome by the affirmative defense of nondelivery or improper delivery by the Postal Service," but the respondent must "present substantial and probative evidence such as documentary evidence from the Postal Service, third party affidavits, or other similar evidence demonstrating that there was improper delivery or that nondelivery was not due to the respondent's failure to provide an address where he could receive mail." *Id.* at 37.

b. Rebutting Presumption of Regular Mail Delivery

There is a presumption of effective delivery and notice to the alien if the hearing notice was properly addressed to the address last provided by the respondent, had sufficient postage, and was properly deposited in the mail. *See Busquets-Ivars v. Ashcroft*, 333 F.3d 1008, 1010 (9th Cir. 2003) (citing *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884)). "The delivery presumption is based on common experience that 'most letters are delivered, but some aren't.'" *Nibagwire v. Gonzales*, 450 F.3d 153, 156 (4th Cir. 2006) (citing *Joshi v. Ashcroft*, 389 F.3d 732, 735 (7th Cir. 2004)). To determine whether a respondent rebutted the presumption of delivery in their motion to reopen, an immigration judge should consider: "(1) the respondent's affidavit; (2) affidavits from family members or other individuals who are knowledgeable about the facts relevant to whether notice was received; (3) the respondent's actions upon learning of the in absentia order, and whether due diligence was exercised in seeking to redress the situation; (4) any prior affirmative application for relief, indicating that the respondent had an incentive to appear; (5) any prior application for relief filed with the Immigration Court or any prima facie evidence in the record or the respondent's motion of statutory eligibility for relief, indicating that the respondent had an incentive to appear; (6) the respondent's previous attendance at Immigration Court hearings, if applicable; and (7) any other circumstances or evidence indicating possible nonreceipt of notice." *Matter*

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of M-R-A-, 24 I&N Dec. 665, 674 (BIA 2008). The IJ may also consider any other relevant factor and must evaluate each case "based on its own particular circumstances." *Matter of M-R-A-*, 24 I&N Dec. at 674.

Generally, a Motion to Reopen and Rescind an In Absentia order will be accompanied by a signed declaration from the respondent alleging, simply, that they did not receive the court's hearing notice. The court "must accept as true reasonably specific facts proffered by an alien in support of a motion to reopen unless it finds those facts to be inherently unbelievable." *Haftlang v. INS*, 790 F.2d 140, 142 (D.C. Cir. 1986) (internal quotation omitted); *see, e.g.*, *Trujillo Diaz v. Sessions*, 880 F.3d 244, 252–53 (6th Cir. 2018).

2. Exceptional Circumstances

An alien may file a motion to reopen and rescind an in absentia order within 180 days after the order was issued "if the alien demonstrates that the failure to appear was because of exceptional circumstances [as defined in INA § 240(e)(1)]." INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii). "Exceptional circumstances" are defined as:

> [E]xceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien.

INA § 240(e)(1). Situations that commonly arise but do not constitute exceptional circumstances include pre-existing minor illness, traffic, parking trouble, and vehicle mechanical failure. *See Arredondo v. Lynch*, 824 F.3d 801, 806 (9th Cir. 2016); *Matter of Ali*, 21 I&N Dec. 1058 (BIA 1997).

C. Changed Country Conditions

A motion to reopen to seek asylum, withholding of removal, or protection under the Convention Against Torture is not subject to time or number limitations, if the motion is "based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding. INA § 240(c)(7)(C)(ii); 8 C.F.R. § 1003.23(b)(4)(i). Specifically, a respondent seeking to reopen must: (1) produce evidence that conditions have changed in the country of removal; (2) show that the evidence is "material;" (3) establish that the evidence was not available or discoverable at the previous hearing; and (4) demonstrate that "the new evidence, when considered together with the evidence presented at the original hearing, would establish prima facie eligibility for the relief sought." *Toufighi v. Mukasey*, 538 F.3d 988, 996–97 (9th Cir. 2008) (internal citations omitted); *see Matter of J-G-*, 26 I&N Dec. 161, 169 (BIA 2013). A respondent may apply for relief under INA § 240(c)(7)(C)(ii) even if they are

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subject to a prior in absentia order that has not been rescinded through one of the mechanisms—lack of notice or exceptional circumstances—contained in INA § 240(b)(5)(C). *Matter of J-G-*, 26 I&N Dec. at 167.

A change in personal circumstances that is relevant to a motion to reopen for changed circumstances may be considered, but the scope of that inquiry varies by circuit. *See Rei Feng Wang v. Lynch*, 795 F.3d 283, 286 (1st Cir. 2015); *Jiang v. Lynch*, 621 F. App'x 24, 25–26 (2nd Cir. 2015) (mem.) (noting that the Second Circuit has not addressed issue in a published opinion); *Khan v. U.S. Atty. Gen.*, 691 F.3d 488, 497 (3rd Cir. 2012); *Trujillo Diaz v. Sessions*, 880 F.3d 244, 255 (6th Cir. 2018); *Wen Ying Zheng v. Mukasey*, 509 F.3d 869, 871 (8th Cir. 2007); *Joseph v. Holder*, 579 F.3d 827, 834 (7th Cir. 2009); *Chandra v. Holder*, 751 F.3d 1034, 1037 (9th Cir. 2014); *Zhang v. U.S. Atty. Gen.*, 572 F.3d 1316, 1319 (11th Cir. 2009).

D. Sua Sponte Reopening

Unlike 8 C.F.R. § 1003.23(b)(3), which implements a respondent's "statutory right [provided by the Illegal Immigration Reform and Immigrant Responsibility Act] to reopen . . . removal proceedings," the court's sua sponte authority to reopen is derived from a regulation, 8 C.F.R. § 1003.23(b)(1), that preceded the codification of motions to reopen and dates back to 1958. *Mata v. Lynch*, 135 S. Ct. 2150, 2153 (2015); *see* Motions and Appeals in Immigration Proceedings, 61 Fed. Reg. 18900, 18901, 18905 (1996); Rules and Regulations, 23 Fed. Reg. 9115, 9118-9119 (1958). The decision to reopen a case sua sponte is discretionary and is not generally subject to judicial review because "there are no meaningful standards against which to judge the BIA's exercise or non-exercise of its discretion to reopen proceedings sua sponte." *Peralta v. Holder*, 567 F.3d 31, 34 (1st Cir. 2009) (compiling cases); *see Kucana v. Holder*, 558 U.S. 233, 252 n.18 (2010) (declining to decide whether motions to reopen sua sponte are reviewable). However, the Second, Third, Ninth, and Tenth Circuits review the denial of a motion to reopen sua sponte to the extent that the Board[1] made a legal or constitutional error. *See Bonilla v. Lynch*, 840 F.3d 575, 588–89 (9th Cir. 2016) (compiling cases). Because motions to reopen sua sponte are generally unreviewable by the Courts of Appeals, there is very little guidance about how an immigration judge should or should not exercise their authority.

The Board has explained that the power to reopen a case sua sponte is "not meant to be used as a general cure for filing defects or to otherwise circumvent the regulations, where enforcing them might result in hardship." *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997) (requiring movant to present evidence of an "exceptional situation"); *see Matter of G-D-*, 22 I&N Dec. 1132, 1135 (BIA 1999) (explaining that sua sponte may be warranted if there is a "fundamental change in the law"). Similarly, where a respondent seeks to challenge a prior order of removal—in reinstated removal proceedings under INA

[1] Although the Courts of Appeals are technically reviewing the Board's decision, where the Board incorporates or adopts your reasoning, it will be treated as the *Board*'s reasoning. *See*, *e.g.*, *Sosa-Perez v. Sessions*, 884 F.3d 74, 79 (1st Cir. 2018) ("When the BIA conducts a de novo review of the record, independently validates the sufficiency of the evidence, and adopts the IJ's findings and conclusions, the IJ's findings become the BIA's.") (internal quotation omitted).

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§ 241(b)(3), for example—the Board has explained that reopening the prior removal proceeding is only appropriate where "there has been a gross miscarriage of justice." *Matter of Malone*, 11 I&N Dec. 730, 731 (BIA 1966). With these general principles in mind, an immigration judge retains broad discretion to exercise their authority to sua sponte reopen a case, even in situations where a state conviction that undergirded an order of removal has been vacated. *See Menendez-Gonzalez v. Barr*, 929 F.3d 1113 (9th Cir. 2019) (court of appeals lacked jurisdiction to review motion to reopen sua sponte where conviction that formed basis of prior removal. If appealed, the IJ's discretionary decision is reviewed by the Board de novo). 8 C.F.R. § 1003.1(d)(3)(ii).

The Ninth Circuit recently held that the Board did not err by declining to equitably toll the filing deadline because Petitioner did not act diligently after her removal and *before* the intervening case, and because there were no impediments preventing her from learning about categorical approach cases. *Lona v. Barr*, 958 F.3d 1225 (9th Cir. 2020). The panel also held that even if a "fundamental change in law" had been established, the Board did not err by refusing to reopen Petitioner's case sua sponte.

E. Ineffective Assistance of Counsel

In *Matter of Lozada*, the Board of Immigration Appeals held that, in order to establish eligibility for a motion to reopen based on ineffective assistance of counsel, a respondent should (1) provide an affidavit describing in detail the agreement with counsel; (2) inform counsel of the allegations and afford counsel an opportunity to respond; and (3) report whether a complaint of ethical or legal violations has been filed with the proper authorities, and if not, why. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988), *overruled on other grounds by Matter of Compean*, 24 I&N Dec. 710, 712 (AG 2009). A claim of ineffective assistance of counsel may toll the 90 day deadline to file a motion to reopen if the movant, "exercised due diligence in pursing the case during the period he seeks to toll." *Wang v. Board of Immigration Appeals*, 508 F.3d 710, 714 (2d Cir. 2007) (internal quotation omitted).

The degree of adherence—strict vs. some compliance—to the *Lozada* factors varies by circuit and you should review the applicable case law in your circuit before ruling on a motion. *See*, *e.g.*, *Reyes v. Ashcroft*, 358 F.3d 592, 597 (9th Cir. 2004).

F. Regulatory Departure Bar to Reopening

The Attorney General promulgated regulations, 8 C.F.R. §§ 1003.2(d), 1003.23(b)(1), commonly known as the "departure bar" that prevents "a person who is the subject of exclusion, deportation, or removal proceedings subsequent to his or her departure from the United States," from filing a motion to reopen or a motion to reconsider. The First, Second, Third, Fourth, Fifth, Sixth, Seventh, and Tenth Circuits—*i.e.*, every circuit to have considered the issue—hold that the regulatory departure bar conflicts with the plain language of INA § 240(c)(6), (7), or that it is an impermissible interpretation of the Act. *See Toor v. Lynch*, 789 F.3d 1055, 1060–61 (9th Cir. 2015) (compiling cases). However, the Second and Fifth Circuits allow the Board to apply the regulatory departure bar to

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untimely motions to reopen. *See Zhang v. Holder*, 617 F.3d 650 (2d Cir. 2010); *Ovalles v. Holder*, 577 F.3d 288 (5th Cir. 2009). Additionally, the regulatory departure bar precludes consideration of a motion to reopen sua sponte, but some circuits have declined to follow that interpretation. *Compare Matter of Armendarez-Mendez*, 24 I&N Dec. 646, 660 (BIA 2008), *with Medina v. Holder*, 542 F. App'x 621, 623 (9th Cir. 2013) (mem.).

II. Motion to Reconsider

A respondent may file one motion to reconsider within 30 days of the entry of a final administrative order of removal. INA § 240(c)(6)(B). A motion to reconsider must "state the reasons for the motion by specifying the errors of fact or law in the Immigration Judge's prior decision and shall be supported by pertinent authority." 8 C.F.R. § 1003.23(b)(2). A motion to reconsider asks the court to reconsider its prior decision based on the law applicable at the time the court made the disputed decision. *Matter of Cerna*, 20 I&N Dec. 399, 402 (BIA 1991); *cf. Stone v. INS*, 514 U.S. 386, 401 (1995) ("The closest analogy to the INS' discretionary petition for agency reconsideration is the motion for relief from judgement under Rule of Civil Procedure 60(b)."). The 30 day filing deadline may be subject to equitable tolling. *See*, *e.g.*, *Omar v. Lynch*, 814 F.3d 565, 568–69 (1st Cir. 2016) ("To prevail on a theory of equitable tolling, an individual must show (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way that prevent timely filing.") (internal quotation omitted).

III. Motion to Terminate

A motion to terminate is a motion filed by the respondent, arguing that they are not removable as charged in the Notice to Appear. INA § 240(c); *see*, *e.g.*, *Alonzo v. Lynch*, 821 F.3d 951 (8th Cir. 2016). A motion to terminate is usually filed at or immediately after the pleadings stage. 8 C.F.R. § 1240.10(c), (d). The protypical motion to terminate argues that a respondent's statute of conviction is not a categorical match to a generic offense set out in the INA and that they are therefore not removable as charged. Immigration judges may terminate removal proceedings only under the circumstances expressly identified in the regulations, *see* 8 C.F.R. § 1239.2(c), (f), or where the Department of Homeland Security fails to sustain the charges of removability against a respondent, *see* 8 C.F.R. § 1240.12(c). *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018).

An immigration judge may also terminate proceedings to permit an alien to proceed to a final hearing on a pending application or petition for naturalization "when the alien has established prima facie eligibility for naturalization and the matter involves exceptionally appealing or humanitarian factors[.]" 8 C.F.R. § 1239.2(f).

IV. Motion to Pretermit

A motion to pretermit is a motion filed by DHS, which argues that the respondent is statutorily ineligible for a form of relief. INA § 240(c)(4)(A)(i).

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V. Motion to Administratively Close Proceedings

The Attorney General recently explained that Immigration Judges lack any authority to administratively close removal proceedings and that previously closed hearings *must* be re-calendared upon the motion of either party. *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018).

VI. Motion to Suppress

The Fourth Amendment's exclusionary rule applies in removal proceedings, but to a more limited extent than criminal proceedings. *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984) (holding that the exclusionary rule does not apply in deportation proceedings, but declining to decide whether the exclusionary rule would apply to an *egregious* violation of the Fourth Amendment); *see*, *e.g.*, *Cotzojay v. Holder*, 725 F.3d 172 (2d Cir. 2013). The Board has held that a respondent may suppress evidence obtained from an egregious violation of the Fourth Amendment. *Matter of Barcenas*, 19 I&N Dec. 609, 611 (BIA 1988) (quoting *Matter of Burgos*, 15 I&N Dec. 278, 279 (BIA 1975)). However, the respondent "must come forward with proof establishing a prima facie case before [DHS] will be called on to assume the burden of justifying the manner in which it obtained the evidence." *Matter of Barcenas*, 19 I&N Dec. at 611.

The Courts of Appeals differ in their application of the exclusionary rule in removal proceedings, so it is critical to review binding precedents before issuing a decision. *See Cotzojay*, 725 F.3d at 181 ("Other courts have identified egregious violations under arguably less severe circumstances.") (citing *Lopez-Rodriguez v. Mukasey*, 536 F.3d 1012, 1018–19 (9th Cir. 2008))).

VII. Motion to Continue

The immigration judge may continue a matter to a later date "for good cause shown." 8 C.F.R. § 1003.29; *see Matter of Rajah*, 25 I&N Dec. 127 (BIA 2009). The Board has articulated a special, multi-factor test that an Immigration Judge must apply before granting a continuance so that a respondent may seek a U-visa before United States Citizenship and Immigration Services. *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012). The Board has also explained that a continuance "should generally be given" if the alien files an unopposed motion to continue to await USCIS's adjudication of their family-based visa petition. *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009). However, an alien's prima facie eligibility for relief and whether it will materially affect the outcome of proceedings are not dispositive, especially where other factors—including the uncertainty as to when the relief will be approved or become available—weight against granting a continuance. *Matter of L-N-Y-,* 27 I. & N. Dec. 755 (BIA 2020).

The Chief Immigration Judge has issued guidance on continuances that immigration judges should be aware of. *See* Operating Policies and Procedures Memorandum 17-01: *Continuances* (July 31, 2017); *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018).

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VIII. Motion to Change Venue

The venue rules in Immigration Court are straightforward: venue resides with the court where a Notice to Appear is filed. 8 C.F.R. § 1003.14(a), 1003.20(a). The IJ may change venue for "good cause" but "only after the other party has been given notice and an opportunity to respond to the motion to change venue." 8 C.F.R. § 1003.20(b). To prevail on a motion to change venue, the respondent must identify a fixed address where the respondent can be reached after relocating. 8 C.F.R. § 1003.20(c).

The Chief Immigration Judge has issued guidance on change of venue motions that immigration judges should consult. *See* Operating Policies and Procedures Memorandum 18-01: *Change of Venue* (Jan. 17, 2018).

IX. Motion to Dismiss

The Department of Homeland Security may file a motion to dismiss a notice to appear after removal proceedings have commenced. 8 C.F.R. § 1239.2(c). A motion to dismiss is essentially a government initiated motion to terminate proceedings and usually occurs if a respondent has secured some type of immigration status through United States Citizenship and Immigration Services. *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018); *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018).

X. Motion for Stay of Removal

An alien subject to a final order of removal may seek an administrative stay of removal from the court. 8 C.F.R. § 1241.6(b). The Board has explained that the agency with jurisdiction over any pending applications for relief should be the agency that issues a stay of removal. *Matter of Yauri*, 25 I&N Dec. 103, 109 (BIA 2009).

Although there is no dispositive set of factors that an IJ must consider before issuing an administrative stay, the four factors articulated by the Supreme Court in *Nken v. Holder*, 556 U.S. 418, 426 (2009) provide useful guidance. Those factors include: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken*, 556 U.S. at 426.

XI. Pre-Hearing Statements and Pre-Hearing Conferences

The regulations allow the immigration judge to schedule pre-hearing conferences to "narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise simplify and organize the proceeding." 8 C.F.R. § 1003.21(a). In addition, the immigration judge can order a pre-hearing statement of position that includes, but is not limited to: "A statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list

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of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and, a statement of unresolved issues involved in the proceedings." 8 C.F.R. § 1003.21(b). Finally, the court can request written evidentiary objections to information contained in a pre-hearing statement prior to the hearing and "deem the admission of all evidence described in the pre-hearing statement . . . unopposed[,]" if no written objection is filed. 8 C.F.R. § 1003.21(c).

This tool is one of the most powerful that an immigration judge has at their disposal and it can help to dramatically shorten the length of individual calendar hearings and make it much easier to issue an oral decision. Unlike proceedings before other tribunals, it is highly unlikely that the parties before you have spoken to one another about a case prior to the hearing before you. The artful use of pre-hearing statements can open dialogue between the parties and limit the scope of proceedings to only those issue that are actually in dispute.

XII. Motion for Deposition or Subpoena

The INA and regulations give IJs the authority to order a deposition or issue a subpoena. 8 C.F.R. § 1003.35. Before a subpoena may issue, the moving party must "state in writing or at the proceeding, what he or she expects to prove by such witnesses or documentary evidence, and to show affirmatively that he or she has made diligent effort, without success, to produce the same." 8 C.F.R. § 1003.35(b)(2). If you are satisfied that a witness will not appear to testify or produce evidence, the court may issue a subpoena that complies with the requirements of 8 C.F.R. § 1003.35(b)(3). If a witness neglects or refuses to appear, the Immigration Judge "shall request the United States Attorney for the district in which the subpoena was issued to report such neglect or refusal to the United States District Court and to request such court to issue an order requesting the witness to appear and testify and to produce the books, papers or documents designated in the subpoena." 8 C.F.R. § 1003.35(b)(6).

Be aware that special prerequisites must be met before a government employee may be subpoenaed to appear in immigration court. *See* 5 C.F.R. § 2635.805(a) (requiring authorization for a government employee to appear as a witness).

XIII. Motion to Lodge Additional Charges of Removability

The Department of Homeland Security may substitute the charge(s) of removability contained in the Notice to Appear or DHS may add additional charges through a Form I–261, Additional Charges of Inadmissibility/Deportability, at any time during removal proceedings. 8 C.F.R. § 1003.20.

XIV. Motion for a Protective Order (Sealed Submissions)

The Immigration Judge may seal the Record of Proceeding or specific documents after a motion by the Department of Homeland Security that establishes "a substantial likelihood that specific information submitted under seal or to be submitted under seal will, if disclosed, harm the national security (as defined in section 219(c)(2) of the Act) or law

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enforcement interests of the United States[.]" 8 C.F.R. § 1003.46(a). The protective order may require the respondent and his or her representative to "not divulge any of the information submitted under the protective order, or any information derived therefrom" in addition to other procedural requirements. 8 C.F.R. § 1003.46(f)(2)(i).

The Chief Immigration Judge has issued guidance on protective orders, as well as the handling of classified information that immigration judges should consult. *See* Operating Policies and Procedures Memorandum 09-02: *Protective Orders and the Sealing of Records in Immigration Proceedings* (Feb. 9, 2009); Operating Policies and Procedures Memorandum 09-01: *Classified Information in Immigration Court Proceedings* (Feb. 5, 2009).

XV. Motion to Close Hearing

An immigration judge may limit attendance or hold a closed hearing "[f]or the purpose of protecting witnesses, parties, or the public interest." 8 C.F.R. § 1003.27(b). However, there is a presumption that immigration hearings are open to the public, with attendance priority given to members of the media over the general public if seating is limited. 8 C.F.R. §§ 1003.27(a); 1240.10(b)

XVI. Motion to Consolidate

An immigration judge may consolidate several removal cases together "in the interests of administrative efficiency and clarification of the record for appeal, and in the interests of insuring full and proper presentation and consideration of the respondent's case[.]" *Matter of Taerghodsi*, 16 I&N Dec. 260, 263 (BIA 1977); *see* 8 C.F.R. § 1003.10(b) (IJs "may take any action consistent with the authorities under the Act and regulation that is appropriate and necessary for the disposition of such cases.").

Consolidating cases has consequences: "[t]he denial of an asylum application filed by a principal applicant for asylum shall also result in the denial of asylum status to any dependents of that principal applicant who are included in that same application." 8 C.F.R. § 1208.14(f). Importantly, there is *no* derivative withholding of removal or protection under the Convention Against Torture—a derivative asylum applicant must file a separate, independent Form I-589, Application for Asylum and Withholding of Removal, if they want to be considered for those forms of relief. *Matter of A-K-*, 24 I&N Dec. 275, 279 (BIA 2007) ("the Act does not permit derivative withholding of removal under any circumstances.").

XVII. Motion to Withdraw or Substitute Counsel

An attorney appearing on behalf of an alien must file a Form EOIR-28 (commonly referred to as an "E28"). 8 C.F.R. § 1003.17(a). The immigration judge may permit an attorney to withdraw as counsel, but that written request should include evidence that the attorney attempted to advise the respondent of the withdrawal. 8 C.F.R. § 1003.17(c); *see Matter of Rosales*, 19 I&N Dec. 655, 657 (BIA 1988).

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XVIII. Motion to Recuse

Attorneys appearing before you may request that you recuse yourself from a case, and you have an independent duty to sua sponte recuse yourself where recusal is appropriate.

The Chief Immigration Judge has issued guidance on recusal that immigration judges should consult. *See* Operating Policies and Procedures Memorandum 05-02: *Procedures for Issuing Recusal Orders in Immigration Proceedings* (Mar. 21, 2005).

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I. The Sources, Origins, and Intersection of Immigration and Criminal Law

Immigration and criminal law have become intertwined because Congress has increasingly defined an alien's removability from the United States by reference to their prior criminal convictions. *See* Juliet Stumpf, *The Crimmigration Crisis: Immigrants, Crime, and Sovereign Power*, 56 AM. U. L. REV. 367 (2006). Although the term "crime involving moral turpitude," was enacted in 1891 to "direct[] the exclusion of 'persons who have been convicted of a felony or other infamous crime or misdemeanor involving moral turpitude[,]'" *Jordan v. De George*, 341 U.S. 223, 229 n.14 (1951) (quoting Act of March 3, 1981, 26 Stat. 1084), the immigration consequences of criminal convictions have expanded significantly in recent history.

Central to that expansion are so-called "aggravated felonies,"[1] which make an alien removable for any of a list of enumerated offenses. INA § 101(a)(43)(A)–(U). The term "aggravated felony" emerged in 1988 and was limited to convictions for: murder, any drug trafficking crime as defined in 18 U.S.C. § 924(c)(2), any illicit trafficking in any firearms or destructive devices as defined in 18 U.S.C. § 921, or any attempt or conspiracy to commit any such act, committed within the United States. Anti-Drug Abuse Act of 1988, Pub. L. 100–690, § 7342, 102 Stat. 4181 (1988). Congress subsequently broadened the scope of the term "aggravated felony" to include a diverse array of criminal offenses, ranging from crimes of violence, Immigration Act of 1990, Pub. L. 101–649, § 501, 104 Stat. 4978, to espionage and theft, Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, § 440, 110 Stat. 1214, and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, § 321(a). Today, the Immigration and Nationality Act (INA) lists "80 or so crimes that count as aggravated felonies," *Dimaya v. Sessions*, 138 S. Ct. 1204, 1222 n.12 (2018), and encompasses violations of foreign, state, and federal laws where "the term of imprisonment was completed within the previous 15 years." INA § 101(a)(43) (penultimate clause).

Other provisions of the INA also rely on prior criminal convictions to establish removability. *See*, *e.g.*, INA §§ 212(a)(2)(A)(i)(II) (any violation of the Controlled Substances Act), 237(a)(2)(A)(v) (conviction for failure to register as a sex offender under 18 U.S.C. § 2250), 237(a)(2)(D)(ii) (threatening the president, vice-president or their elected successors), 237(a)(2)(E)(i) (crimes related to domestic abuse and child abuse, neglect, or abandonment), 237(a)(3)(B)(iii) (fraud related to visas, permits, and other documents).

Although the INA references a large number of criminal convictions, the impact that prior convictions have on an alien can be grouped into four general categories. First, an alien may be removable from the United States because their criminal conviction corresponds with an offense listed in INA § 212(a) or INA § 237(a). INA § 240(a)(2). Second, an alien may be subject to mandatory detention because of their criminal conviction. INA § 236(c); *see Nielsen v. Preap*, 139 S. Ct. 954 (2019); *Jennings v. Rodriguez*, 138 S. Ct. 830 (2018).

[1] "Aggravated felony" is a term of art that does not necessarily correspond to the term "felony" in the criminal context—*i.e.*, some offenses may constitute aggravated felonies even if the actual sentence imposed on a particular defendant did not exceed one year. *See*, *e.g.*, INA § 101(a)(43)(M)(i), (Q).

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Third, an alien's criminal convictions may render them statutorily ineligible for relief, certain waivers of inadmissibility, or the favorable exercise of discretion. INA § 240(c)(4)(A); *see*, *e.g.*, INA § 240A(b)(1)(C) (listing offense that make an alien ineligible for non-lawful permanent resident cancellation of removal); *Matter of Y–L–*, 23 I&N Dec. 270 (A.G. 2003) (creating presumption that drug trafficking offenses are "particularly serious crimes"). Fourth, an alien who is ordered removed from the United States and is subsequently prosecuted for illegal reentry faces an increased maximum criminal sentence. 8 U.S.C. § 1326(b)(2). As an immigration judge, you will be concerned with only the first three categories: removability, civil immigration detention, and eligibility for relief.

To decide whether an alien's prior conviction implicates one or all of those categories, immigration judges generally—but not always—apply an analytic framework developed by the Supreme Court called the "categorical approach." *Mathis v. United States*, 136 S. Ct. 2243, 2251 n.2 (2016); *see Matter of Chairez-Castrejon*, 27 I&N Dec. 21 (BIA 2017) (applying *Mathis*). That approach confines judges to a straightforward *legal* analysis: do the elements of a respondent's prior conviction match the elements contained in the generic offense—*i.e.*, an offense enumerated in (or cross-referenced by) the INA. The categorical approach may lead to counterintuitive results that "deviate[] from common sense," *United States v. Brown*, 879 F.3d 1043, 1051 (9th Cir. 2018) (Owens, J., dissenting), because judges cannot inquire into whether a respondent's *actual conduct* corresponds to the generic definition. Instead an immigration judge is confined to a limited set of reliable criminal documents, statutes, and case law to determine whether someone convicted of a particular crime was *necessarily* found guilty beyond a reasonable doubt of all of a generic offense's elements.

Some provisions on the INA require application of the "circumstance specific" approach, which enables the judge to delve deeper into the facts of a prior conviction to determine whether an offense matches a generic definition, although these provisions are the minority. *See Nijhawan v. Holder*, 557 U.S. 29 (2009). More complicated still, some provisions of the INA require the application of the categorical approach *and* the circumstance specific approach to determine whether a particular conviction on a particular occasion matches the generic offense. *See*, *e.g.*, *Kawashima v. Holder*, 565 U.S. 478, 483 (2012) (analyzing INA § 101(a)(43)(M)). Additionally, some provisions of the INA make an alien inadmissible if there is "reason to believe" they engaged in certain illicit activities, such as drug trafficking, espionage, or terrorism.[2] *See*, *e.g.*, INA § 212(a)(2)(C), (a)(3)(A)–(B).

The materials below discuss how to correctly and efficiently handle a wide range of criminal-immigration issues. However, the usual caveats apply. This guide is not intended to be an exhaustive treatise on the nuanced differences in law that exist between the circuits or the complete law in any circuit. You are strongly advised to consult with Judicial Law

[2] A "reason to believe" does not require a criminal conviction and requires a lower standard of proof than "beyond a reasonable doubt": a reason to believe need only be based on reasonable, substantial, and probative evidence. *See Cuevas v. Holder*, 737 F.3d 972, 975 (5th Cir. 2013) (citing *Alarcon-Serrano v. INS*, 220 F.3d 1116, 1119 (9th Cir. 2000)).

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Clerks, Attorney Advisors, and other Immigration Judges at your duty court to identify unique aspects of law related to criminal issues in your circuit.

II. Terms of Art

A. What is a "Conviction"?

The Immigration and Nationality Act defines a "conviction" as:

> a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where—
> (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt; and
> (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed

INA § 101(a)(48)(A). The term "conviction" encompasses convictions for violations of municipal ordinances. *Matter of Cuellar-Gomez*, 25 I&N Dec. 850 (BIA 2012). However, "an adjudication of youthful offender status or juvenile delinquency is not a conviction for a crime for purposes of the immigration laws." *Matter of Devision-Charles*, 22 I&N Dec. 1362, 1372–73 (BIA 2001).

The existence of a conviction may be established through a number of documents and electronic records listed in the INA. *See* INA § 240(c)(3)(B)–(C); *Matter of J.R. Velasquez*, 25 I&N Dec. 680 (BIA 2012) (discussing admissibility of criminal documents). Additionally, an alien's admission (during pleadings) to a conviction is usually sufficient to establish a conviction. 8 C.F.R. § 1240.10(c); *see, e.g.*, *Perez-Mejia v. Holder*, 663 F.3d 403, 410 (9th Cir. 2011) ("admissions by an alien to facts alleged in an NTA, and concessions of removability . . . may be relied on by an IJ.").

1. Finality

The Board recently held "a conviction must attain sufficient finality before immigration consequences attach[.]" *Matter of J. M. Acosta*, 27 I&N Dec. 420, 431 (BIA 2018) (analyzing ambiguous text on INA § 101(a)(42)(A)). Under that standard, "a conviction does not achieve finality for immigration purposes until the time for filing an initial direct appeal has expired under the laws of the applicable jurisdiction." *Id.* at 432. Once DHS establishes that an alien has a criminal conviction and that the time for filing a direct appeal has elapsed, a presumption that the conviction is final arises. The alien may rebut the presumption "with evidence that an appeal has been filed within the prescribed deadline, including any extensions or permissive filings by [an] appellate court." *Id.* However, "appeals . . . that do not relate to the underlying merits of the conviction will not be given effect to eliminate the finality of the conviction." *Id.* Several courts of appeals previously concluded that the INA unambiguously required the opposite result. *See Planes v.*

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Holder, 652 F.3d 991, 996 (9th Cir. 2011) (compiling cases); *see also Planes v. Holder*, 686 F.3d 1033, 1034 (9th Cir. 2012) (opinion concurring in denial of rehearing en banc).

2. Deferred Adjudication

"Under the plain language of section 101(a)(48)(A), neither a finding of guilt by a judge or jury, nor a plea of guilty or nolo contendere is required to establish a conviction. Rather, the definition is satisfied so long as the alien 'has admitted sufficient facts to warrant a finding of guilt.'" *Matter of Mohamed*, 27 I&N Dec. 92, 97 (BIA 2017). To establish a conviction in this manner two showings are required. First, "a judge or jury has found the alien guilty *or* the alien has entered a plea of guilty or nolo contendere *or* has admitted sufficient facts to warrant a finding of guilty." *Id.* at 96–97. Second, "it must be demonstrated that the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed." *Id.* at 97.

3. Vacated Convictions

A vacated conviction remains a "conviction" under the INA if the purpose of the vacatur was to ameliorate the immigration consequences of the conviction, but if the basis of a vacatur is a procedural or substantive deficit in the underlying proceedings then the alien no longer has a "conviction" under the INA. *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003). However, be aware that the case law distinguishes between a vacatur intended to eliminate immigration hardships and one due to the *failure to advise an alien of immigration consequences of a conviction*, which implicates the Constitution's Fifth Amendment Due Process clause. *See Padilla v. Kentucky*, 559 U.S. 356 (2010). The Attorney General recently reemphasized this distinction and reemphasized that the test in *Matter of Pickering* is the one that must be applied to vacated convictions. *Matters of Thomas and Thompson*, 27 I&N Dec. 674, 675 (A.G. 2019) ("an alteration will have legal effect for immigration purposes when based on a procedural or substantive defect in the underlying criminal proceeding, but not when the change was based on reasons unrelated to the merits, such as the alien's rehabilitation or an interest in avoiding an immigration consequence.").

4. Federal First Offender Act (FFOA) Treatment

In the Ninth Circuit, an alien's pre-*Nunez-Reyes v. Holder*, 646 F.3d 684, 688 (9th Cir. 2011) (en banc) (prospectively overruling *Lujan-Armendariz v. INS*, 222 F.3d 728 (2000))), expunged state drug conviction does not constitute a "conviction" under the INA if it would have been eligible for expungement under the Federal First Offender Act, had the alien's offense been federal prosecuted. Such treatment is unavailable in any other circuit. *See Matter of Salazar-Regino*, 23 I&N Dec. 223, 235 (BIA 2002).

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5. Pardons

Generally, pardons do not ameliorate immigration consequences of prior convictions; however, a pardon waives the immigration consequences of a conviction under INA § 237(a)(2)(A)(i)–(iv) so that a pardoned conviction does not constitute a crime involving moral turpitude or an aggravated felony. *See* INA § 237(a)(2)(A)(vi). The pardon must be "full and unconditional" and be issued by the President or the Governor of a state. *Id.*

6. Interstate Commerce as an Element

An offense defined by state or foreign law may be classified as an aggravated felony as an offense "described in" a federal statute enumerated in INA § 101(a)(43) even if it lacks a federal jurisdictional element. *See Torres v. Lynch*, 136 S. Ct. 1619, 16 (2016).

B. What is a "term of imprisonment"?

The INA defines a "term of imprisonment" or "sentence" to include:

> the period of incarceration or confinement ordered by a court of law regardless of any suspension of the imposition or execution of that imprisonment in whole or in part

INA § 101(a)(48)(B). Thus, a term of imprisonment imposed as a condition of probation satisfies the INA's term of imprisonment requirement. *Matter of Valvillo Garcia*, 26 I&N Dec. 697, 699 (BIA 2015). If an alien's criminal sentence is modified after a probation or parole violation, the "resulting sentence to confinement is considered to be part of the penalty imposed for the original underlying crime, rather than punishment for a separate offense." *Matter of Ramirez*, 25 I&N Dec. 203, 206 (BIA 2010). If an alien is sentenced to an indeterminate sentence—say, for a period of incarceration not to exceed 5 years—then the "sentence" for immigration purposes is the *maximum* possible sentence. *Matter of S–S–*, 21 I&N Dec. 900, 903 (BIA 1997).

If a state court reduces the length of sentence, the immigration court must apply *Matter of Pickering*, 23 I&N Dec. 621, 624 (BIA 2003), to decide whether it has immigration consequences. *Matters of Thomas and Thompson*, 27 I&N Dec. 674, 675 (A.G. 2019) (overruling *Matter of Cota-Vargas*, 23 I&N Dec. 849, 851 (BIA 2005))); *see*, *e.g.*, *Velasquez-Rios v. Barr*, 979 F.3d 690 (9th Cir. 2020) (explaining that Cal. Penal Code § 18.5 could not retroactively reduce sentences for immigration purposes: the sentence at the time of conviction was determinative).

1. Wobbler Offenses

California has a statutory scheme, Cal. Penal Code § 17(b), that, by default, treats offenses as a felony, but the statute permits those offenses to "wobble" down to a

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misdemeanor jail term after the successful completion of a term of probation. The Seventh, Eighth, and Ninth Circuits hold that the misdemeanor jail term *after* an offense wobbles is the "term of imprisonment" under the INA. *See United States v. Jones*, 235 F.3d 342 (7th Cir. 2000); *United States v. Viezcas-Soto*, 562 F.3d 903, 907 (8th Cir. 2009); *Ceron v. Holder*, 747 F.3d 773 (9th Cir. 2014) (en banc).

2. Immigration Consequences of Certain Terms of Imprisonment

In addition to forming an element of some generic offenses, an aggregate term of imprisonment of 180 days or more precludes an alien from establishing "good moral character," rendering them ineligible for various forms of relief including non-lawful permanent resident cancellation of removal and post-conclusion voluntary departure. INA § 101(f)(7); *see*, *e.g.*, INA §§ 240A(b)(1)(B), 240B(b)(B).

III. Motions to Reopen

An alien subject to an order of removal may seek to reopen removal proceedings based on post-conviction relief related to their criminal convictions. *See Matter of Chavez-Martinez*, 24 I&N Dec. 272 (BIA 2007). Although immigration courts give "full faith and credit" to state law actions that vacate an alien's criminal convictions, the *alien* bears the burden of showing that the conviction was not altered "solely on the basis of immigration hardships or rehabilitation, [but] rather . . . on the basis of a substantive or procedural defect in the underlying criminal proceedings[.]" *Id.* at 273 (citing *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003)); *see Matters of Thomas and Thompson*, 27 I&N Dec. 674, 675 (A.G. 2019). A vacatur intended to ameliorate immigration hardships is not given any effect in immigration proceedings.

The Board has found the vacatur of a guilty plea for failure to advise the alien of immigration consequences, *Matter of Adamiak*, 23 I&N Dec. 849 (BIA 2005), and a vacatur as a form of post-conviction relief, *Matter of Marquez Conde*, 27 I&N Dec. 251 (BIA 2018), should be given effect in immigration proceedings.

If a motion to reopen is untimely, an immigration judge may exercise their discretion to reopen removal proceedings sua sponte. 8 C.F.R. § 1003.23(b). The Board has explained that the exercise of sua sponte authority *may* be appropriate if a criminal conviction has been vacated because of a fundamental change in law. *See Matter of G–D–*, 22 I&N Dec. 1132, 1135 (BIA 1999); *Matter of X–G–W–*, 22 I&N Dec. 71 (BIA 1998); *see*, *e.g.*, *Mendiola v. Holder*, 576 F. App'x 828, 841 (10th Cir. 2014) (mem.). The Ninth Circuit recently explained that the decision whether to reopen removal proceedings based on a vacated conviction is not subject to judicial review absent a future showing of a "settled course" of adjudication. *Menendez-Gonzalez v. Barr*, 929 F.3d 1113 (9th Cir. 2019).

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IV. Burdens of Proof

An alien with a criminal conviction may be ordered removed as "inadmissible" under INA § 212(a)(2) or "deportable" under INA § 237(a)(2). INA § 240(a)(2).

A. Removability Under INA § 212(a)(2)

In removal proceedings where the alien is charged with removability under INA § 212, once the Department of Homeland Security meets their burden to establish alienage, 8 C.F.R. § 1240.8(c), "the burden shifts to the alien to establish their admissibility or lawful presence through "clear and convincing evidence."[3] INA § 240(c)(2); 8 C.F.R. § 1240.8(d); *see*, *e.g.*, *Antia-Perea v. Holder*, 768 F.3d 647, 659 (7th Cir. 2014).

In certain limited circumstances, a *lawful permanent resident* may be treated as "seeking admission into the United States" after travel abroad if, among other things, the alien: (1) "has engaged in illegal activity after having departed the United States"; or (2) "has committed an offense identified in section 212(a)(2), unless since such offense the alien has been granted relief under section 212(h) or 240A(a)[.]" INA § 101(a)(13)(C)(iii), (v). Restated, a lawful permanent resident falling within any of the categories established by INA § 101(a)(13)(C) may be charged with removability under INA § 212 rather than INA § 237. Because the grounds of removability in INA § 212 are different from those contained in INA § 237, this charging decision by DHS can carry significant legal consequences.

B. Removability Under INA § 237

In removal proceedings where the alien is charged with removability under INA § 237(a)(2), DHS has the burden of establishing the alien's removability by "clear and convincing evidence." INA § 240(c)(3)(A); 8 C.F.R. § 1240.8(a). When the charge of removability is based on a criminal conviction, DHS is required to show which part of a statute a respondent was convicted of, or it has not met its burden. *Pereida v. Wilkinson*, 141 S.Ct. 754, 765 (2021); *see also Mathis v. United States*, 136 S. Ct. 2243, 2254 (2016).

The core holding of *Pereida* is that a respondent seeking cancellation of removal who is unable to show definitively that a prior conviction is *not* a disqualifying offense under the modified categorical approach, has not met respondent's burden and is therefore ineligible for cancellation of removal. *See Pereida*, 141 S.Ct. at 764-767. Although not settled, it is likely that the core holding of *Pereida* is applicable to all forms of relief in immigration court. The majority's primary consideration in reaching the *Pereida* holding was that a respondent seeking cancellation of removal bears the burden of proof to demonstrate that they are eligible for cancellation of removal. This is significant because respondents bear

[3] "Clear and convincing evidence" is an intermediate standard of proof situated between a preponderance of the evidence and proof beyond a reasonable doubt. *See Addington v. Texas*, 441 U.S. 418, 425 (1979) ("The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of factfinding, is to 'instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of application.'") (quoting *In re Winship*, 397 U.S. 358 (1970)).

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the burden of proof when seeking *all* forms of relief, not just cancellation of removal. *See* INA § 240(c)(4); 8 C.F.R. § 1240.8(d); *see also Matter of M-B-C-*, 27 I&N Dec. 31, 31 (BIA 2017). Additionally, nowhere in *Pereida* is the specific statutory language of INA § 240A(b)(1) emphasized as an important aspect of the majority's analysis. As such, there is little reason to believe the majority intended to limit the core holding to cancellation of removal only. Thus, because the respondent always carries the burden of proof when establishing eligibility for relief, it is very likely that the core holding of *Pereida* applies to all forms of relief.

C. Eligibility for Relief

An alien has the burden of establishing that she is eligible for relief and warrants the favorable exercise of the court's discretion. INA § 240(c)(4)(A); *see*, *e.g.*, *Matter of Sotelo-Sotelo*, 23 I&N Dec. 201 (BIA 2001).

V. Categorical Approach

A. Why Was the Categorical Approach Adopted?

The Supreme Court adopted the categorical approach for statutes that use the term "conviction" to avoid "Sixth Amendments concerns that would arise from sentencing courts' making findings of fact that properly belong to juries," and to eliminate the difficulties and potential unfairness of a factual approach. *Descamps v. United States*, 570 U.S. 254, 267 (2013). The unfairness cited by the court refers to reliance on evidence and statements that are "prone to error because their proof is unnecessary." *Mathis v. United States*, 136 S. Ct. 2243, 2253 (2016).

In plain language, the categorical approach promotes uniformity by ensuring that an alien is only removable if their statute of conviction contains all of the elements of a generic offense. It also prevents an alien's removal based on "facts"—the statement of probable cause accompanied by a police report, for example—that were not necessarily found by a jury and which the alien had no incentive or ability to refute in their prior criminal proceeding.

B. When Does the Categorical Approach Apply?

"When the Government alleges that a state conviction qualifies as an 'aggravated felony' under the INA, [courts] generally employ a 'categorical approach' to determine whether the state offense is comparable to an offense listed in the INA." *Moncrieffe v. Holder*, 569 U.S. 184, 190 (2013). The categorical approach must also be applied to determine whether a conviction constitutes a crime involving moral turpitude. *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831 (BIA 2016). As a result, most—but not all—criminal convictions must be analyzed using the categorical approach's analytic framework.

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C. Who Bears the "Burden" of the Categorical Approach?

The INA creates clear statutory burdens: the Department of Homeland Security bears the burden of establishing an alien's removability, while the alien bears the burden of establishing relief from removal. INA § 240(c)(3), (c)(4). The alien also bears the burden of showing they have not been convicted of a disqualifying offense. An alien has not carried that burden when the record shows he has been convicted under a statute listing multiple offenses, some of which are disqualifying, and the record is ambiguous as to which crime formed the basis of his conviction. *Pereida v. Wilkinson*, 141 S.Ct. 754, 760-767 (2021).

D. How to Apply the Categorical Approach

To determine whether an alien's criminal conviction constitutes a removable offense under the INA, immigration courts utilize the two-step approach established in *Taylor v. United States*, 495 U.S. 575 (1990), and elucidated in *Descamps v. United States*, 133 S. Ct. 2276 (2013). Under that approach, the immigration judge compares the elements of the statute of conviction to the generic definition of an offense contained in the INA. *See Mathis v. United States*, 136 S. Ct. 2243, 2248 (2016); *Descamps*, 133 S. Ct. at 2281. A statute of conviction is a categorical match to the generic offense when its elements are the same as, or narrower than, those of the generic definition, meaning that all of the conduct penalized by the criminal statute would qualify as a removable offense. *Descamps*, 133 S. Ct. at 2281–82. If the statute of conviction is not categorically a removable offense, the immigration judge then looks to whether the statute of conviction is divisible, "set[ting] out one or more elements of the offense in the alternative[,]" at least one of which fits the generic definition. *Id.* at 2281. Only if one of the statute's divisible sections fits the generic definition may the immigration judge proceed to the modified categorical approach, and compare the elements of the crime of conviction with the elements of generic offense. *Id.* at 2281.

1. Step One:[4] Determine the Elements of the State Statute

Under *Mathis*, an immigration judge's first task is to ascertain the "elements" of the state or federal statute that formed the basis of the alien's conviction. Your analysis must use the statute of conviction that existed *at the time of the alien's conviction* not the statute as it exists today. *See*, *e.g.*, *Doe v. Sessions*, 886 F.3d 203, 208 (7th Cir. 2018); *Matter of Obshatko*, 27 I&N Dec. 173, 173 n.1 (BIA 2017). Once the alien's statute of conviction has been identified, you must apply the hierarchy of interpretive tools discussed in *Mathis* to the alien's statute of conviction. These tools include: state court decisions, conviction punishments, statutory lists, state charging law, and, if all else fails, a "peek" at the alien's conviction documents. *Mathis*, 136 S. Ct. at 2269. These tools will reveal whether alternative phrases in a statute are alternative "elements" or merely alternative

[4] The "steps" described here are loose cognitive tools to ensure proper application of the categorical approach. Technically, you can begin your analysis with the generic definition and then ascertain the elements of the alien's statute of conviction. Either approach, applied faithfully, will render legally correct results. Check out *United States v. Faust*, 853 F.3d 39 (1st Cir. 2017), for an alternative structure.

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means or ways of committing a single, indivisible offense. The different "means" of committing an offense are sometimes called "brute facts" and have no legal significance: it does not matter what Professor Plum does with a candlestick unless the "use of a candlestick" is an *element*. *Mathis*, 136 S. Ct. at 2248 ("Facts, by contrast, are mere real-world things—extraneous to the crime's legal requirements . . . [t]hey are circumstances or events having no legal effect or consequences.") (internal citations, quotations, and alterations omitted).

a. State Court Decisions

If a state court decision articulates the elements of an offense that ends the inquiry. *Mathis*, 136 S. Ct. at 2256. An immigration judge need only apply the binding state court decision. These state-law decisions can be found by directly researching the statute or by looking at court cases that address lesser-included offenses, double jeopardy challenges, or challenges to the sufficiency of a criminal charging document.

b. Conviction Punishment

Statutory alternatives are different "elements" if they carry different punishments because juries are required to agree on every fact that increases punishment. *Mathis*, 136 S. Ct. at 2256 (citing *Apprendi v. New Jersey*, 530 U.S. 466, 490 (2000). For example, if a statute criminalizes assault with a firearm more severely than other forms of assault contained in the same statute, then "firearm" is an *element* that a jury or judge necessarily found beyond a reasonable doubt.

c. Illustrative Lists

If a statute contains an "illustrative list" of examples, then those examples are alternative "means" rather than alternative "elements." *Mathis*, 136 S. Ct. at 2256. In contrast, if a statute contains an exhaustive list of all ways of committing an offense, then those listed alternatives may be alternative elements. *See*, *e.g.*, *United States v. Henderson*, 841 F.3d 623, 630 (3d Cir. 2016).

d. *Shepard* Document Peek

If "state law fails to provide clear answers" immigration judges may look to the record of conviction and "peek at the record documents . . . for the sole and limited purpose of determining whether the listed items are elements of the offense." *Mathis*, 136 S. Ct. at 2256–57 (quoting *Rendon v. Holder*, 782 F.3d 466, 473–74 (9th Cir. 2015) (internal brackets and quotation marks omitted))).

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If you determine that an alien's statute of conviction contains multiple, alternative elements (*i.e.*, several different crimes), then the statute is ***divisible*** and you may apply the so-called "modified categorical approach." Under this approach, "a court can 'modify' the categorical approach by looking at a limited set of documents, including the indictment, to consider under which portion of the statute the defendant was charged. After determining which portion was at issue, the court then applies the categorical approach to that part of the challenged statute." *United States v. Hill*, 890 F.3d 51, 56 n.6 (2d Cir. 2018) (citing *Descamps*, 570 U.S. at 261–63) (internal citation omitted). Under the modified categorical approach, the court may refer to "the terms of the charging document, the terms of a plea agreement or transcript of colloquy between judge and defendant in which the factual basis for the plea was confirmed by the defendant, or to some comparable judicial record of this information." *Shepard*, 544 U.S. at 26.

2. Step Two: Identify the Elements of the Generic Definition

The generic definition of an offense can be gleaned from the INA, as well as any published decisions from the Board of Immigration Appeals and the relevant Court of Appeals.

3. Step Three: Compare the Elements

After you have established the elements of the alien's statute of conviction and the generic offense, you must compare the elements to determine if they are a "categorical match," meaning that an alien is "necessarily . . . guilty of all the generic crime's elements[.]" *Descamps*, 133 S. Ct. at 2283 (quoting *Taylor*, 495 U.S. at 599). If *all* of the alternative elements of a divisible statute match the generic offense, then you do not need to apply the modified categorical approach because *any* conviction under the statute would match the generic definition. Conversely, if the elements of the statute of conviction "sweep[] more broadly than the generic crime," then the statute of conviction is not a categorical match and the modified categorical approach must be used to ascertain the elements of an alien's conviction and compare those to the elements of the generic offense. *Id*. at 2283.

The Attorney General recently held that if the elements of a state statute of conviction correspond to two or more different aggravated felony provisions, then the state offense constitutes an aggravated felony, even if the state offense is not a perfect match for either aggravated felony provision considered individually. *Matter of Reyes*, 28 I&N Dec. 52, 62 (A.G. 2020) ("When all means of committing the offense of conviction satisfy one or the other of two alternative aggravated felonies, the conviction does not fall between stools. Instead, it is necessarily supported by one or the other, even if the categorical approach obscures which

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one."); *see United States v. Chaves-Cuevas*, 862 F.3d 729, 740 (9th Cir. 2017) (conducting same analysis).

When comparing statutes, you must assume that a conviction rested on nothing more than the "least criminalized act." *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 193 (2007). To find that a statute of conviction creates a crime that falls outside the generic definition, the alien must show "a realistic probability, not a theoretical possibility, that the State would apply its statute to conduct that falls outside the generic definition of a crime." *Duenas-Alvarez*, 549 U.S. at 193; *see*, *e.g.*, *Matter of Navarro Guadarrama*, 27 I&N Dec. 560, 567 (BIA 2019) ("where an alien has been convicted of violating a State drug statute that includes a controlled substance that is not on the Federal controlled substances schedules, he or she must establish a realistic probability that the State would actually apply the language of the statute to prosecute conduct involving that substance in order to avoid the immigration consequences of such a conviction."). To establish a "realistic probability," the alien "must at least point to his own case or other cases in which the state courts in fact did apply the statute in the special (nongeneric) manner for which he argues."[5] *Duenas-Alvarez*, 549 U.S. at 193.

V. Circumstance Specific Approach

Some aggravated felony provisions proscribe generic offenses only when committed under particular, factual circumstances. *See, e.g.*, INA § 101(a)(43)(M)(i) ("an offense that involves fraud or deceit *in which the loss to the victim or victims exceeds $10,0000*" (emphasis added)); *see also Nijhawan v. Holder*, 557 U.S. 29, 33, 38 (2009) (explaining some aggravated felony definitions under the INA "almost certainly refer[] to the specific circumstances in which a crime was committed").

When considering such a provision, the court applies the categorical and modified categorical approaches to the generic elements of offense and a "circumstance-specific" approach to determine whether the generic crime was committed in the proscribed manner. *See Nijhawan*, 557 U.S. at 42-43 (looking to the petitioner's stipulation to determine whether his conviction involved a loss of $10,000 or more as required by INA § 101(a)(43)(M)(i)); *see also Matter of Estrada*, 26 I&N Dec. 736, 751-52 (BIA 2016) (applying the circumstance-specific approach to determine if there was domestic relationship between the respondent and victim under INA § 237(a)(2)(E)(i)). Under the circumstance-specific approach, the court may review "all reliable evidence," including the judicially noticeable documents considered under the modified categorical approach, as well as any other evidence that is otherwise admissible in removal proceedings, including witness testimony and "the testimonial admissions of the respondent made during the removal hearing." *Matter Garza-Olivares*, 26 I&N Dec. 736, 742 n.4 (BIA 2016); *see also Kawashima v. Holder*, 615 F.3d 1043, 1056 (9th Cir. 2010) (holding that the reviewing court is "not limited to only those documents which a court applying the

[5] The Third and Fifth circuit apply the "least culpable conduct" and the "minimum reading" approach, respectively. *See Jean-Louis v. Att'y Gen. of U.S.*, 582 F.3d 462 (3d Cir. 2009); *Gomez-Perez v. Lynch*, 829 F.3d 323 (5th Cir. 2016).

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modified categorical approach may review" when applying the circumstance-specific approach).

VI. Particularly Serious Crime Analysis

An alien convicted of a particularly serious crime is ineligible for asylum, withholding of removal, and withholding of removal under the Convention Against Torture. *See* INA §§ 208(b)(2)(A)(ii), 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2). An aggravated felony conviction constitutes a particularly serious crime barring asylum. INA § 208(b)(2)(B)(i). For withholding of removal under the INA and Convention Against Torture, an alien commits a *per se* particularly serious crime if convicted of an aggravated felony or felonies "for which the alien has been sentenced to an aggregate term of imprisonment of at least 5 years." INA § 241(b)(3)(B)(ii); 8 C.F.R. § 1208.16(d)(2). If the alien's aggregate sentence is less than 5 years, the Court has discretion to determine—on a case-by-case basis—whether the conviction constitutes a particularly serious crime by applying *Matter of N–A–M–*, 24 I&N Dec. 336, 342 (BIA 2007), and the modified *Matter of Frentescu*, 18 I&N Dec. 244, 247 (BIA 1982), factors.

An immigration judge's particularly serious crime analysis must consider, "the nature of the conviction, the circumstances and underlying facts of the conviction, [and] the type of sentence imposed[.]" *Matter of Frentescu*, 18 I&N Dec. at 247. *See Anaya-Ortiz v. Holder*, 594 F.3d 673, 679 (9th Cir. 2010) (explaining that the particularly serious crime analysis "no longer requires the BIA to engage in a separate determination to address whether the alien is a danger to the community."). The immigration judge cannot determine that a conviction is particularly serious based solely on the elements of the underlying offense. *Blandino-Medina v. Holder*, 712 F.3d 1338, 1348 (9th Cir. 2013). Rather, "all reliable information may be considered in making a particularly serious crime determination, including the conviction records and sentencing information, as well as other information outside the confines of a record of conviction." *Anaya-Ortiz*, 594 F.3d 678 (citing and deferring to *Matter of M–A–M–*, 24 I&N Dec. at 342). This information includes sentencing enhancements. *Konou v. Holder*, 750 F.3d 1120, 1128 (9th Cir. 2014).

The Ninth Circuit has held that a conviction need not constitute an aggravated felony to constitute a particularly serious crime. *Delgado v. Holder*, 648 F.3d 1095, 1103–06 (9th Cir. 2011) (en banc). Thus, a particularly egregious assault could constitute a particularly serious crime even if the elements of the state offense are not a categorical match to an aggravated felony.

A. Presumptions (*Matter of Y-L-*)

Crimes against persons are more likely to be categorized as particularly serious crimes. *Matter of Frentescu*, 18 I&N Dec. 247. Relatedly, the Attorney General created an "extraordinary strong presumption" in *Matter of Y–L–*, 23 I&N Dec. 270 (A.G. 2002), that aggravated felony illicit drug trafficking offenses are particularly serious crimes. *See Miguel-Miguel v. Gonzales*, 500 F.3d 941, 947 (9th Cir. 2007). To rebut that presumption, an alien must show that their offense involved "extraordinary and

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compelling circumstances," including "at a *minimum*: (1) a very small quantity of controlled substance; (2) a very modest amount of money paid for the drugs in the offending transaction; (3) merely peripheral involvement by the alien in the criminal activity, transaction, or conspiracy; (4) the absence of any violence or threat of violence, implicit or otherwise, associated with the offense; (5) the absence of any organized crime or terrorist organization involvement, direct or indirect, in relation to the offending activity; and (6) the absence of any adverse or harmful effect of the activity or transaction on juveniles." *Matter of Y–L–*, 23 I&N Dec. at 276–77.

B. Calculating an Aggregate Sentence

An alien's *concurrent* sentences may *not* be aggregated together to determine whether their aggregate term of imprisonment exceeds 5 years as part of the particularly serious crime analysis. *Matter of Aldabesheh*, 22 I&N Dec. 983, 985 (BIA 1999).

VII. Serious Non-Political Crimes

An alien is ineligible for asylum, withholding of removal, and withholding of removal under CAT if "there are serious reasons to believe that the alien committed a serious nonpolitical crime outside the United States before the alien arrived in the United States." INA §§ 208(b)(2)(A)(iii); 241(b)(3)(B)(iii); 8 C.F.R. § 1208.16(d)(2). The Ninth Circuit has interpreted "serious reasons to believe" as "tantamount to probable cause." *Go v. Holder*, 640 F.3d 1047, 1052 (9th Cir. 2011). That standard can be met "without an explicit admission of guilt[.]" *Silva-Pereira v. Lynch*, 827 F.3d 1176, 1189 (9th Cir. 2016). To determine if a crime is political, the court must assesses whether: "(1) the act or acts were directed at a governmental entity or political organization, as opposed to a private or civilian entity; (2) they were directed toward modification of the political organization of the State; and (3) there is a close and direct causal link between the crime and its political purpose." *Matter of E–A–*, 26 I&N Dec. 1, 2 (BIA 2012); *see also McMullen v. INS*, 788 F.2d 591, 597 (9th Cir. 1986), *overruled on other grounds by Barapind v. Enomoto*, 400 F.3d 744, 751 n.7 (9th Cir. 2005) (en banc). A "particularly serious crime" is necessarily a "serious" crime. *Go*, 640 F.3d at 1052.

VIII. Crimes Involving Moral Turpitude

To determine whether a conviction constitutes a crime involving moral turpitude, immigration courts must apply the categorical approach.[6] *Matter of Silva-Trevino*, 26 I&N Dec. 826, 831-34 (BIA 2016). "An offense must have two essential elements to constitute a crime involving moral turpitude: a culpable mental state and reprehensible conduct." *Gomez-Gutierrez v. Lynch*, 811 F.3d 1053, 1058 (8th Cir. 2016) (quoting *Matter of Medina*, 26 I&N Dec. 79, 82 (BIA 2013)); *see*, *e.g.*, *Sotnikau v. Lynch*, 846 F.3d 731, 736 (4th Cir. 2017).

[6] The term "crime involving moral turpitude" is not unconstitutionally vague. *See Jordan v. De George*, 341 U.S. 223 (1951); *see*, *e.g.*, *Islas-Veloz v. Whitaker*, 914 F.3d 1249 (9th Cir. 2019); *Moreno v. U.S. Atty. Gen.*, 887 F.3d 160, 166 (3d Cir. 2018).

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Specifically, an offense qualifies as a crime involving moral turpitude when it involves "conduct that is inherently base, vile, or depraved, and contrary to the private and social duties man owes to his fellow men or to society in general." *Robles-Urrea v. Holder*, 678 F.3d 702, 708 (9th Cir. 2012) (citing *Navarro-Lopez v. Gonzales*, 503 F.3d 1063, 1068 (9th Cir. 2007) (en banc)). "To meet the *actus reus* requirement, the crime, must involve conduct that not only violates a statute but also independently violates a moral norm." *Ramirez v. Sessions*, 887 F.3d 693, 704 (4th Cir. 2018) (internal quotation omitted). To satisfy the *mens rea* element, crimes involving moral turpitude require a "degree of scienter, either specific intent, deliberateness, willfulness, or recklessness." *Matter of Silva-Trevino*, 24 I&N Dec. 687, 706 n.5 (AG 2008), *overruled on other grounds as recognized in Matter of Silva-Trevino*, 26 I&N Dec. 826, 828 n.2 (BIA 2016); *see, e.g.*, *Alonzo v. Lynch*, 821 F.3d 951 (8th Cir. 2016) (a statute with general intent does not constitute a crime involving moral turpitude).

In the Ninth Circuit, crimes involving moral turpitude have been divided into two species: "(1) those involving fraud and (2) those involving grave acts of baseness or depravity." *Robles-Urrea*, 678 F.3d at 708.

A. Fraud Offenses

"[F]raud crimes are categorically crimes involving moral turpitude, simply by virtue of their fraudulent nature." *Linares–Gonzalez v. Lynch*, 823 F.3d 508, 514 (9th Cir. 2016) (alteration in original) (quoting *Planes v. Holder*, 652 F.3d 991, 997 (9th Cir. 2011)). The Tenth Circuit explained that there are three types of "deceit-related offenses" that involve moral turpitude: "(1) offenses containing an explicit fraudulent intent element; (2) offenses containing an inherent fraudulent intent element; and (3) offenses containing a specific intent element." *Afamasaga v. Sessions*, 884 F.3d 1286, 1289 (10th Cir. 2018). In contrast, non-fraudulent crimes involving moral turpitude generally involve an intent to injure, actual injury, or a protected class of victims. *Castrijon-Garcia v. Holder*, 704 F.3d 1205, 1212 (9th Cir. 2013).

B. Assault Offenses

"Assault may or may not involve moral turpitude." *Matter of Solon*, 24 I&N Dec. 239, 241 (BIA 2007). "While the presence of an aggravating factor, such as serious physical injury or the use of a deadly weapon, can be important in determining whether a particular assault amounts to a [CIMT], the need for, and the nature of, any aggravating factor is affected by the mental state required for the conviction." *Alonzo v. Lynch*, 821 F.3d 951, 960 (8th Cir. 2016) (quoting *Matter of Solon*, 24 I&N Dec. at 960)).

C. Theft Offenses

A theft offense involves moral turpitude "if it involves an intent to deprive the owner of his property either permanently or under circumstances where the owner's property rights are substantially eroded." *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847, 853 (BIA 2016). That formulation has been challenged in several circuits, which have concluded that it only

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applies *prospectively* because it constitutes an abrupt departure from prior interpretations. *See Obeya v. Sessions*, 884 F.3d 442, 450 (2d Cir. 2018); *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018).

D. Sexual Offenses

The Board of Immigration Appeals recently clarified the types of criminal sexual conduct that constitute a crime involving moral turpitude. *See Matter of Jimenez-Cedillo*, 27 I&N Dec. 782 (BIA 2020).

IX. Appendix of Aggravated Felony Definitions

A. INA § 101(a)(43)(A) – Murder, Rape, or Sexual Abuse of a Minor

Statutory Text: murder, rape, or sexual abuse of a minor;

1. Murder

The Board has defined murder as "the unlawful killing of a human being with malice aforethought." *Matter of M–W–*, 25 I&N Dec. 748, 752 (BIA 2012). The Board further explained that the mens rea for generic murder encompasses both intentional killings and unintentional killings where the defendant manifested an intent to do serious bodily injury or "an extreme indifference to the value of human life (depraved heart murder')." *Id.* at 753-56.

2. Rape

In *Matter of Keeley*, 27 I&N Dec. 146, 154 (BIA 2017), the Board defined generic rape to encompass any nonconsensual act of vaginal, anal, or oral intercourse, or digital or mechanical penetration, no matter how slight. The Board also found that the lack of consent element can be established by a statutory requirement that the victim's ability to appraise the nature of the conduct was substantially impaired and the offender had a culpable mental state as to such impairment. *Id.* at 158.

3. Sexual Abuse of a Minor

The Board has not clearly defined "sexual abuse of a minor." Some circuits hold that *Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999), created a generic definition of sexual abuse of a minor by incorporating the definition contained in 18 U.S.C. § 3509, while others find that "the BIA did not provide direction regarding the elements of the generic federal crime of 'sexual abuse of a minor.'" *Amos v. Lynch*, 790 F.3d 512, 520 (4th Cir. 2015) (compiling cases). However, in the context of statutory rape crimes, the Supreme Court held in *Esquivel-Quintana v. Sessions*, 157 S. Ct. 1562, 1568 (2017), the generic federal definition of sexual abuse of a minor requires that the victim be younger than 16.

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The Ninth Circuit has adopted *two* generic federal definitions of sexual abuse of minor under INA § 101(a)(43)(A). First, a statute of conviction qualifies as "sexual abuse of a minor" if a person "knowingly engages in a sexual act" with another person who is at least 12 years old, but less than 16, and at least four years younger than the defendant. *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1152, 1158 (9th Cir. 2008) (citing 18 U.S.C. § 2243). Second, a conviction may also constitute sexual abuse of a minor if "(1) the conduct prohibited by the criminal statute is sexual, (2) the statute protects a minor, and (3) the statute requires abuse. A criminal statute includes the element of 'abuse' if it expressly prohibits conduct that causes 'physical or psychological harm in light of the age of the victim in question.'" *Medina-Villa v. Holder*, 567 F.3d 507, 513 (9th Cir. 2009). A criminal statute does not involve sexual abuse of a minor if it does not require the defendant to participate in sexual conduct (physical or verbal) with the child victim. *See Mero v. Barr*, — F.3d —, 2020 WL 2091107 (9th Cir. May 1, 2020) (conviction for possessing child pornography did not constitute sexual abuse of a minor).

B. INA § 101(a)(43)(B) – Drug trafficking

Statutory Text: illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

There are two routes for a drug offense to fall within INA § 101(a)(43)(B). *Matter of L–G–H–*, 26 I&N Dec. 365 (BIA 2014) (explaining that 18 U.S.C. § 841(a) requires knowledge whereas illicit trafficking under 21 U.S.C. § 802 does not require knowledge of the particular controlled substance); *see*, *e.g.*, *Choizilme v. U.S. Atty. Gen.*, 886 F.3d 1016 (11th Cir. 2018); *Matter of Rosa*, 27 I&N Dec. 228, 234–37 (BIA 2018) (O'Connor, concurring). First, a controlled substance conviction is an aggravated felony if the statute of conviction contains involves illicit trafficking, defined as the "unlawful trading or dealing of any controlled substance as defined in . . . the Controlled Substances Act." *Matter of Davis*, 20 I&N Dec. 536, 541 (BIA 1992). Second, an offense is a "drug trafficking crime" under 18 U.S.C. § 924(c) if the statute of conviction "'necessarily' proscribe[s] conduct that is an offense under the CSA, and the CSA 'necessarily' prescribe[s] felony punishment for that conduct." *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1685 (2013); *Lopez v. Gonzales*, 549 U.S. 47, 60 (2006). A "felony" is an offense for which the maximum term of imprisonment is "more than one year." 18 U.S.C. § 3559(a)(5).

C. INA § 101(a)(43)(C) – Offenses Relating to Firearms or Destructive Devices

Statutory Text: illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

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See, *e.g.*, *Soto-Hernandez v. Holder*, 729 F.3d 1 (1st Cir. 2013) (discussing the definition of trafficking in the context of firearms); *United States v. Ochoa*, 861 F.3d 1010 (9th Cir. 2017) (finding the respondent's 18 U.S.C. § 371 conviction for conspiring to export of defense articles without a license in violation of 22 U.S.C. § 2778 was not an aggravated felony because the Munitions List included defense items other than firearms and ammunition and was indivisible).

D. INA § 101(a)(43)(D) – Offenses Relating to Money Laundering

Statutory Text: an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

An alien is removable as an aggravated felony under INA § 101(a)(43)(D), if he or she has been convicted of an offense described in 18 U.S.C. § 1956, relating to laundering of money instruments or 18 U.S.C. § 1957, relating to engaging in monetary transactions in property derived from specific unlawful activity and the amount of the funds exceeded $10,000. INA § 101(a)(43)(D). The Court employs the circumstance specific approach to determine whether the amount of funds laundered exceeded $10,000. *See*, *e.g.*, *Fuentes v. Lynch*, 788 F.3d 1177, 1181 (9th Cir. 2015); *Varughese v. Holder*, 629 F.3d 272, 274–75 (2d Cir. 201); *Chowdhury v. INS*, 249 F.3d 970, 972–74 (9th Cir.2001) (explaining that the relevant inquiry for INA § 101(a)(43)(D) is the total amount of funds laundered, not the loss to a victim).

E. INA § 101(a)(43)(E) – Offenses relating to explosive materials

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Statutory Text: an offense described in—

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) section 5861 of Title 26 (relating to firearms offenses);

See, e.g., Nieto Hernandez v. Holder, 592 F.3d 681 (5th Cir. 2009); *Matter of Vasquez-Munoz*, 23 I&N Dec. 207 (BIA 2002) (finding possession of a firearm by a felon in violation of Cal. Penal Code § 12021(a)(l) is an aggravated felony under INA § 101(a)(43)(E)(ii) because it is "described in" 18 U.S.C. § 922(g)(l)).

F. INA § 101(a)(43)(F) – Crime of Violence

Statutory Text: a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment [is] at least one year;

A crime of violence is "an offense that has as an element the use, attempted use, or threatened use of physical force against the person or property of another." 18 U.S.C. § 16(a); *see Voisine v. United States*, 136 S. Ct. 2272 (2016) (discussing mens rea). In addition, "the 'physical force' used must be '*violent* force,' or 'force capable of causing physical pain or injury to another person. *Solorio-Ruiz v. Sessions*, 881 F.3d 733, 736 (9th Cir. 2018) (applying the Supreme Court's interpretation of physical force from *Johnson v. United States*, 559 U.S. 133 (2010)). The Supreme Court recently clarified that the definition of "physical force" encompasses "the degree of force necessary to overcome a victim's resistance." *Stokeling v. United States*, 139 S. Ct. 544, 555 (2019).

Immigration courts may <u>*not*</u> consider whether the respondent's conviction qualifies as a crime of violence under 18 U.S.C. § 16(b) because the Supreme Court held that that portion of the statute was unconstitutionally vague for the reasons articulated in *Johnson v. United States*, 135 S. Ct. 2551, 2558 (2015). *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018).

G. INA § 101(a)(43)(G) – Theft and Burglary Offenses

Statutory Text: a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment [is] at least one year;

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Generic theft is defined as the "taking of property or an exercise of control over property without consent with the criminal intent to deprive the owner of rights and benefits of ownership, even if such deprivation is less than total or permanent. *Gonzales v. Duenas-Alvarez*, 549 U.S. 183, 189 (2007); *see also Matter of Delgado*, 27 I&N Dec. 48, 51 (BIA 2017) (holding that extortionate takings—those accomplished by force or fear—satisfy the generic elements of taking of property without the owner's consent); *see also Matter of Ibarra*, 26 I&N Dec. 809, 810 (BIA 2016).

The generic definition of "burglary" is the "unlawful or unprivileged entry into, or remaining in, a building or structure, with intent to commit a crime." *Taylor v. United States*, 495 U.S. 575, 599, 110 S. Ct. 2143, 2158 (1990) (defining the generic definition of burglary for the purposes of 18 U.S.C. § 924(e)). The Supreme Court recently clarified that the term "burglary" includes "vehicles designed or adapted for overnight use." *United States v. Stitt*, 139 S. Ct. 399, 407 (2018).

The aggravated felony receipt of stolen property provision does not require that unlawfully received property be obtained by means of common law theft or larceny. *Matter of Alday-Dominguez*, 27 I&N Dec. 48, 51 (BIA 2017).

H. INA § 101(a)(43)(H) – Offense Relating to Demand or Receipt of a Ransom

Statutory Text: an offense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

[There are no known published Board or Ninth Circuit decisions interpreting this subsection]

I. INA § 101(a)(43)(I) – Offense Relating to Child Pornography

Statutory Text: an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

An alien is removable as an aggravated felony under INA § 101(a)(43)(I), if he or she has been convicted of an offense described in 18 U.S.C. §§ 2251, 2251A, or 2252. *See Matter of R-A-M-*, 25 I&N Dec. 657, 658-59 (BIA 2012) (finding that a child pornography conviction constituted a particularly serious crime).

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J. INA § 101(a)(43)(J) – Offense Relating to Racketeering and Gambling

Statutory Text: an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

See, *e.g.*, *Murillo-Prado v. Holder*, 735 F.3d 1152 (9th Cir. 2013).

K. INA § 101(a)(43)(K) – Certain Offenses Related to Prostitution, Involuntary Servitude, and Human Trafficking

Statutory Text: an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

L. INA § 101(a)(43)(L) – Certain National Security Offenses

Statutory Text: an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 3121 of Title 50 (relating to protecting the identity of undercover agents);

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M. INA § 101(a)(43)(M) – Offense Involving Fraud, Deceit, or Tax Evasion

Statutory Text: an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

The Supreme Court has held that the court must first apply the categorical approach to determine whether the respondent's offenses have "elements that necessarily entail fraudulent or deceitful conduct." *Kawashima v. Holder*, 565 U.S. 478, 483–84 (2012). If a statute of conviction necessarily involves fraudulent or deceitful conduct, then the court looks to "the specific circumstances surrounding . . . [the offense] on a specific occasion" to determine whether the $10,000 monetary threshold is met. *Nijhawan v. Holder*, 557 U.S. 29, 40 (2009). The Ninth Circuit has squarely held that "theft" offenses that do not require fraud or deceit are not aggravated felonies under section 101(a)(43)(M)(i) of the Act. *Carlos–Blaza v. Holder*, 611 F.3d 583, 588 (9th Cir. 2010).

N. INA § 101(a)(43)(N) – Offense Relating to Alien Smuggling

Statutory Text: an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter

An alien is removable an aggravated felon under INA § 101(a)(43)(N) if he or she was convicted of any offense described in INA § 274(a)(1)(A) or INA § 274(a)(2). *Matter of Ruiz-Romero*, 22 I&N Dec. 486, 486 (BIA 1999) (finding respondent's conviction for transporting an illegal alien within the United States in violation of INA § 274(a)(1)(A)(ii) qualified as an aggravated felony). The Court applies the categorical approach to determine whether the respondent's conviction constitutes offense described in INA § 274(a)(1)(A) or INA § 274(a)(2) and applies the circumstance-specific approach to determine whether the alien's conviction was a first offense that involved only members of his family. *United States v. Guzman-Mata*, 579 F.3d 1065, 1070 (9th Cir. 2009).

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O. INA § 101(a)(43)(O) – Offense Committed by an Alien Previously Deported for an Aggravated Felony

Statutory Text: an offense described in section 275(a) or 276 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

An alien is removable under INA § 101(a)(43)(O) if he or she: (1) was previously removed for an aggravated felony offense described in INA § 101(a)(43); and (2) was convicted of entry at an improper time or place or through misrepresentation and concealment of facts in violation of 8 U.S.C. § 275(a), or for illegal reentry under 8 C.F.R. § 1326. *Matter of Alvarado-Alvino*, 22 I&N Dec. 718, 721 (BIA 1999).

P. INA § 101(a)(43)(P) – Certain Offenses Related to Passport or Document Fraud

Statutory Text: an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

[There are no known BIA or Ninth Circuit decisions interpreting this provision]

Q. INA § 101(a)(43)(Q) – Offense Relating to Failure to Appear

Statutory Text: an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

An alien is removable under INA § 101(a)(43)(Q) if he or she failed to appear for service of a sentence and the underlying offense could have punished by 5 years or more, regardless of the actual sentence ordered or imposed. *Matter of Adeniye*, 26 I&N Dec. 726, 730 (BIA 2016).

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R. INA § 101(a)(43)(R) – Offense Relating to Commercial Bribery, Counterfeiting, Forgery, or Trafficking

Statutory Text: an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

1. An Offense Relating to . . . Commercial Bribery

The Board of Immigration Appeals has explained that the "commercial bribery" provision of INA § 101(a)(43)(R) is subject to the categorical approach and focuses on "influencing action in the private sector involving the breach of the duty of fidelity." *Matter of Gruenangerl*, 25 I&N Dec. 351, 354–55 (BIA 2010) (internal citation omitted).

2. An Offense Relating to . . . Counterfeiting

The Ninth Circuit has explained that the generic definition of a crime relating to counterfeiting includes "the unauthorized immigration of trademarks," and extends "far beyond the imitation of currency." *Rodriguez-Valencia v. Holder*, 652 F.3d 1157, 1159–60 (9th Cir. 2011) (assuming, without deciding, that the generic definition includes an "intent to defraud"). The term "related to," "necessarily covers a range of activities beyond those of counterfeiting or forgery itself."). *Albillo-Figueroa v. INS*, 221 F.3d 1070, 1073–74 (9th Cir. 2000).

3. An Offense Relating to . . . Forgery

The Ninth Circuit has explained that the generic element of forgery is "the false making or alternation of a document, such that the document is not what it purports to be." *Vizcarra-Ayala v. Mukasey*, 514 F.3d 870, 875 (9th Cir. 2008) (explaining that INA § 101(a)(43)(R) is subject to the categorical approach). Additionally, forgery "requires intent to defraud and includes a mental state requirement of knowledge of the fictitious nature of the instrument." *Morales-Alegria v. Gonzales*, 449 F.3d 1051, 1056 (9th Cir. 2006); *see*, *e.g.*, *Addy v. Sessions*, 696 F. App'x 801, 803 (9th Cir. 2017) (mem.).

4. An Offense Relating to . . . Trafficking in Vehicles

[There are no known published BIA or Ninth Circuit decisions interpreting on this subsection]

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S. INA § 101(a)(43)(S) – Offense Relating to Obstruction of Justice, Perjury, Subornation of Perjury, or Bribery of a Witness

Statutory Text: an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

There is no federal definition of "obstruction of justice" or "obstructing justice" in the United States Code. *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889, 891 (BIA 1999) (en banc); 18 USC §§ 1501-1518. In *Matter of Valenzuela Gallardo*, the Board explained that INA § 101(a)(43)(S) includes "offenses that are substantially more inchoate than those involving an intent to hinder or prevent another's arrest, trial, conviction, or punishment." 25 I&N Dec. 838, 844 (BIA 2012) (concluding that accessory after the fact offenses fall within INA § 101(a)(43)(S)).

In *Valenzuela Gallardo v. Lynch*, 818 F.3d 808, 824 (9th Cir. 2016), the Ninth Circuit declined to give *Chevron* deference to the Board's construction of "obstruction of justice" under INA § 101(a)(43)(S) in *Matter of Valenzuela Gallardo*, 25 I&N Dec. 838 (BIA 2012) and remanded the case so the Board could either apply its prior definition from *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889 (BIA 1999) or develop a new one. The Board recently clarified that an offense relating to obstruction of justice includes "offenses covered by chapter 73 of the Federal criminal code or any other Federal or State offense that involves: (1) an affirmative and intentional attempt; (2) that is motivated by a specific intent; (3) to interfere either in an investigation or proceeding that is ongoing, pending, or reasonably foreseeable by the defendant, or in another's punishment resulting from a completed proceeding." *Matter of Valenzuela Gallardo*, 27 I&N Dec. 449, 460 (BIA 2018).

T. INA § 101(a)(43)(T) – Offenses Relating to a Failure to Appear in Court

Statutory Text: an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed;

The Board has explained that the initial components of INA § 101(a)(43)(T), referencing a "failure to appear" that occurs "before a court," requires a categorical inquiry because they are elements of the generic "failure to appear" crime. *Matter of Garza–Olivares*, 26 I&N Dec. 736, 739 (BIA 2016). If the court determines that the statute of conviction meets the generic elements of a "failure to appear" crime, it must then conduct a fact-specific inquiry to determine whether the failure to appear in court was: (1) pursuant to a court order (2) to answer to or dispose of a felony charge (3) for which a sentence of 2 years' imprisonment or more may be imposed, do not refer to formal elements of generic "failure to appear" crimes. *Id.* at 739.

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U. INA § 101(a)(43)(U) – Attempt to Commit an Aggravated Felony

Statutory Text: an attempt or conspiracy to commit an offense described in this paragraph.

The court must determine whether the respondent's conviction matches the elements of the generic definition of "attempt" and that the underlying offense he attempted matches the generic definition of the aggravated felony provisions delineated at INA § 101(a)(43)(A)–(T). *United States v. Gonzalez-Monterroso*, 745 F.3d 1237, 1240, 1243 (9th Cir. 2014).

X. Appendix of Other Grounds of Removability

A. INA § 237(a)(2)(E)(i) – Crime of Child Abuse

Statutory Text: Any alien who at any time after admission is convicted of a crime of domestic violence, a crime of stalking, or a crime of child abuse, child neglect, or child abandonment is deportable. For purposes of this clause, the term "crime of domestic violence" means any crime of violence (as defined in section 16 of Title 18) against a person committed by a current or former spouse of the person, by an individual with whom the person shares a child in common, by an individual who is cohabiting with or has cohabited with the person as a spouse, by an individual similarly situated to a spouse of the person under the domestic or family violence laws of the jurisdiction where the offense occurs, or by any other individual against a person who is protected from that individual's acts under the domestic or family violence laws of the United States or any State, Indian tribal government, or unit of local government.

A crime of child abuse includes, "any offense involving an intentional, knowing, reckless, or criminally negligent act or omission that constitutes maltreatment of a child or that impairs a child's physical or mental well-being, including sexual abuse or exploitation." *Matter of Velazquez-Herrera*, 24 I&N Dec. 503, 512 (BIA 2008); *see Fregozo v. Holder*, 576 F.3d 1030, 1036 (9th Cir. 2009) (giving *Chevron* deference to *Matter of Velazquez-Herrera*). "Sexual abuse" can constitute a "crime of child abuse," if it includes "direct acts of sexual contact, but also including acts that induce (or omissions that permit) a child to engage in prostitution, pornography, or other sexually explicit conduct; as well as any act that involves the use or exploitation of a child as an object of sexual gratification . . . ." *Id.* at 512. Specifically, the act must "constitute[] maltreatment of a child or impair[] a child's physical or mental well-being." *Jimenez-Juarez v. Holder*, 635 F.3d 1169, 1171 (9th Cir. 2011). However, the definition of a "crime of child abuse" is not limited

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to "those requiring proof of actual harm or injury to the child." *Matter of Soram*, 25 I&N Dec. 378, 381 (BIA 2010).

B. INA § 237(a)(2)(E)(ii) – Violation of a Protection Order

Statutory Text: Any alien who at any time after admission is enjoined under a protection order issued by a court and whom the court determines has engaged in conduct that violates the portion of a protection order that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued is deportable. For purposes of this clause, the term "protection order" means any injunction issued for the purpose of preventing violent or threatening acts of domestic violence, including temporary or final orders issued by civil or criminal courts (other than support or child custody orders or provisions) whether obtained by filing an independent action or as a pendente lite order in another proceeding.

To determine whether respondent is removable under INA § 237(a)(2)(E)(ii), immigration judges must decide whether the respondent was subject to an order of protection "issued for the purpose of preventing violent or threatening acts of domestic violence," and review all reliable record evidence to decide whether a State court "determined" that the respondent violated a portion of a protective order "that involves protection against credible threats of violence, repeated harassment, or bodily injury to the person or persons for whom the protection order was issued[.]" INA § 237(a)(2)(E)(ii); *see Matter of Obshatko*, 27 I&N Dec. 173, 175–77 (BIA 2017). Reliable evidence includes conviction documents, as well as any other evidence that is probative and fundamentally fair. *Obshatko*, 27 I&N Dec. at 176 (internal citations omitted).

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Forms of Relief

	XL Certain LPR -- 240A	XL NPR -- 240A(b)	ASY	W/H	CAT	AOS	VD pre	VD post
Form	*EOIR 42A ($100.00)*	*EOIR 42B ($100.00)*	*I-589 ($00.00)*	*I-589 ($00.00)*	*I-589 ($00.00)*	*I-485 ($985.00)*	*no application*	*no application*
Burden	Respondent	Respondent	R to show refugee and past persecution	Respondent	Respondent	Respondent	Respondent	Respondent
Requirements	>5 yrs as LPR	≥ 10 yrs present US	persecution or well-founded fear of persecution	MLTN threat to life or freedom	Withholding or Deferral of Removal	Eligible to receive immigrant visa	m/ request at master when set for merits hearing	request any time before final decision
	7 yrs continuous residence after lawful admission	GMC during 10 yrs			MLTN tortured if removed to proposed country	Immigrant visa immediately available	concede removability	not required to concede removability
	Watch Stop Times * no cont. res for vets w/ 24 mos active duty; battered spouse reqs 3 yrs continual residence	no disqualifying convictions -- 212(a)2), 237(a)(2), 237(a)(3)	on account of race, religion, nationality, membership in PSG or political opinion	on account of race, religion, nationality, membership in PSG or political opinion (9th Cir.: "because of" Standard. See Barajas-Romero).	Torture: severe phys/mental pain, int'al, proscribed purpose, pub.official (instigation or w/ consent), custody or phys ctrl of vic, d/n arise from lawful sanctions	inspected and admitted or paroled	waive or withdraw other requests for relief	not required to waive or withdraw other relief applications
	No agg felony conviction 101(a)(43)	except'l and extr'ly unusual hardship to LPR/USC spouse, child or parent	Once PP est'd, presumption of well-founded fear -- DHS m/ rebut (changed circ or safe relocation)			not statutorily barred	waive appeal of all issues (except denial of VD)	not necessary to waive appeal
	R must est that R deserves relief as matter of discretion	R must establish that R deserves relief as matter of discretion	≥ 10% chance to est well-founded fear (pattern or practice, disfavored group)			admissible or eligible for waiver of inadmissibility	not arriving alien, terrorist or agg felon	GMC for ≥5 yrs
	* not necy to est "unusual or outstanding equities" to counterbalance very strong negative factors	* balance positive equities and adverse factors	**Bars: 1 yr, friv application, firm resettlement, perscutor/terrorist/ security threat/ PSC, or serious non-political crime**	**Bars: perscutor or terrorist or security threat or PSC, or serious non-political crime**		warrants favorable exercise of discretion	bond not required	minimum $500 bond
			Discretionary	**Not Discretionary**			up to 120 days	travel docs ready for inspection up to 60 days

Biometric Fee: $85

Updated: 7/2/2021

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158 Am. Jur. Trials 301 (Originally published in 2019)

American Jurisprudence | October 2021 Update

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Litigation of Removal Proceedings of Children in Immigration Law

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I. Introduction

§ 1. Counsel for children in removal proceedings

Removal proceedings for immigrant children are governed by due process of law. Law and policy determining the conduct of removal proceedings must satisfy standards for fundamental fairness. The Immigration and Nationality Act, for example, recognizes that immigrants are entitled to representation in removal proceedings at no expense to the government.[1] The privilege extends to children. At a minimum, due process requires that children receive a fair hearing. Whether or not an immigrant child can receive a fair hearing without appointed counsel is determined on a case-by-case basis.

On January 29, 2018, the U.S. Court of Appeals for the Ninth Circuit issued a decision in *C.J.L.G. v Sessions*, considering the right to counsel at government expense for immigrant children in removal proceedings.[2] The court held that immigrant children have no categorical right under due process to government-provided counsel in proceedings.[3] Children have an individual right to due process but it was not violated by the government's failure to provide counsel in the case.[4] The decision turned on the adequacy of existing procedural safeguards in removal proceedings and the risk of error in the absence of additional procedures.[5] The court found the Immigration Judge's questioning served to adequately protect the minor's

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rights.[6] Any shortcomings in the process did not prejudice the child's ability to obtain relief.[7] Even if the child demonstrated that his right to a fair hearing had been violated in a prejudicial way, the proper remedy was to remand for the IJ to more thoroughly build the record and consider relief—not the appointment of counsel at government expense.[8] The child faced the stiff burden of showing that error prejudiced his case in a way that only representation by government-provided counsel could remedy.

The decision defined narrowly the due process right to counsel owed by the government to children in proceedings. One can take issue with the court's analysis of the merits of a child's asylum claim at the appellate level. The record relied on an asylum application that was "borderline inscrutable and non-responsive";[9] an experienced attorney might have argued that threats to a child that "became 'more menacing' over time culminating in a harrowing encounter in which a gang member put a gun to his head, and gave him a date certain … to die" constituted past persecution;[10] and the value of a lawyer working with the child to develop grounds for persecution cannot be known. It is not difficult to imagine alternative facts that would have required, if not government-appointed counsel, a remand. As a practical matter, the likelihood that other unrepresented children will have access to appellate review to challenge unfair denials is small. The court's decision places faith in immigration judges.

By acknowledging the due process rights of children, the Ninth Circuit provides a touchstone for considering procedures available to immigrant children more broadly. Unaccompanied children are distinguished as a separate matter and the court specifically did not consider their right to counsel. Nor does the court consider the case of immigrant children subject to in absentia proceedings. New policies that separate children from caregivers and increase the likelihood of in absentia proceedings may further distinguish these cases. As safeguards once available to children are diminished, the procedural protections under the Fifth Amendment become more relevant.

Note:

A number of jurisdictions may have rules, regulations, constitutional provisions, or legislative enactments directly bearing upon this subject. The reader is consequently advised to consult the appropriate statutory or regulatory compilations to ascertain the current status of all statutes discussed.

§ 2. Introduction to article

This article focuses on the changing landscape for children in removal proceedings. Statutes, case law, regulations, and policy combine to provide children with procedural safeguards not available to adults. Starting with the service of a notice to appear and the initiation of removal proceedings, practitioners are faced with choices concerning the jurisdiction of immigration courts and the posture of individuals in proceedings. Recent decisions issued by the Attorney General will play a significant role in determining the course of proceedings for minors. In addition, the decision of the Supreme Court in *Pereira v. Sessions*[1] may effectively reorder the way the Department of Homeland Security (DHS) and the Executive Office for Immigration Review (EOIR) initiate removal proceedings.

The article explores the statutory background that defines and separates unaccompanied children in their treatment in removal proceedings from other juvenile immigrants.[2] It considers the procedures available to unaccompanied children, the significance of their status throughout proceedings, and the durability of that status.[3] It reviews the procedures applicable to immigrant children generally and surveys the forms of immigration relief available to immigrant children.[4] The article considers new developments in law and policy and how they impact the procedures available for children in proceedings.[5] The Attorney General's decision in *Matter of A-B-* and the Supreme Court's decision in *Pereira v. Sessions* create challenges and opportunities for children in proceedings.[6] In addition, the Attorney General's decision in *Matter of L-A-B-R-*[7] and *Matter of Castro-Tum*[8] make the pursuit of collateral claims for children more difficult. The article considers additional policies from

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the current administration and their unintended consequences. It provides strategies for practitioners to navigate changes in law and policy.[9]

II. Legal Background

A. Rules Applicable to Children in Removal Proceedings

§ 3. Children in Immigration and Nationality Act

[Cumulative Supplement]

The Immigration and Nationality Act defines a "child" as an unmarried juvenile under the age of 21.[1] The regulations refer to a "juvenile" as an alien under 18 years of age.[2] The regulations further distinguish children under the age of 14 from older children for additional safeguards.[3] A child may be classified as an "unaccompanied alien child" under the Homeland Security Act of 2002.[4] Unaccompanied children are further distinguishable based on whether or not they arrived from a contiguous country. Unaccompanied children receive additional safeguards in proceedings.

In general, the same procedural rules applicable to adults apply to children in removal proceedings. Thus, children are entitled to notice.[5] They have the privilege of being represented by counsel at no expense to the government.[6] They have a reasonable opportunity to examine the evidence against them, to present evidence on their own behalf, and to cross-examine witnesses presented by the government.[7] They have a right to a record and an appeal.[8] Additional procedures available to children may be determined based on age, legal disability, and unaccompanied status.

CUMULATIVE SUPPLEMENT

Cases:

Board of Immigration Appeals (BIA) did not abuse its discretion in denying alien's out-of-time motion to reopen removal proceedings based on new evidence allegedly bearing on their fears of female genital mutilation (FGM) for their United States citizen daughters if they were removed to their native country of Senegal, where aliens' statements regarding current country conditions in Senegal were not based on personal knowledge and relied on letters from family members, letters which were unpersuasive because they were from interested witnesses, speculative, and not corroborated, and which, even if they were accepted as credible, did nothing to undermine earlier determination that aliens could reasonably relocate in Senegal to avoid FGM, given that practice of FGM was not universal. Immigration and Nationality Act § 240(c)(7), 8 U.S.C.A. § 1229a(c)(7); 8 C.F.R. § 1003.2(c)(1), (c)(3)(ii). Dieng v. Barr, 947 F.3d 956 (6th Cir. 2020).

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[END OF SUPPLEMENT]

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§ 4. Flores Settlement Agreement

The Flores Settlement Agreement reached in 1997 is a significant development for the treatment of detained immigrant children under the law. The agreement is the culmination of a lengthy class action lawsuit challenging the detention, treatment, and release of immigrant children by the then Immigration and Naturalization Service (INS). Flores imposed several obligations on immigration authorities.[1] The agreement requires the government to release children from immigration detention without delay to, in order of preference, parents, other adult relatives, or licensed programs able to accept custody.[2] In the event a suitable placement is not immediately available to a child, the government is required to place the child in the "least restrictive" setting appropriate to her age and any special needs.[3] Lastly, the agreement requires the government to implement standards relating to the care and treatment of children in immigration detention.[4]

§ 5. Trafficking Victims Protection Reauthorization Act of 2008

Parts of the Flores agreement were incorporated into the Trafficking Victims Protection Reauthorization Act (TVPRA) and the Homeland Security Act. The 2008 TVPRA codified the treatment of unaccompanied children in the United States and established "special rules" for children from "contiguous countries" (Mexico and Canada).[1] The term "unaccompanied alien child" (UAC) has the meaning given the term in section 462(g) of the Homeland Security Act of 2002, 6 U.S.C.A. § 279(g).[2] The Homeland Security Act of 2002 introduced the concept of an "unaccompanied alien child" defined as a child who: "has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom—there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is available to provide care and physical custody."[3]

The TVPRA provides safeguards to protect against the trafficking of children. DHS must screen children within 48 hours of apprehension to determine if a child from a contiguous country is a trafficking victim or has a claim to asylum. An immigration officer may permit an unaccompanied child from a contiguous country to withdraw her admission and return the child to her country of nationality or of last habitual residence only after satisfying specific criteria.[4] Before the child is returned, the Department of Homeland Security must determine that the child has not been a victim of severe trafficking and there is no evidence that the child is at risk of being trafficked upon return; the child does not have a credible fear of persecution if returned; and the child is able to make an independent decision to withdraw the application for admission to the United States.[5]

If the child meets the criteria, he or she is eligible for voluntary return pursuant to section 235(a)(4) of the INA and can be returned to her country of nationality or last habitual residence.[6] If after reviewing the criteria, the child is not eligible for return, he will be transferred to the Office of Refugee Resettlement (ORR) and placed in removal proceedings.[7] The State Department must ensure safe repatriation of a UAC to their country of nationality through agreements with contiguous countries. At minimum, agreements must provide that children are returned to appropriate government or welfare officials and returned during reasonable business hours.[8]

Unaccompanied children from noncontiguous countries are placed in formal removal proceedings and appear in immigration court.[9] Their care and custody, including responsibility for their detention or placement with family or sponsors while their immigration cases are processed, is the responsibility of the Department of Health and Human Services (HHS).[10] The TVPRA requires the HHS be notified within 48 hours upon the apprehension of a UAC.[11] Except in the case of "exceptional circumstances," an unaccompanied child should be transferred to HHS within 72 hours of being determined to be unaccompanied.[12]

An unaccompanied child must be promptly placed in the "least restrictive setting possible" while awaiting a court hearing.[13] Usually this means placement with a parent, relative, or other sponsor in the United States. If no sponsor can be found, ORR retains custody, which may mean placement in a shelter or foster home. Placement of child trafficking victims may include placement in an unaccompanied refugee minor program, pursuant to section 412(d) of the Immigration and Nationality Act, if a suitable family member is not available to provide care.[14] A child shall not be placed in a secure facility absent a determination that the child poses a danger to self or others or has been charged with having committed a criminal offense.[15]

A child may not be placed until HHS determines that the proposed sponsor is capable of providing for the child's physical

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and mental wellbeing. At minimum, they are required to verify the custodian's identity and relationship to the child.[16] Before placing the child with an individual, the Secretary of Health and Human Services shall determine whether a home study is first necessary. For some types of children, e.g., victims of severe forms of trafficking in person, a special needs child with disability, a child victim of sexual or physical abuse where a child's health and welfare is harmed or threatened, or where the child's sponsor clearly presents a risk, a home study needs to be conducted.[17]

The TVPRA requires HHS to work with the Executive Office for Immigration Review (EOIR) to ensure that custodians receive legal orientation presentations.[18] HHS should ensure, to the greatest extent practicable, the availability of legal counsel for unaccompanied children and make every effort possible to utilize the services of pro bono legal counsel.[19] An unaccompanied child should be provided access to an advocate.[20]

The TVPRA places initial jurisdiction of asylum applications filed by UACs with U.S. Citizenship and Immigration Services (USCIS).[21] USCIS obtains jurisdiction even if the case is in removal proceedings or before the BIA. It exempts UACs from the one-year filing deadline and safe third country limitations.[22] Applications for asylum and other forms of relief from removal in which an unaccompanied child is the principal applicant are governed by regulations that take into account the specialized needs of unaccompanied children and which address both procedural and substantive aspects of handling children's cases.[23] Unaccompanied children receive enhanced notice,[24] are not required to plead on their own to charges,[25] may proceed affirmatively in asylum proceedings, and benefit from additional safeguards in detention.[26]

ORR funded facilities provide significant services for detained children. They ensure that the interests of the child are considered in decisions related to the care and custody of unaccompanied children; grant specific consent for state court jurisdiction over children; cooperate with the Department of Justice's EOIR to ensure that sponsors of unaccompanied children receive legal orientation presentations; and ensure, to the greatest extent practicable, that all unaccompanied children in custody have access to legal representation or counsel.[27]

B. Notice for Juveniles

§ 6. Service of notice on children under 14 years old

As in adult cases, removal proceedings are initiated against children immigrants when the government serves a notice to appear (NTA) on the immigration court and the child. The regulations have different requirements for proper service of notice depending on an immigrant's age. The Immigration and Nationality Act requires that in removal proceedings "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) …."[1] The regulations require that "such service shall be in person or by first class mail to the most recent address contained in the Record of Proceeding" and a "certification showing service" "shall accompany any filing with the Immigration Judge."[2]

The regulations provide additional notice procedures for children. For children under the age of 14, DHS must prove that it served (1) the person with whom a Minor Respondent resides and (2) whenever possible, "the near relative, guardian, committee, or friend."[3] DHS bears the burden of establishing "by clear, unequivocal, and convincing evidence that the written notice was so provided" as required by section 239(a)(1) of the Immigration and Nationality Act.[4] Proper service is a jurisdictional issue. Service of notice must be provided before the immigration court has jurisdiction.[5] The Board anticipates proper service of notice and jurisdiction before an immigration court can schedule hearings.[6]

Not any service of notice is appropriate to confer jurisdiction over immigrant children under the age of 14. The Code of Federal Regulations requires service on the person with whom a minor under 14 resides and, whenever possible, service upon a near relative.[7] *Matter of Amaya-Castro* affirms the regulatory mandate to serve the person with whom a minor resides.[8] In the case of a minor detained at an ORR-run facility, that person is the director of the facility.[9] *Amaya-Castro* recognizes that alien children are often detained for a relatively short period but nevertheless requires service on the director of the ORR facility.[10] *Amaya* anticipates that service will be proper at the time it is made. "[W]e find that service of the Order to Show Cause upon the director of the IES facility in which the respondent was detained at that *time* constituted service upon a person with whom the respondent resided at that *time* …."[11]

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Matter of Amaya required that the recipient of service be identified as the Director of the International Emergency Shelter in Los Fresnos, Texas.[12]

Matter of Mejia-Andino affirms the regulatory mandate of service, whenever possible, upon an alien child's near relative.[13] In that case, an eight-year-old child entered the country with a man who purported to be the child's uncle and the Board held service upon the man was not sufficient.[14] When the agency was aware that the child was reuniting with her parents, the immigration judge required service upon the parents.[15] The immigration judge asserted the regulation and terminated proceedings when the parents had not been served notice.[16]*Mejia-Andino* argues for a strict application of the regulations. In the case where the agency fails to comply with 8 C.F.R. § 103.8(c)(2)(ii), it supports terminating proceedings.

§ 7. Remedy for improper service of notice on children under 14

Because service of notice is considered a jurisdictional issue, many immigration judges terminated proceedings when service was improper.[1] In 2016, the Board issued a decision holding that the proper remedy in cases where a child was not properly served but appeared at a master calendar hearing was not to terminate proceedings but to grant a continuance to allow reservice by DHS. In *Matter of W-A-F-C-*, the Board found that "[i]n this case, there is no signature on the notice to appear reflecting that service was made on either the respondent or another person."[2] The Board did not require proper service of notice as a requisite for the court maintaining jurisdiction and continuing proceedings.

Matter of W-A-F-C- considered service on a 12-year-old child who entered the country unaccompanied.[3] On the same day the minor entered the United States, DHS issued an NTA.[4] DHS conceded that it had not properly served the child under the regulations at the time the NTA was issued.[5] The record showed that "there is no signature on the notice to appear reflecting that service was made on either the respondent or another person."[6] Almost two years after entering the county, the child appeared with a lawyer at a master calendar hearing in immigration court.[7] At that time, the child's counsel requested that proceedings be terminated for lack of proper notice, and the immigration judge agreed.[8] DHS appealed the decision of the immigration judge to the Board of Immigration Appeals (BIA or Board).[9]

The Board reversed the decision of the immigration judge terminating proceedings for lack of proper service. The Board held that following its decision in Matter of E-S-I-, 26 I. &N. Dec. 136, 2013 WL 3200732 (BIA 2013), the immigration judge "should have granted a continuance to give the DHS an opportunity to effect proper service."[10] The Board distinguished *Matter of Mejia-Andino* where the child did not appear at two hearings.[11] In *W-A-F-C-,* by contrast, the child appeared at his hearing with an attorney and the DHS attempted to reserve the NTA after the issue of improper service was raised.[12]

The Board found that *Matter of E-S-I-* was controlling authority in the case.[13] In *Matter of E-S-I-*, the Board stated: "If the DHS did not properly serve the respondent where indicia of incompetency were either manifest or arose during a master calendar hearing that was held shortly after service of the notice to appear, the Immigration Judge should grant a continuance to give the DHS time to effect proper service."[14] The Immigration Judge involved in *W-A-F-C-* concluded that the child's incompetency was known before the master calendar hearing distinguishing his case from the mentally incompetent adult in *Matter of E-S-I-*.[15] The Board rejected this reasoning. "In *Matter of E-S-I-* we noted that the DHS was aware of indicia of the respondent's incompetency at the time of service since the respondent in that case had been transferred into DHS custody from a psychiatric hospital."[16] It concluded that a continuance was appropriate even when DHS had advanced notice of issues of incompetency and did not properly serve an alien.[17]

The Board did not discuss the difference between children and mentally incompetent adults. The developmental issues affecting children are different from the disability affecting a mentally incompetent adult. Different regulations govern the service of process for mentally incompetent adults and children.[18] The Board did not address the difference in regulations for service on children and mentally incompetent adults. The two groups also are differently situated in terms of detention. The average length of stay of an unaccompanied child in an ORR shelter is 34 days.[19] Adults in psychiatric care may face longer detentions. The adult in *Matter of E-S-I-*, for example, was detained at the time of his master calendar hearing.

In *Matter of Amaya-Castro*, the Board stated that the purpose of the regulation for enhanced notice to minors is to provide service upon persons "who are most likely to be responsible for ensuring that an alien appears before the Immigration Court

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at the scheduled time."[20] It is unclear, under *W-A-F-C-*, how waiting for a child to appear at a hearing before serving her supports that purpose. *Matter of Amaya-Castro* involved service of process on a child, nine days short of his 13th birthday.[21] The Board held that service of process under the regulations was appropriate when it was served on the director of the facility where the minor was detained. The Board held that the child resided at the detention center and the recipient of service was identified as the "Director of IES" (International Emergency Shelter) in Los Fresnos, Texas.[22] The Board found this to be a "reasonable interpretation of the somewhat ambiguous regulatory language …"[23]

Matter of W-A-F-C- does not require service upon the director of the detention center as in *Amaya-Castro*. DHS can wait until the master calendar hearing to serve the person with whom the child resides at the time. Additionally, if the child in *Amaya-Castro* turned 14 at the time of the first master calendar hearing (immigration courts may schedule the first master calendar hearing more than a year after receipt of notice), DHS would not have to follow the regulations for enhanced notice and could serve the child directly. In significant part, *Matter of W-A-F-C-* renders *Matter of Amaya-Castro* superfluous.

§ 8. Service on children 14 years old and older

[Cumulative Supplement]

Matter of W-A-F-C- and the regulations for enhanced notice apply specifically for children under the age of 14. For children between the ages of 14 and 18, there are no specific notice requirements. This gap in the regulations has led to competing interpretations. One circuit court has held that enhance notice procedures should apply to all children under 18. The Board has rejected this interpretation and concluded that the general service regulations for adults apply to children between the ages of 14 and 18 as well.

In *Flores-Chavez v. Ashcroft*, the Ninth Circuit Court of Appeals relied on the doctrine of constitutional avoidance to conclude that the regulatory framework required enhanced service procedures for all minors.[1] The court found that the regulations did not address the issue of minors over 13 but younger than 18.[2] In that case, they read the general notice requirements together with the regulations governing the release of minors from detention.[3] The detention regulations govern all minors under the age of 18 and require that they be released into the care of an adult who is obligated to ensure the child's appearance for all proceedings in immigration court.[4] The court concluded that it was unreasonable to obligate adults for the court appearance of children without providing the adults with notice of those proceedings.[5] The Court held that it was necessary to read the regulations together in order to avoid a constitutional question. "Any other interpretation would raise serious constitutional questions."[6] The Ninth Circuit's decision finds support in the Second Circuit, which remanded a BIA decision affirming service on a minor over 13 back to the BIA for a more meaningful decision.[7]

In *Matter of Cubor-Cruz*, the Board of Immigration Appeals rejected the decision of the Ninth Circuit.[8] In *Cubor-Cruz*, DHS personally served a 17-year-old immigrant child with a Notice to Appear.[9] The child however failed to appear for his immigration court hearing and an in absentia order of removal was entered against him.[10] The child moved to reopen his proceedings on the grounds that he did not receive proper notice and the in absentia order should be set aside.[11] He argued that notice should have been served on his step-father or legal guardian.[12] The child asserted that the definition of a minor conflicted with the regulations governing the detention and release of juveniles at 8 C.F.R. §§ 236.3(a), 1236.3(a) which define a juvenile as under the age of 18.[13]

The Board recognized that regulations should be interpreted to give effect to the entire regulatory scheme but that the regulations in question served different purposes. The Board pointed to a Fifth Circuit decision holding that it would be a strained analysis to hold that "the more general release provision somehow negated the specific service provision despite making no reference to notification at all."[14] The Board also relied on an Eighth Circuit decision identifying "a number of situations in which individuals under 18 are responsible for their legal status and may waive their rights, noting that many State laws allow personal service of a summons on minors as young as 14 years old."[15]

The Board was not persuaded by the argument that notice provisions were designed to let parents know the details of their

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children's proceedings.[16] The purpose of the release provisions is not to provide knowledge but to provide assistance to minors.[17] "It is therefore logical for the regulations to provide that minors entering the country illegally can be responsible for receiving notice regarding their court proceedings and yet also provide that minors need assistance from adults to obtain basic necessities."[18] The Board's reasoning does not account for *Matter of Amaya-Castro*, which reasoned that the purpose of the regulation for notice to minors is to provide service upon persons "who are most likely to be responsible for ensuring that an alien appears before the Immigration Court at the scheduled time."[19]

The BIA supported its conclusion by asserting that "many State laws allow personal service of a summons on minors as young as 14 years old" but identified only five such states.[20] The Board also relied on criminal cases involving juveniles and the waiver of rights.[21] However, cases affirming that a minor can waive constitutional rights are not analogous to a case determining the extent of a minor's right to notice in the first instance. The validity of a juvenile's waiver of rights is decided by a totality of the circumstances test, while her due process rights in proceedings are determined by the *Mathews v. Eldridge*[22] balancing test. The Board analogized a minor's ability to waive rights in the context of enhanced notice procedures that it does not recognize as a right for children 14 years old and older.

Practice Pointer:

The Board's reliance on *U.S. v Burrous* and other waiver cases supports the use of a case by case/totality of the circumstances approach to determine the sufficiency of notice to minors in the absence of a per se rule.[23] According to *Burrous*, "[t]his approach requires an 'inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.' "[24] According to the Supreme Court of the United States in *Fare v. Michael C.*, the inquiry is a mandatory one.[25] While waiver cases show that minors may exercise judgment in their proceedings, decisions by minors affecting their rights are subject to considerable scrutiny involving something akin to a competency determination. The existence of the right to be waived in the first instance requires an independent determination. The decision to challenge service of notice in removal proceedings involving minor children is a strategic one. In the case of an unaccompanied child with a meritorious asylum claim, it may serve little purpose to challenge sufficiency of service that results in a continuance and reservice of the notice to appear. In that case, the asylum office would assume jurisdiction over the claim regardless and the party could pursue her asylum application affirmatively. Alternatively, counsel would need to be prepared to challenge the interpretation of *Matter of W-A-F-C-* in the federal court of appeals—a significant undertaking. In other cases, where relief is uncertain, challenging service and the immigration court's jurisdiction may be the best alternative to avoid a removal order. Removal proceedings are stayed through the course of an appeal to the Board of Immigration Appeals.[26] The challenge may provide only a temporary reprieve. In the case an alien successfully terminates proceedings, DHS can reserve a notice to appear to put an alien back into proceedings.

Nevertheless, in light of the Attorney General's decision in *Castro-Tum*[27] and in *L-A-B-R-*,[28] additional time may be essential for immigrant children awaiting adjudication of a "collateral matter." Children with U visa applications pending with USCIS, for example, do not have their removal proceedings stayed.[29] Challenging the adequacy of service may provide a strategic benefit.

CUMULATIVE SUPPLEMENT

Cases:

In deportation proceedings involving 16-year-old alien who had never been detained, and who had affirmatively filed application for asylum, service of Order to Show Cause and Notice of Hearing (OSC) only on this alien minor and not on responsible adult with whom alien minor lived, assuming that such an adult existed, did not violate alien minor's due process

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rights; while alien minor's interest in receiving notice of deportation proceedings was one of grave importance, his active participation in process, by affirmatively filing application for asylum, lessened risk of error, and it would impose significant burden on government, in case of alien minor who had never been detained or released to any adult, to investigate and identify an appropriate adult for service of the OSC. U.S. Const. Amend. 5. Cruz Pleitez v. Barr, 938 F.3d 1141 (9th Cir. 2019), for additional opinion, see, 777 Fed. Appx. 248 (9th Cir. 2019).

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[END OF SUPPLEMENT]

§ 9. Pereira v. Sessions and adequacy of notice

On June 21, 2018, the United States Supreme Court issued a decision in *Pereira v. Sessions* with significant consequences on the issue of what constitutes sufficient notice in immigration proceedings.[1] The issue before the Court was the stop time rule in cancellation of removal cases.[2] An individual may be eligible for cancellation of removal if, among other things, they have spent 10 years continuously resident in the United States.[3] If, after entering, the individual is served with a notice to appear, service of the notice to appear stops the accrual of time towards the 10-year residency requirement.[4] Petitioner Wescley Pereira was served with a notice to appear that otherwise prevented him from accruing the necessary 10 years of continuous residence.[5]

Pereira argued that the stop time rule did not apply to him because the notice to appear he received was substantially defective.[6] The notice to appear did not inform him of the date of his first immigration court hearing.[7] Specifically, it ordered him to appear before an immigration judge in Boston "on a date to be set at a time to be set."[8] As stated by the Court, the question was: "If the Government serves a noncitizen with a document that is labeled 'notice to appear,' but the document fails to specify either the time or place of the removal proceedings, does it trigger the stop time rule?"[9] The Court answered no.[10] More significantly, for notice in removal proceedings, the Court indicated that a notice to appear that did not indicate a time or place was not a notice to appear for the purposes of notice. The conclusion is particularly significant considering that "almost 100% of notices to appear omit the time and date of the proceeding over the last three years."[11] Removal proceedings initiated by notices to appear that do not state a time and place are thus susceptible to termination.

The statutory section defining the written notice that shall be given to the alien requires that it specify: "The time and place at which the proceedings will be held."[12] The Court held that this requirement was definitional.[13] Because it was essential to notice, the Court held that a notice to appear that did not include the time and place for a hearing was not a notice to appear. "If the three words 'notice to appear' mean anything in this context, they must mean that at a minimum, the Government has to provide noncitizens 'notice' of the information, i.e., the 'time' and 'place,' that would enable them 'to appear' at the removal hearing in the first place."[14]

§ 10. Matter of Bermudez-Cota, board's response to Pereira v. Sessions

On August 31, 2018, the Board of Immigration Appeals issued *Matter of Bermudez-Cota* addressing the issue of a motion for termination brought pursuant to *Pereira v. Sessions*.[1] The Board found that *Pereira v. Sessions* was narrowly decided and distinguishable from cases where the alien received notice from a subsequent order and appeared for an immigration court hearing.[2] The Board concluded that a notice to appear without the date and location information was sufficient to vest jurisdiction with the immigration court provided the court mailed a subsequent notice with the information and the immigrant appeared for the proceeding.[3] The Board's decision is not strongly reasoned and may not survive federal judicial review.

The Board attached significance to the fact that Respondent German Bermudez-Cota received the scheduling order from the

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court and appeared for his proceedings. The Board notes "[t]he respondent in this case clearly was sufficiently informed to attend his hearings."[4] The Board also emphasized that *Pereira* was narrowly decided and limited to the issue of cancellation of removal. "Had the Court intended to issue a holding as expansive as the one advanced by the respondent, presumably it would not have referred to the question before it as being 'narrow.'"[5] The Board found it significant that "the Court did not purport to invalidate the alien's underlying removal proceedings or suggest that proceedings should be terminated."[6] Instead, "the Court remanded the matter for further proceedings."[7]

The Board sidestepped much of the Court's most forceful language that asserted time and place information was essential to the existence of a notice to appear. Nor did it squarely address the Court's statutory arguments for the necessity of the time and place information. The Board acknowledged that "the Court questioned arguments concerning the alleged inability of the DHS to specify an accurate date and time for the initial hearing on the notice to appear."[8] It concluded, however, that "the Court did not hold that proceedings initiated by a notice to appear that fails to specify a time, date and place for the initial hearing should be terminated."[9]

To support its argument, the Board relied on courts of appeals decisions that preceded *Pereira v. Sessions*. The Board relied on *Popa v. Holder,*[10]*Gomez-Palacios v. Holder,*[11]*Dababneh v. Gonzales,*[12] and *Haider v. Gonzales*[13] for the general proposition that a notice to appear without time and place information followed by a scheduling order issued by the immigration court satisfies the requirements for notice and jurisdiction. "We agree with the Fifth, Seventh, Eighth, and Ninth Circuits that a two-step notice process is sufficient to meet the statutory notice requirements in section 239(a) of the Act."[14]

Notably, excepting *Dababneh*, the decisions relied on by the Board involve fact patterns where the individual was ordered removed in absentia after receiving a notice to appear but not the subsequent hearing notice. In *Gomez-Palacios v. Holder*, an in absentia order was issued after the notice of hearing was sent to an incorrect address even though "the alien had provided a change of address prior to the mailing of the hearing notice."[15] Similarly, *Bermudez-Cota* had to reopen proceedings after an in absentia order was issued because "notice was not mailed to the correct address and was returned as undeliverable."[16] The facts of these cases do not speak well for the reliability of the two-step process supported by the Board. In some cases, it places the burden of notice on aliens, who have to move to reopen cases when they do not receive the second step scheduling hearing notice.

Practice Pointer:

After *Matter of Bermudez-Cota*, practitioners should continue to file motions for termination with the immigration courts and to preserve the issue as necessary for their clients. The Board's decision has significant gaps and may not stand up to federal appellate review. The Court's decision in *Pereira* has consequences beyond cases involving cancellation of removal. Depending on the posture of an individual case, the decision to move to terminate proceedings is a strategic one. Unaccompanied alien children, who are applying for asylum, for example, may have their cases administratively closed because the asylum office has initial jurisdiction over UAC asylum claims. The benefit of requiring DHS to reserve a notice to appear with immigration court if the case is referred may seem small. That benefit may be more significant depending on the strength of the merits of the child's claim. For other children with claims before USCIS, the benefit may be substantial. Whether or not DHS will reissue notice on a child is a matter of government capacity and resources.

Termination of proceedings may also stop the time running for the availability of work authorization. Asylum applicants are eligible for work authorization 180 days after filing their asylum application.[17] For those who file for asylum defensively in proceedings, terminating the proceedings may stop the running of the asylum clock towards qualifying for work authorization. Delays caused by the applicant stop the asylum clock.[18] While children may not be eligible to work, a work authorization card can be a helpful form of identification.

In many other cases, termination of removal proceedings may be a significant benefit. Termination ends proceedings and precludes a final order of removal. While a pending asylum application stays proceedings, many other forms of relief do not.

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Thus, an immigrant child who has received state court predicate orders for special immigrant juvenile status and has an I-360 application pending with USCIS is not protected from removal. Nor is the immigrant juvenile with a pending U Visa petition or a number of other forms of relief. In these cases, terminating proceedings may provide time to finalize other forms of relief even if DHS reserves a notice to appear later.

Termination of proceedings may also be advantageous in light of the Attorney General's decision limiting the availability of administrative closure and continuances. *Castro-Tum* emphasized the use of continuances to pause proceedings for a short duration. Termination precludes the need for individuals to return to immigration court and request subsequent continuances. The Attorney General's decision in *Matter of L-A-B-R-* identified factors to be considered for an applicant to establish good cause to support a continuance.[19] The decision requires applicants to demonstrate the likelihood of success with their collateral petitions.[20] It also indicates that some visa petitions with long wait times may be too remote to satisfy the good cause standard.[21] If *Matter of L-A-B-R-* restricts the granting of continuances for the adjudication of collateral matters, termination under *Pereira v. Sessions* may become more essential.

C. Conduct of Removal Proceedings for Children

§ 11. Guidance for proceedings for children

The Immigration and Nationality Act provides little child-specific guidance for the conduct of removal proceedings. Procedural protections applicable to adults in removal proceedings are applicable to children's cases as well. Children are subject to the same burden of proof as adults. Guidelines provided by the United States Citizenship and Immigration Services in 1998 offer standards in handling children's claims.[1] Although offered for the conduct of nonadversarial interviews, they have been found relevant in removal proceedings as well. Guidelines for Children's Asylum Claims developed by the legacy INS borrow from international instruments dedicated to the protection of the rights of children. The memorandum recognizes that "children may not present their cases in the same way as adults" and "may be less forthcoming as adults and may hesitate to talk about past experiences in order not to relive their trauma."[2]

Procedures are recommended to protect the best interests of the child. "It is generally in the child's best interests for Asylum Officers to allow a trusted adult to attend an asylum interview with the child applicant."[3] The guidelines further recognize that "[i]t is in the best interests of the child to be interviewed by an official who has specialized training in child refugee issues." More generally, the guidelines recognize the unique challenges of working with children and in having them recount traumatic episodes. Officers are encouraged to be sensitive to gender issues, to build rapport with child witnesses, and to use active listening techniques to develop complete responses.[4]

The United Nations High Commission for Refugees also recognizes the need for child sensitive procedures when deciding the claims of immigrant children.[5] "Every person under18 years who is the principal asylum applicant is entitled to child sensitive procedural safeguards."[6] The Handbook references the Convention on the Rights of the Child, signed by the Unites States, for additional support. The Handbook asserts: "Children cannot be expected to provide adult like accounts of their experiences."[7] "They may be too young or immature to be able to evaluate what information is important or to interpret what they have witnessed or experienced in a manner that is easily understandable to an adult."[8] Procedures and training are needed to ensure that children's statements are not erroneously construed as lies when they reflect the challenge of obtaining testimony from underdeveloped witnesses.[9]

§ 12. Persecution from child's perspective

For the purposes of deciding what persecution is, courts of appeals have applied a child- centered approach to the inquiry. "[A]ge can be a critical factor in the adjudication of asylum claims and may bear heavily on the question of whether an applicant was persecuted or whether she holds a well-founded fear of future persecution."[1] "Where the events that form the basis of a past persecution claim were perceived when the petitioner was a child, the fact-finder must 'look at the events from [the child's] perspective, [and] measure the degree of [his] injuries by their impact on [a child] of his age[].' "[2]

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In *Santos-Guaman v. Sessions*, the First Circuit Court of Appeals remanded the case of an asylum applicant when the Executive Office for Immigration Review did not consider the applicant's status as a juvenile.[3] The court held that the agency erred when neither the IJ nor the BIA took into account the petitioner's age at the time of mistreatment nor undertook a "child-specific analysis."[4] "[T]he IJ and the BIA erred as a matter of law in failing to apply the childhood standard."[5] The court recognized harm that might not rise to the level of persecution for an adult may be able to meet the standard in the case of a child.

D. New Guidelines Concerning Unaccompanied Alien Children

§ 13. Guidance for protections under Trafficking Victims Protection Reauthorization Act

Recent policy changes initiated by the government take a harder line in children's cases. Government policy considers children's cases through the prism of fraud. It discounts the use of the best interest of the child standard and holds children to meeting the same standards of proof as adults. On December 20, 2017, Chief Immigration Judge MaryBeth Keller of the Executive Office for Immigration Review (EOIR) issued Operating Policies and Procedures Memorandum (OPPM) 17-03 providing guidance for adjudicating cases involving minors.[1]

OPPM 17-03 replaces OPPM 07-01: Guidelines for Immigration Court Cases Involving Unaccompanied Alien Children (UAC), which applied specifically to UACs. The new OPPM does not recognize previous protections offered to UACs under the Trafficking Victims Protection Reauthorization Act of 2009 (TVPRA). An unaccompanied alien child (UAC) is still defined as a child under the age of 18 with no lawful status in the United States and where there is no parent or legal guardian in the United States or no parent or legal guardian in the United States available to provide care and physical custody.[2] The new guidelines emphasize that a child's eligibility for UAC status may change if the child turns 18, reunites with their family, or is granted status in the United States. When this happens, the child no longer meets the criteria of UAC as defined in federal law.

OPPM 17-03 instructs Judges to investigate if a child respondent is still a UAC. The memorandum asks judges to "ensure that an alien claiming to be a UAC is, in fact, a UAC at the time his or her case is adjudicated."[3] The memorandum notes that minors may be motivated to "misrepresent their accompaniment status or age in order to qualify for the benefits associated with UAC status."[4] The memo concludes by noting that EOIR staff have a duty to report suspected fraud and abuse especially when benefits, relief, or protection is at stake.[5]

The guidance is distinct from previous policy which instructed USCIS officers not to make a de novo UAC determinations if one has been made by CBP or ICE unless HHS, ORR, ICE, or CBP have taken an "affirmative act" to terminate the UAC finding before the UAC filed an affirmative asylum application.[6] When no prior UAC designation has been made, USCIS can conduct a factual inquiry to determine if the child was a UAC at the time of filing the asylum application.[7]

On September 19, 2017, Jean King, General Counsel for EOIR, released a memorandum stating that EOIR is not bound by a determination by DHS of UAC status.[8] An IJ may exercise their independent adjudicatory role to determine a respondent's status as an UAC at the time the alien is before the court.[9] An IJ can *resolve a dispute* about UAC status during the course of proceedings or to *determine applicability of initial jurisdiction*.[10] An immigration judge is responsible for determining if the respondent "satisfies the applicable eligibility requirements" for relief from removal[11] and an IJ is required to determine if an immigrant qualifies as a UAC as a prerequisite to benefitting under the TVPRA for relief from removal.[12] The TVPRA's goal is to prevent human trafficking through increasing protection for victims and the strengthening of prosecution against traffickers.

§ 14. Role of best interest of child in removal proceedings

Previously, OPPM, 07-01 focused on balancing the best interests of the child with the application of the law.[1] New policy

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states that best interests of the child is not a standard in removal proceedings. "Although 8 U.S.C.A. § 1232(c)(2) contains provisions for … HHS to consider 'the best interests of the child' in certain circumstances, no similar provision exists in the INA directing IJs to consider the concept of 'the best interests of the child' as a legal standard for determining removability or eligibility for relief or protection from removal."[2] OPPM 07-01 acknowledged that the concept of best interests of the child does not "negate the statute or the regulatory delegation of the Attorney General's authority, and cannot provide a basis for providing relief not sanctioned by law."[3] However, a child "best interests" can guide the IJs discretion in taking steps to ensure that a "child-appropriate" hearing environment is established, allowing a child to discuss freely the element and details of his/her claim.[4] The new guidelines do not recognize a role for the best interest of the child standard in removal proceedings.

§ 15. Standards for credibility and burden of proof

New guidance from the Executive Office of Immigration Review instructs IJs that the legal requirements, including credibility standards and burdens of proof, are not relaxed or obviated for juvenile respondents.[1] OPPM 17-03 rigidly asserts the standards for credibility and burden of proof and does not make allowances for the nature of children's testimony. The OPPM references two cases to support the idea that child testimony may itself be insufficient to prove credibility or meet the burden of proof.[2] The cases relied on by the OPPM involve aliens who are not juveniles. *Matter of Y-B-* involved a 29-year-old man from Mauritania and *Matter of E-P-* involved a 35-year-old woman from Haiti. Both cases involved the ability of adults to satisfy the burden of proof. The framework for children recognizes developmental limitations and resiliency to emotional or physical trauma.

Matter of Amaya-Castro noted that 8 C.F.R. § 242.16(b) was designed to protect the interests of unaccompanied and unrepresented minors under the age of 16. The BIA held that an IJ "shall not accept an admission of deportability from an unrepresented respondent who is under the age of 16 and is not accompanied by a guardian, relative or friend."[3] The regulation does not preclude an Immigration Judge from accepting a minor's admissions to factual allegations.

When an unaccompanied and unrepresented minor under the age of 16 years admits to the factual allegations made against him, an Immigration Judge can take into consideration the minor's age and pro se and unaccompanied status in determining whether the minor's testimony is reliable and whether he understands any facts that are admitted. His deportability must be established by clear, unequivocal, and convincing evidence.[4]

§ 16. Competency and immigrant children

A competency hearing presents a safeguard to ensure the rights of immigrant children. Competency remains a benchmark for fairness to determine the need for enhanced procedural safeguards. In the criminal context, the Supreme Court has held that a person is not competent to stand trial if "he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense."[1] In immigration proceedings, the need for competency is rooted in the Fifth Amendment's right to due process of law. "[T]he test for determining whether an alien is competent to participate in immigration proceedings is whether he or she has a rational and factual understanding of the nature and object of the proceedings, can consult with the attorney or representative if there is one, and has a reasonable opportunity to examine and present evidence and cross-examine witnesses."[2]

In *Matter of M-A-M-*, the Board determined that if there are indicia of incompetency, an immigration judge must determine whether an individual is competent to proceed and, if not, must evaluate appropriate safeguards.[3] "Indicia of incompetency include a wide variety of observations and evidence."[4] In making the determination, "the Immigration Judge or the parties may observe certain behaviors by the respondent, such as an inability to understand and respond to questions, the inability to stay on topic, or a high level of distraction."[5] The determination may consider "evidence from other relevant sources, such as school records regarding special education classes or individualized education plans; reports or letters from teachers, counselors, or social workers …."[6]

In *Matter of M-A-M-*, the Respondent was a Jamaican man with a history of mental illness including schizophrenia.[7] "[T]he

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Immigration Judge asked the respondent whether he was able to proceed with the hearing, and the respondent answered that he would do the best he could."[8] In *Matter of M-A-M-*, the Board gives no indication that it intended to afford competency hearings to minor respondents absent some extrinsic mental disability. Similarly, although the Executive Office of Immigration Review has launched the National Qualified Representative Program, there is no indication that EOIR intends to cover minority as a disability entitled to free representation.[9]

Practice Pointer:

Minority may be or contribute to grounds for determining a lack of competency. In other contexts, EOIR and USCIS treat minority as a mental disability. Thus, USCIS does not require minor immigrants to file for asylum within one year of entering the United States.[10] For this purpose, it treats minors and those with a mental impairment alike, as having a legal disability.[11] In addition, the regulations and the Board treat incompetent persons similar to minors for service of notice and other purposes. "[T]he regulations prohibit Immigration Judges from accepting an admission of removability from an unrepresented alien who is incompetent and provide that when an alien is mentally incompetent, the attorney, near relative, or friend who was served with a copy of the Notice to Appear is permitted to appear on the respondent's behalf."[12]

Matter of M-A-M- was decided with adult pro se respondents in mind. Children who wish to assert their right to a competency hearing face the same dilemma as the petitioner in *C.J.L.G. v. Sessions*. Children represented by counsel may not be able to demonstrate harm because they have representation, while children without representation likely will not have the ability to request a competency hearing. Unrepresented children face a high burden for prejudice under the Ninth Circuit standard. Nevertheless, *Matter of M-A-M-* is controlling precedent and children are not excluded from its protections. Children and children with developmental issues may be entitled to enhanced procedures under *Matter of M-A-M-*.

E. Strategies for Children in Removal Proceedings

§ 17. Continuances to allow children to pursue collateral relief

On August 16, 2018, the Attorney General, reviewing a series of cases certified to himself, issued a decision in *Matter of L-A-B-R-* clarifying the standard for motions to continue to allow an individual to pursue collateral relief.[1] Immigration judges have historically issued continuances for children with available collateral relief and the Attorney General's decision affirmed their use for this purpose. The Attorney General requires respondents to demonstrate the likelihood of obtaining collateral relief and that the relief will materially affect the outcome of the removal proceedings in order to qualify for a continuance.[2] The Attorney General cited a Government Accountability Office report identifying a significant increase in the number of continuances as reason to address the issue. The same report notes that the length of USCIS adjudications for children contributed to the increased issuance of continuances.[3]

The regulation governing continuances authorizes an immigration judge to grant a motion for continuance "for good cause shown."[4] The Attorney General adopted an approach to determine good cause that "requires consideration and balancing of all relevant factors…."[5] Consideration focuses on two factors:

(1) the likelihood that the alien will receive the collateral relief, and
(2) whether the relief will materially affect the outcome of the removal proceedings.[6]

"The immigration judge should also consider whether the alien has exercised reasonable diligence in pursuing relief, DHS's position on the motion, the length of the requested continuance, and the procedural history of the case."[7] In addition, immigration judges may consider concerns of administrative efficiency, "the number of hearings held and continuances granted previously, and the timing of the continuance motion."[8]

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The Attorney General affirmed that continuances were proper to allow an individual to pursue collateral relief but "should not be granted when a respondent's collateral pursuits were merely speculative."[9] Immigration judges should not grant continuances "where the respondent appears to be seeking interim relief as a way of delaying the ultimate disposition of the case."[10] "[I]mmigration judges need not treat as controlling DHS's consent to, opposition to, or failure to take a position on a motion for continuance."[11]

Immigration judges may consider the number of continuances previously requested when making their decision.[12] "A respondent who makes a compelling case that he will receive collateral relief and successfully adjust status may receive a continuance even if, for instance, he has already received previous continuances."[13] "[B]ecause the respondent's likelihood of success in the collateral matter is paramount, a truly weak showing on that front may be dispositive."[14] "The immigration judge should not grant a continuance merely because the respondent expresses the intention to file for collateral relief at some future date or where the respondent appears to have unreasonably delayed filing for collateral relief until shortly before the noticed hearing."[15]

The Attorney General identified a number of circumstances that may be too speculative. Thus, an individual's "pending collateral attack on a criminal conviction is too tentative and speculative …."[16] "[T]he immigration judge must deny a continuance if he concludes that, even if USCIS approved the respondent's visa petition, he would deny adjustment of status as a discretionary matter or because the respondent is statutorily ineligible for adjustment."[17] Ominously for immigrant children and others, "good cause does not exist if the alien's visa priority date is too remote to raise the prospect of adjustment of status above the speculative level."[18]

Practice Pointer:

Under the Attorney General's decision, practitioners cannot consider continuances as routine. In particular, practitioners need to demonstrate the likelihood of success in collateral matters before the USCIS. "To assess the speculativeness of a respondent's collateral matter, an immigration judge will generally need an evidentiary submission by the respondent, which should include copies of relevant submissions in the collateral proceedings, supporting affidavits and the like."[19] The decision puts the burden squarely on individuals requesting a continuance to make their case.

The decision does not elaborate on when a respondent's visa priority date may be too remote to raise the prospect of adjustment above speculation. In *Matter of Quintero*, cited by the Attorney General, the Board denied a continuance for a man from Mexico with an approved petition by his lawful permanent resident wife that put him into the second preference category.[20] Under the current visa bulletin, he would face an approximately two-year wait for a visa to become available.[21] It's unclear what the waiting period was in 1982. The case offers little guidance. Children may have to wait more than two years for a visa under the EB 4 category after applying for special immigrant juvenile status. Practitioners should be concerned and prepared to argue that their clients have a strong case and that adjustment is not speculative. In the context of U visas, for example, they can argue that they do not need to wait until a visa becomes available because a grant of deferred status precedes the receipt of the visa.

The decision may also forecast more appeals to the Board of Immigration Appeals by DHS. The Attorney General was critical of the Board's failure to consider interlocutory appeals filed by DHS challenging continuances. He instructed immigration judges to issue reasons in order to aid the Board's review of a continuance order. "The immigration judge should also state his reasons for granting a continuance on the record or in a written decision."[22] "The absence of any reasoned explanation for the grant of a continuance may, were the Board to entertain an interlocutory appeal, leave the Board no choice but to vacate the order granting the continuance if evidence supporting good cause is not clear from the record."[23] Notably, the Attorney General does not address the immigration judge's responsibility when denying a continuance. It is hard to imagine the Board actively refereeing continuances through interlocutory appeals; nevertheless, practitioners faced with a denial may wish to appeal to the Board. At the same time, they can ask the immigration court to hold the matter in abeyance to allow the Board to consider the matter.

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§ 18. Administrative closure to allow children to pursue collateral relief

Many applications for relief available to children without status do not serve as a defense to removal. While a pending asylum application precludes a child from being removed from the country, a pending U Visa application, for example, does not stay a child's removal.[1] For many children in proceedings, requesting continuances of immigration court hearings will provide time for the adjudication of applications pending before the USCIS. Previously, immigration judges could administratively close immigration court proceedings for children with substantive claims of relief without requiring them to periodically return to court for master calendar hearings. In that case, when a child was granted relief, he could move the immigration court to reopen the case and then terminate proceedings.

Recently, the Attorney General of the United States, in a case certified to himself, issued a decision significantly narrowing the use of administrative closure as a tool by immigration judges. In *Matter of Castro-Tum*, the Attorney General held that granting administrative closure in all but a narrow category of cases was not authorized by the INA.[2] The case involved an unaccompanied minor who entered the United States in 2014.[3] According to the summary of facts, the minor "was served with a Notice to Appear and released to a relative after providing the address where they would reside."[4] He was personally served and then released to the custody of his brother- in-law.[5] The child failed to appear for several hearing dates.[6] The IJ continued the case four times "and finally ordered the case administratively closed on the ground that DHS had not shown it had a sufficiently reliable address to provide adequate notice."[7] The IJ refused to issue an in absentia order in the case.[8] The Board vacated the Immigration Judge's decision and remanded the case to the Immigration Court.[9] The Attorney General then certified the case to himself.[10]

The Attorney General held there is no general authority in the INA for the administrative closure of cases.[11] The "regulations limit administrative closure authority to specific categories of cases, but do not delegate the general authority to authorize administrative closure."[12] The Attorney General was not persuaded that general grants of authority in the regulations authorized administrative closure. "Grants of general authority to take measures 'appropriate and necessary for the disposition of such cases' would not ordinarily include the authority to suspend such cases indefinitely."[13] He reversed Matter of Avetisyan, 25 I&N Dec. 688, 2012 WL 390562 (BIA 2012), which found authority for administrative closure in regulations identifying jurisdiction in immigration judges including authority to "take any other action consistent with applicable law and regulations as may be appropriate."[14] "That provision does not concern the authority to make procedural rulings within the proceeding, such as the granting of administrative closure."[15] Nor did the IJ consider regulations determining jurisdiction and allowing the Chief Immigration Judge and Chairman of the Board to manage dockets to be a source of authority for administrative closure.[16]

Practice Pointer:

Under the Immigration and Nationality Act and regulations, the proper procedural mechanisms for dealing with cases are through continuance, termination, or dismissal.[17] The Attorney General's decision asserts the use of a continuance as preferable to administrative closure. With a continuance "[i]mmigration judges remain accountable for the proceedings, and the periods of delay are transparent."[18] The decision specifically addresses continuances in children's cases. "Those features illustrate why continuances are a superior alternative to administrative closure for cases involving particularly vulnerable respondents. The good-cause standard, when properly applied, gives judges sufficient discretion to pause proceedings in individual cases while also preventing undue delays. For example, a continuance may allow an immigration judge to oversee an alien minor's progress in obtaining appropriate alternative forms of relief."[19]

Looking forward, the Attorney General recognized the impracticality of immediately recalendaring every administratively closed case for consideration. He provides an ambiguous statement of discretion for the Board and immigration judges. "I now order that all cases that are currently administratively closed may remain closed unless DHS or the respondent requests recalendaring."[20] At the same time, the Attorney General expressed his expectation that cases will be recalendared. "I expect the recalendaring process will proceed in a measured but deliberate fashion that will ensure that cases ripe for resolution are swiftly returned to active dockets."[21] The Attorney General anticipates a process that is measured, deliberate, and swift. Practitioners should not be surprised by recalendaring of cases that were administratively closed.

Practitioners can assert Note 13 and other portions of the decision to assert good cause in favor of a continuance in children's

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cases. They should be aware that although portions of the Attorney General's decision seem friendly to immigrant children, his subsequent decision in *Matter of L-A-B-R-*[22] is restrictive toward continuance for collateral claims. Applications for U Visas or Special Immigrant Juvenile status are collateral matters affected by the decision. Notably, children who experienced trafficking are eligible for administrative closure pursuant to the regulations for T visas.[23] Alternatively, EOIR has distinguished between active and inactive status for cases and there is some authority for the creation of an inactive docket by immigration courts.[24] The designation of "non-status" cases leaves room for the creation of an inactive status docket with the immigration courts.[25]

§ 19. **Motion to terminate under Pereira v. Sessions and for continuance in alternative**

[Cover Page]
[Caption]
MOTION TO TERMINATE OR IN THE ALTERNATIVE TO CONTINUE

Respondent, *[name of respondent]*, through undersigned pro bono counsel, hereby moves this Honorable Court to terminate this proceeding and, as grounds therefore, asserts that Respondent was not served with a valid Notice to Appear, a prerequisite to this Court acquiring jurisdiction. In the alternative, Respondent moves to continue the Master Calendar Hearing presently scheduled for October 10, 2018.

MOTION TO TERMINATE
The implementing regulations applicable to removal proceedings specify that "[j]urisdiction vests, and proceedings before an Immigration Judge commence, when a charging document is filed with the Immigration Court by the Service."[1] The regulations further define the charging document as a "notice to appear."[2] Section 239 of the INA, 8 U.S.C.A. § 1229, titled "Initiation of removal proceedings," requires service of a "notice to appear" that contains certain specified information, including the "time and place at which the proceedings will be held."[3] The Supreme Court of the United States has held that the inclusion of time and place information in a notice to appear is definitional.[4]

This case was initiated by the filing of a Notice to Appear, dated *[date]*. That document ordered Respondent to appear before an immigration judge of the United States Department of Justice "AT A PLACE TO BE SET" on "a date to be set" at "a time to be set." It did not specify the time or the place where the removal proceedings would be held.

In *Matter of Bermudez-Cota*, the Board of Immigration Appeals held that a notice to appear that did not include date and place information was sufficient to vest jurisdiction with the immigration court provided notice of the date and place of the hearing was later sent to the individual.[5] The Board's decision affirms a two-step process of notice. Notwithstanding the Board's decision, the Immigration and Nationality Act requires that the proceedings be terminated for lack of jurisdiction.

The statutory section at issue, 8 U.S.C.A. § 1229(a), requires that "written notice (in this section referred to as a 'notice to appear') shall be given in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any) specifying the following" 8 U.S.C.A. § 1229(a). Section 1229(a)(G)(i) specifies information to be included in the notice to appear. "The time and place at which the proceedings will be held." 8 U.S.C.A. § 1229(a)(G)(i). The putative notice to appear that was filed by DHS in this case did not specify the time and place of the proceeding and did not comply with the clear and unambiguous requirements of § 1229(a). In *Pereira v Sessions*, the Court found that the requirement in 8 U.S.C.A. § 1229(a) that a notice to appear includes a time and place is definitional.[6]

In *Matter of Bermudez-Cota*, the Board emphasized that *Pereira* was narrowly decided and limited to the issue of cancellation of removal. "Had the Court intended to issue a holding as expansive as the one advanced by the respondent, presumably it would not have referred to the question before it as being 'narrow.' "[7]

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Contrary to the Board's narrow reading of *Pereira v. Sessions*, the Court states that maintaining the essential nature of the notice to appear is relevant beyond the stop-time-rule. "Thus, when the term 'notice to appear' is used elsewhere in the statutory section, including as the trigger for the stop time rule, it carries with it the substantive time-and-place criteria required by § 1229(a)."[8]

The Court found that the definitional requirements of a notice to appear are also relevant to 8 U.S.C.A. § 1229(b)(1), for example, requiring that "the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear …" so noncitizens can secure counsel.[9] "For § 1229(b)(1) to have any meaning, the 'notice to appear' must specify the time and place that the noncitizen, and his counsel, must appear at the removal hearing."[10] "It therefore follows that, if a 'notice to appear' for purposes of § 1229(b)(1) must include the time and place information, a 'notice to appear' for purposes of the stop-time-rule under § 1229b(d)(1) must as well."[11] It further follows that a notice to appear for the purposes of providing notice and initiating jurisdiction under § 1229(a) must include time and place information as well.

The two-step process affirmed by the Board in *Matter of Bermudez-Cota* establishes a process rejected by the Court in *Pereira v. Sessions.*[12] "[T]he Government could serve a document labeled 'notice to appear' without listing the time and location of the hearing and then, years down the line, provide that information a day before the removal hearing when it becomes available."[13] The intent and purpose of the Court in *Pereira v. Sessions* is clear and the notice to appear must include time and location information at the time proceedings are instituted.

Matter of Bermudez-Cota asserts that in failing to comment on jurisdiction, the Court implicitly found that the immigration court had jurisdiction. However, "[q]uestions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents."[14] The same is true for questions of jurisdiction.[15]

Matter of Bermudez-Cota relies on cases holding that immigration courts maintain jurisdiction over removal proceedings because the requirements of § 1229(a)(1) were met through service of a charging document that did not include time and place information, followed by a notice of hearing that included the information.[16] Such cases, however, cannot be considered precedential in light of *Pereira*.[17] In fact, in *Pereira*, the Court found that the provision allowing the government to provide notice of any change or postponement in the time and place reinforced its interpretation of the statute because it presumed the government had already served a notice to appear that specified the time and place as required by § 1229(a)(1)(G)(i). Moreover, a hearing notice issued by EOIR cannot "cure" a deficient NTA because it is not a "charging document" that can vest jurisdiction under 8 C.F.R. § 1003.13 and 1003.14, and it is not issued by DHS, which has exclusive authority to issue NTAs.[18]

Notably, excepting *Dababneh*, the decisions relied on by the Board involve fact patterns where the individual was ordered removed in absentia after receiving a notice to appear but not the subsequent hearing notice. In *Gomez-Palacios v. Holder*, an in absentia order was issued after the notice of hearing was sent to an incorrect address even though "the alien had provided a change of address prior to the mailing of the hearing notice."[19] Similarly, Bermudez-Cota had to reopen his proceedings after an in absentia order was issued because "notice was not mailed to the correct address and was returned as undeliverable."[20] The facts of these cases do not speak well for the reliability of the two-step process supported by the Board. In some cases, it places the burden of notice on aliens, who have to move to reopen cases when they do not receive the second step hearing notice.

Matter of Bermudez-Cota does not squarely address the Supreme Court's holding in *Pereira v. Sessions*. The Court held that a document styled as a notice to appear "that fails to designate the specific time or place of the noncitizen's removal proceedings is not a 'notice to appear under section 1229(a),' " and did not trigger the stop time rule applicable to cancellation of removal.[21] The holding has broader application because it was premised upon the "plain text"—the "clear and

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unambiguous" language of § 1229(a).[22] That language remains clear and ambiguous when applied to determine this court's jurisdiction.

The Court did not find that the "notice to appear" was merely defective. It rejected the dissent's argument that a "notice to appear" without time and place information is still a notice to appear "much like a three wheeled Chevy is still a car."[23] The Court found that the "notice to appear" in these circumstances was not in fact a notice to appear. The omission of the time and place information was not merely a "ministerial defect" but was essential to the notice itself.[24] "Failing to specify integral information like the time and place of removal proceedings unquestionably would deprive [the notice to appear] of its essential character."[25]

Section 1229b(d)(1)(A) of the INA detailing the stop-time-rule requires service of a notice to appear consistent with § 1229(a).[26] Similarly, the INA requires service of a notice to appear consistent with § 1229(a) to initiate removal proceedings. This case presents the same issue as in *Pereira v. Sessions*. Was the "notice to appear" served on respondent and the court, a notice to appear under section 1229(a)? When the notice does not contain time and place information, the Court has answered "no."

The requirement of time and place information in the notice to appear is more compelling in the context of jurisdiction. For purposes of the stop-time-rule, service of the notice to appear establishes a date for measuring continuous presence. In the context of jurisdiction, actual notice plays a more substantive role. A court that asserts jurisdiction without notifying parties acts in secret.[27] Including time and place in the notice to appear to initiate jurisdiction is necessary under *Pereira v. Sessions*.

In the alternative, concluding the notice to appear does not need time and place information for the immigration court's jurisdiction renders § 1229b(d)(1)(A) largely superfluous. If DHS does not need to include time and place information in the notice to appear to vest jurisdiction, then the period of continuous physical presence will not stop running when the "notice to appear" is served on the alien. As a practical matter, § 1229b(d)(1)(A) will be beside the point. At best, the agency will have created a dual system of notice for jurisdiction and the stop-time-rule that is unnecessarily complicated and duplicative.

Proper service of notice on the respondent and the court marks a jurisdictional line.[28] When a decision is made that notice is not proper, that determines the matter for jurisdictional purposes.[29]

When the court lacks jurisdiction, the only available recourse is to terminate proceedings.[30] The agency is a creature of the regulations and the INA.[31] The agency has a remedy within the agency's statutory and regulatory authority. It can terminate proceedings and the government can reissue a notice to appear.

The court cannot grant a continuance to allow the government to "cure" notice. It does not have the authority to craft a remedy outside of the statutory or regulatory mandate.[32] This is particularly so in the context of statutory requirements determining jurisdiction that implicate constitutional concerns of notice.[33]

Principles of judicial restraint argue against crafting an alternative remedy when due process is affected and reissuance is available.[34] The immigration court lacks jurisdiction to continue the proceedings.

In failing to file and serve a valid Notice to Appear, DHS failed to initiate a removal proceeding under the INA and, therefore, failed to invoke this court's jurisdiction. Accordingly, this proceeding must be terminated. In *In re Mejia-Andino*, the Board affirmed the immigration judge's termination of a removal proceeding for lack of proper service of the Notice to Appear.[35] If improper service of a valid notice to appear warrants termination of the proceeding, the filing and service of an invalid notice to appear, which was never sufficient to invoke the immigration court's jurisdiction, should also result in termination of the proceeding.

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MOTION TO CONTINUE

On June 29, 2018, respondent filed with USCIS a Form I-360, Petition for Special Immigrant Juvenile Status. Copies of the USCIS receipt, and the underlying predicate orders issued by the Circuit Court for Montgomery County, Maryland, are attached hereto.

Respondent would prefer that this case be administratively closed. However, the Attorney General has recently held that immigration judges have no general authority to administratively close immigration proceedings and that administrative closure is permitted only when specifically authorized by regulation or a judicially approved settlement, circumstances not present here.[36]

While *Castro-Tum* greatly restricted the use of administrative closures, it specifically reaffirmed the authority of an immigration judge to continue or adjourn proceedings, as set forth in regulations. The granting of a continuance to "allow an immigration judge to oversee an alien minor's progress in obtaining appropriate alternative forms of relief" was cited in *Castro-Tum* as an example of the proper application of discretion to pause proceedings.[37] That is precisely what respondent seeks.

Pursuant to 8 C.F.R. § 1003.29, an immigration judge may grant a motion for continuance for good cause shown and, pursuant to 8 C.F.R. § 1240.6, may grant a reasonable adjournment either at his or her own instance, or for good cause shown, upon application by the respondent or DHS. In *Matter of L-A-B-R-*, the Attorney General adopted an approach to determine good cause that "requires consideration and balancing of all relevant factors…."[38] Consideration focuses on two factors: "(1) the likelihood that the alien will receive the collateral relief, and (2) whether the relief will materially affect the outcome of the removal proceedings."[39] "The immigration judge should also consider whether the alien has exercised reasonable diligence in pursuing relief, DHS's position on the motion, the length of the requested continuance, and the procedural history of the case."[40] In addition, immigration judges may consider concerns of administrative efficiency, "the number of hearings held and continuances granted previously, and the timing of the continuance motion."[41]

Respondent's motion is premised on the filing of a Petition for Special Immigrant Juvenile Status. Respondent contends that the petition is prima facie approvable, and that ultimately, this removal proceeding will be terminated based upon approval of the petition and/or respondent's successful adjustment of status. Attached hereto are copies of the predicate orders upon which the petition is based and the pending form I-360. The orders establish that respondent satisfies all elements of SIJ status and that the petition is prima facie approvable. If DHS chooses to oppose this motion, it is not expected to contend otherwise.

Respondent has diligently pursued relief available under the INA. Although only a child, he has secured pro bono counsel and pursued his claim in both state court and before the USCIS. State court predicate orders have been entered, and a prima facie approvable petition for SIJS has been filed. Respondent has satisfied the most important of the factors to be considered in deciding this request for a continuance. He has demonstrated a high likelihood of succeeding on the petition that has been filed and that the most likely ultimate outcome of this case will be termination.

Respondent is an honor student. He has no criminal issues, either arrests or convictions. With the help of counsel, he will obtain an approved I-360 and adjust his status when a visa becomes available in his case. The ultimate success of his claim is likely and the strength of his evidence demonstrates a successful outcome beyond mere speculation.

This is the Respondent's first request for a continuance and he did not wait until the master calendar hearing to pursue Special Immigrant Juvenile Status. Respondent obtained counsel shortly after being reunited with his mother and has diligently pursued his claim. The TVPRA instructs the agency to "take into account the specialized needs of unaccompanied alien children" when handling UAC cases.[42] Allowing a respondent to pursue avenues of relief provided in the INA fulfills an immigration judge's obligation to resolve questions in a "timely and impartial manner consistent with the [INA] and regulations."[43]

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As the court in *Osorio-Martinez v. Attorney General United States of America* recently observed, "[T]he BIA has made clear its conclusion that even mere applicants for SIJ status—let alone children who have already received SIJ status—should not be removed from the country, as it has repeatedly held that '[a]bsent evidence of an alien's ineligibility for SIJ status, an Immigration Judge should, as a general practice, continue proceedings to await adjudication of a pending state dependency petition,' IN RE: ADELINA GONZALEZ-MORALES, 2015 WL 4873234, at *1 (B.I.A. 2015)."[44]

Respondent has contacted the trial attorney in the case and left a message on his voice mail. The trial attorney has not indicated the position that DHS is taking in response to this motion.

WHEREFORE, IT IS MOVED, that this court accept and grant the motion to terminate. In the alternative, this court should continue the Master Calendar Hearing to a date sufficiently in the future to allow the processing of Respondent's Form I-360, Petition for Special Immigrant Juvenile Status, and his eventual adjustment of status.

[Closing]
[Signature]
[Address]
[Certificate of service]
[Draft order]

F. Children and Unaccompanied Minors Applying for Asylum

§ 20. Children and one year filing deadline for asylum

This article addresses procedural rights and requirements for minors applying for asylum. A discussion of the substantive grounds for asylum available to children could support a separate article and this article touches on them briefly. An alien seeking asylum must prove by clear and convincing evidence that an application was filed within one year after the date of his or her arrival in the United States.[1] The provision has withstood constitutional challenges.[2]

The one-year deadline is not a blanket bar and an asylum application may be considered, notwithstanding the time limit, if the alien demonstrates, to the satisfaction of the Attorney General, the existence of either changed circumstances that materially affect the applicant's eligibility for asylum or extraordinary circumstances directly relating to the delay in filing an application within the one-year period.[3]

Children are afforded special protections due to the unique difficulties they may face in filing their application within the time limit. The deadline does not apply to unaccompanied alien children.[4] Children under 18 years old generally are considered eligible as a legal disability which constitutes an extraordinary circumstance, excusing them from meeting the one-year requirement. Scheduling also plays a role in approaching asylum cases for children. Under the USCIS policy of last in first out, practitioners must be prepared for an interview shortly after filing an asylum application.[5] For children who have not been served with a notice to appear and are not in removal proceedings, practitioners need to consider the possibility of the children ending up in removal proceedings if they lose their case. Conversely, delay can negatively affect the strength of a child's case and practitioners have to carefully weigh the likelihood for success against placing their clients in future peril.

§ 21. Unaccompanied alien children (UAC) and asylum relief

An "unaccompanied alien child" is defined as a child under 18, with no lawful immigration status, and without a parent or legal guardian in the U.S., or a parent or legal guardian in the U.S. who is available to provide care.[1] The one-year deadline does not apply to unaccompanied children.[2] If a child is not living with a parent or legal guardian but is in lawful status, the child will not be considered an unaccompanied child and therefore is not categorically exempt from the one-year filing

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deadline. His or her application will be considered as an incidence of extraordinary circumstance.

The Trafficking Victims Protection and Reauthorization Act of 2008 confers initial jurisdiction upon USCIS to process asylum applications filed by unaccompanied children, including children in removal proceedings.[3] According to USCIS policy, when CBP or ICE has made a determination that an applicant is an unaccompanied alien child and that decision is in effect on the date an asylum application is filed (i.e., no affirmative act by HHS, ICE, or CBP terminated UAC status), asylum offices should adopt the DHS determination and should not make a separate factual inquiry.[4] In cases where a determination is not previously made, asylum offices are required to determine if an applicant is an unaccompanied alien child at that time.[5]

In September 2017, the Executive Office for Immigration Review concluded that DHS determinations regarding unaccompanied alien child status are not binding on cases in immigration court. Immigration judges have authority to "resolve any dispute about UAC status" during removal proceedings when it pertains to a respondent's eligibility for relief or to the application of the initial asylum jurisdiction provision found at 8 U.S.C.A. § 1153(b)(3)(C).[6] The memorandum states that individuals previously classified as UAC could lose their status and thus the protections afforded by the TVPRA if they no longer meet the criteria, e.g., (1) they turn 18, (2) become "accompanied" as a result of a parent having been located who can provide care and custody, or (3) obtain legal status.[7] OPPM 17-03 issued by the Department of Justice in December 2017 instructs Immigration Judges of their obligation to make sure that an individual claiming to be an unaccompanied child is still a UAC at the time of adjudication and to be on the lookout for fraudulent cases given the preferential treatment afforded to UACs.[8]

The EOIR memorandum affirms that individuals who are unaccompanied alien children "at the time of filing" may apply directly with USCIS initially.[9] For voluntary departure benefits accorded to UAC by TVPRA 2008, the individual's status determined by the IJ at the time he or she applies for voluntary departure is determinative.[10]

The exception to the one-year deadline for unaccompanied alien children does not apply to an individual, who is no longer classified as an unaccompanied alien child.[11] Time is "tolled while a respondent is in UAC status and begins running when a respondent loses such status."[12]

Reading the 2013 and 2017 memos together indicates that if there has been no "affirmative act" by the DHS to strip UAC status, USCIS should continue to accept initial jurisdiction for asylum applications without giving consideration to the one-year deadline.[13] If an individual is stripped of UAC status, any period of time that elapsed while he held UAC status does not count towards the one-year deadline.

§ 22. Minors under 18 and asylum eligibility

Previously, accompanied minors and in-status unaccompanied minors were not automatically exempt from the one-year deadline and had to establish that their young age amounted to an extraordinary circumstance that directly related to their failure to file within one year. Courts of appeals differed in their approach, leaving the law ambiguous. The Ninth Circuit determined that the one-year time limit was not applicable to minors.[1] In contrast, the Eighth Circuit took the position that the deadline does apply to minors.[2] The Board of Immigration Appeals clarified the matter and determined in an unpublished decision that all applicants under 18 will be deemed to suffer from a "per se legal disability" that excuses them from the filing deadline.[3]

§ 23. Individuals between 18 and 21 years old and asylum eligibility

Section 101(b)(1) of INA defines a "child" as an "unmarried person under twenty-one years of age" and uses this term in various other parts of the act.[1] In different places, it uses the term "minor children" or "minor child" without providing an express definition of the term.[2] The Act is ambiguous about who is to be considered a "minor" for purposes of the one-year bar, an individual under 18 or under 21. In *Matter of A-D-*, the Board addressed the issue and decided that a "minor" for purposes of the one-year deadline is a person under the age of 18.[3] The Board found the interpretation consistent with case

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law[4] and congressional intent as deduced from section 212(a)(9)(B)(iii)(I) of the Act (which provides for an exception from a ground of inadmissibility for alien minors and refers to them as individuals who are "under 18 years of age").[5]

The BIA concluded that although an individual between the ages of 18 and 21 will not be considered a "minor," he or she may still be able to receive an exemption from the one-year deadline based on "extraordinary circumstances" given the "slow maturation of the brain" into early adulthood.[6] Although age alone may not suffice, age combined with other factors, when considered in totality, might amount to extraordinary circumstances.[7] Factors to take into consideration include language proficiency, amount of time spent in the United States, physical and mental well-being, socio-economic status, interaction with legal service providers, housing, and detention situation.[8] The burden remains on individuals between the ages of 18 and 21 to prove by a preponderance of evidence the existence of "extraordinary circumstance" that is "directly related" to the untimely filing.[9] The BIA reiterated its statement in Matter of T-M-H- & S-W-C-, 25 I. & N. Dec. 193, 2010 WL 363406 (B.I.A. 2010) that "a delay of less than six months may be reasonable … and in some 'rare cases', a 'delay of one year or more may be justified' as a reasonable period of time for filing an asylum application after changed or extraordinary circumstances."[10]

Practice Pointer:

Under the USCIS scheduling policy of last in first out, asylum applicants who most recently file their application with the asylum division receive priority in scheduling interviews.[11] About half of applicants who have submitted applications since January 2018 have had their asylum interviews scheduled to occur within about two months of the application being filed. Applicants that do not receive a scheduling notice within about three weeks of their application being filed may be placed in the asylum office case backlog. Once in the backlog, the applicant may wait years before receiving an asylum interview.

Unaccompanied children and children generally receive priority in scheduling for an asylum interview with USCIS. The cases are typically interviewed within about two months of filing. Practice and policy however have changed rapidly and may vary from office to office. New reports indicate, for example, that UAC asylum applicants may no longer receive priority consideration. Some UAC asylum applicants are ending up in the case backlog with extended waiting periods. Nevertheless, practitioners filing affirmatively should have their cases well-prepared at the time of filing. They should expect an interview within about two months and should have their evidence and witnesses prepared in advance. Practitioners should also check with the local asylum office to determine the last date for submitting evidence prior to the interview and the filing procedures.

§ 24. Asylum claims for minors

Immigrant children may qualify for asylum on the basis of any of the five protected grounds.[1] The particular social group category, however, has particular significance for the asylum claims of children. It allows them to apply for asylum on the basis of belonging to a group of vulnerable individuals. Many child asylum applicants from Central America are vulnerable to private actors such as gang or family members. Their eligibility for asylum is dependent on the recognition of state responsibility when government officials are either unable or unwilling to protect citizens.

The Attorney General's recent decision in *Matter of A-B-* has made the burden for child asylum applicants more difficult to meet.[2] It vacated the Board's decision in *Matter of A-R-C-G-*,[3] which found that women victims of domestic violence may belong to a particular social group and qualify for asylum.[4]

In *Matter of A-R-C-G-*, the BIA had held that married women in Guatemala who cannot escape a domestic relationship qualify for membership in a particular social group.[5] The Board looked to a number of different factors including the existence of a marriage, the ability of the individual to escape the relationship, and the societal perception of women in the relationship.[6] In later unpublished decisions, the Board said that it was sufficient if the woman was in a domestic relationship

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that she could not escape and did not require her to be married.

In *Matter of A-R-C-G-*, the Board emphasized a number of criteria that could be equally relevant to cases involving children. Thus, the Board pointed out "that a married woman's inability to leave the relationship may be informed by societal expectations about gender and subordination, as well as legal constraints regarding divorce and separation."[7] The Board also found it significant that while there may have been laws on the books protecting against domestic violence, the police "often failed to respond to requests for assistance related to domestic violence."[8]

Matter of A-B-, in vacating *Matter of A-R-C-G-*, called into question many of the factors and circumstances relied on by the woman to qualify for asylum. As a general matter, the Attorney General found that the Board erred by using *A-R-C-G-* as a precedential decision when the analysis relied significantly on concession by the government.[9] "The Board should not have issued *A-R-C-G-* as a precedential opinion because DHS conceded most of the relevant legal questions."[10]

While much of *Matter of A-B-* restates the elements for asylum relief, the Attorney General questions the viability of claims based on harm by private actors. "It can be especially difficult, however, for victims of private violence to prove persecution because persecution is something a government does either directly or indirectly by being unwilling or unable to prevent private misconduct."[11] The decision indicates that the particular social group in *A-R-C-G-* is defined by the persecution suffered. "*A-R-C-G-* never considered that married women in Guatemala who are unable to leave their relationship was effectively defined to consist of women in Guatemala who are victims of domestic abuse because the inability 'to leave' was created by harm or threatened harm."[12] The Attorney General questioned whether "Guatemalan society views these women … as members of a distinct group in society, rather than each as a victim of a particular abuser in highly individualized circumstances."[13]

In addition to particular social group membership, the Attorney General addressed the issues of nexus and state responsibility in asylum claims based in domestic violence. "When private actors inflict violence based on a personal relationship with a victim, then the victim's membership in a larger group may well not be 'one central reason' for the abuse."[14] The Attorney General opined that the abuser in *A-R-C-G-* attacked his victim "because of his preexisting personal relationship with [her]."[15] The Attorney General also asserted a high bar for showing a government is unwilling or unable to control a persecutor. "The applicant must show that the government condoned the private actions 'or at least demonstrated a complete helplessness to protect the victims.'"[16] The decision is not favorable for individuals applying for asylum. Much of the decision is a restatement of asylum law; nevertheless, it indicates an intent to subject asylum claims based on persecution by private actors to greater administrative scrutiny.

Practice Pointer:

Children victims of domestic violence demonstrate many of the same characteristics as adults. In addition, children are particularly vulnerable to abuse and may lack resources or means to secure help. Escaping domestic relationships for children may be particularly difficult. *Matter of A-B-* makes the burden of proof for children suffering domestic violence more difficult. Nevertheless, children can assert viable claims based on particular social group membership. Youth or age may be considered an immutable characteristic because, although changeable over time, it cannot be changed at any given time. The Board has acknowledged "that the mutability of age is not within one's control, and that if an individual has been persecuted in the past on account of an age-described particular social group, or faces such persecution at a time when that individual's age places him within the group, a claim for asylum may still be cognizable."[17]

Girls or young women have the added basis for immutability based on gender. Like the woman in *Matter of A-R-C-G-*, societal expectations do not afford children the autonomy to leave a familial relationship and they may lack the capacity to do so. In addition, children may not expect protection by police in Central American countries that lack effective child protective services. Children who escape abusive familial relationships may be returned to the relationship by the police. In broad terms, children in abusive familial relationships may demonstrate the characteristics of immutability, particularity, and social

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distinction necessary for particular social group membership.

Membership in a particular social group based on family membership may be a better option for children caught in abusive family relationships. Family is a well-established basis for particular social group membership. The Attorney General in *Matter of A-B-* cast derision on the family as a particular social group argument while at the same time finding that membership in a tribe or clan "is a highly recognizable, immutable characteristic that makes members recognized in society as a group."[18]

The U.S. Court of Appeals for the Fourth Circuit has well-developed jurisprudence on the family as a particular social group that is applicable to children's cases. In *Hernandez-Avalos v. Lynch*, a mother was found eligible for asylum on account of her familial relationship to her teenaged son when gang members persecuted her for preventing the son's recruitment.[19] In *Crespin-Valladares v. Holder*, the Court found that the nephew of a man who testified against gang members in court was eligible for asylum relief based on his familial relationship.[20] The Court also found that the daughter of a man targeted by gangs could qualify for asylum on the basis of her family membership in a particular social group consisting of her immediate family.[21] In *Zavaleta-Policiano v Sessions*, the Court held that a daughter who owned a store was targeted on account of her relationship to her father, also a store owner, who fled the country after gang members threatened him.[22]

The Board of Immigration Appeals has taken a more restricted approach in family-based claims. In *Matter of L-E-A-*, the Board denied relief to the son of a store owner threatened by gangs. The Board held the boy was not threatened on account of his family membership but because the gang was interested in selling drugs at the store which had a strategic location.[23] Domestic violence is not the only context that supports childhood as the basis for particular social group membership. Many other subcategories of children also classify for particular social group characterization outside of a domestic abuse environment. Girls as a subset of children may qualify for protection. Girls who are targeted by gangs for sexual violence or who are considered to be gang property are eligible for relief under the *Matter of A-R-C-G-* analysis. They may not be able to escape the relationship, cannot rely on the police for protection, and may be perceived by society as gang property. Other subsets such as children with disabilities who are perceived distinctly within a society may also support particular social group membership.[24] In addition, it is well established that aliens who are persecuted on account of their gender or sexual orientation are members of a particular social group.[25]

Children who have been abandoned by their families or who lack effective parental protection also have been regarded as a successful particular social group formulation. In the context of shared experience, "young Albanian women living alone who were targeted for prostitution" were found to constitute a particular social group by the Seventh Circuit Court of Appeals.[26] At least one unpublished BIA decision has found that "abandoned street children in Nicaragua" amounted to a particular social group.[27] The boy in *B-F-O-* had seen his parents killed by guerillas and was left on the streets where he was vulnerable to violence and abuse.[28]

In another recent unpublished decision, the Board affirmed this reasoning by reversing an immigration judge and holding that "Mexican children who are perceived as property and lack effective familial protection" is a valid particular social group.[29] The case involved the claim of a girl who was verbally, physically, and sexually abused by her stepfather for years.[30] The stepfather ordered the girl's cousins to kill her brother when he reported the abuse.[31] When the girl reported the abuse to the authorities, they took little action and the stepfather's abuse continued.[32] The Board reversed the IJ's particular social group determination and rejected the IJ's conclusion that the abuse was opportunistic "private violence" on account of the living situation in the family home.[33] The Board found "it established that the respondent's stepfather preyed on her and her other minor siblings because they were vulnerable, as their father was deceased and her mother refused to believe their accounts when they tried to tell her of the abuse."[34] In addition, "after her father died, (her stepfather), who had always coveted her father's possessions, immediately took control of his [ ] home and immediate family members."[35]

Childhood or youth can serve as the basis for particular social group membership. In instances where the youth is a member of another group such as one based on sexual orientation, particular social group membership has been well established. Youth can more directly serve as the basis for particular social group membership and children who, for example, lack effective familial protection may also have a viable path for relief.

III. Trial Practice

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A. Understanding Landscape of Proceedings

§ 25. Proceedings before Executive Office for Immigration Review and United States Immigration and Citizenship Services

Removal proceedings are the province of the immigration courts and the Board of Immigration Appeals. Immigration judges in immigration court determine if children are removable and their decisions are subject to administrative appellate review by the Board of Immigration Appeals. The immigration courts and the Board of Immigration Appeals make up the Executive Office for Immigration Review, which is part of the Department of Justice. In removal proceedings, the government is represented by attorneys from the Department of Homeland Security.[1]

While removal proceedings are the exclusive province of the Executive Office for Immigration Review, another agency, the United States Citizenship and Immigration Services, often plays an important role in determining the outcome of removal proceedings. USCIS is part of the Department of Homeland Security and is responsible for adjudicating many forms of immigration relief for immigrant children. U Visas, T Visas, relief under the Violence Against Women Act (VAWA), Special Immigrant Juvenile Status, and affirmative asylum are all examples of forms of relief or status available for children decided by USCIS.[2]

Determinations by USCIS and the conduct of removal proceedings often proceed at the same time on parallel tracks toward different outcomes. The culmination of USCIS processing may be legal status while the culmination of removal proceedings may be deportation. With the exception of asylum, which stays removal proceedings, the two tracks can represent a race between outcomes. Historically, immigration courts have been willing to delay or administratively close removal proceedings to allow children to conclude processing with the USCIS and obtain available status. Once a child receives legal status, she can then move to terminate her removal proceedings. *Matter of Castro-Tum* and *Matter of L-A-B-R-* demonstrate that children may no longer be able to rely on immigration courts to defer removal proceedings while collateral applications for status are being decided by USCIS. Issues of timing are key for children navigating removal proceedings.

§ 26. Working with immigrant children

Practitioners owe a duty to ensure the children they are representing understand and can participate in their own proceedings. Depending on the age of the child, that duty may take into account practical considerations. At a minimum, attorneys must recognize the vulnerability of children and conduct their representation with the best interest of the child at heart.[1] In doing so, attorneys should consider the child's age, gender, and religious and cultural background; the child's custodial situation; the child's expressed interests; the child's past experiences; the social, emotional, mental, and developmental challenges the child faces; and the child's detention status.[2] The attorney-client relationship should be free from pressure and manipulation, account for the child's evolving ability to understand situations and respond to advice and guidance, and provide information in a way the child can understand to allow her to make an informed decision.[3] When hired by a parent, the attorney's obligation is to represent the child's express wishes even if they conflict with a parent or other adult.[4] The attorney shall maintain client confidentiality and inform the child that the child's conversations with an advocate for child protection are not confidential.[5] The explanation of the attorney's scope of representation should be put in terms that the child can understand.[6]

When scheduling minor clients for interviews, lawyers should keep in mind that children are not used to keeping appointments and may need to be reminded of times and locations. Initially, children may not be forthcoming about their experiences and may require multiple interviews to develop their stories. Attorneys need to be sensitive to the fact that immigrant children may suffer from trauma, which makes it difficult to talk about past experiences. Guilt, fear, shame, or other circumstances may affect a child and lead her to say that "nothing really happened." Children should be given space to work through their emotions. Attorneys need to be particularly patient with children, who may not remember details such as dates, duration, and frequency of occurrence, or the locations and names of people or places.[7]

Practice Pointer:

Some interview techniques adopted from guidance provided by Kids In Need of Defense are:

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• Initiate the meeting by explaining the purpose of the interview and by introducing yourself, the interpreter, and other members of the legal team. • Start the interview with small talk, for example, about the child's interests (e.g., soccer, drawing, sports teams, music). • Allow the child to set the pace of the interview, with appropriate breaks due to a child's limited attention span. • Be attentive to the child throughout the interview. • Show the child respect and empathy by not interrupting and by affirming responses when appropriate. • Use age appropriate language and avoid technical and/or legal terms. • Children who do not feel comfortable talking about themselves may be able to draw detailed pictures of their families and experience. • Recognize when the child may feel overwhelmed. • Give clear instructions and establish clear expectations. • Let the child know how to reach you. • Keep promises.[8]

§ 27. Putting children into removal proceedings

Explaining the consequences of immigration procedures to children may be difficult. Practitioners need to be aware that applications for affirmative relief may result in children being placed in removal proceedings. For a child, who has not been issued a notice to appear, applying for asylum can result in the child being issued a notice to appear and placed in removal proceedings if the child is not successful on the underlying claim. New guidance from the Department of Homeland Security provides that children and adults, who apply for and are denied claims before USCIS may result in the government issuing a notice to appear and the child being placed in removal proceedings. Prior to this guidance, USCIS had adopted the policy that immigrants who applied for relief such as VAWA, U visas, and T visas and who had their applications denied would not have their cases referred for enforcement. The approach recognized in part the purpose of these forms of relief intended to encourage immigrants to cooperate with law enforcement. Facing the threat of removal, immigrant victims of crime may be less likely to come forward.

On June 28, 2018, the Department of Homeland Security issued a new policy for cases denied by USCIS. The new guidance provides: "USCIS will issue an NTA where, upon issuance of an unfavorable decision on an application, petition, or benefit request, the alien is not lawfully present in the United States."[1] In the past, a practitioner could file for many forms of relief with USCIS with confidence that if the application was denied, DHS would not issue a notice to appear based on the denial. Going forward practitioners need to carefully consider the risk to child applicants.

§ 28. Challenging immigration court's jurisdiction

[Cumulative Supplement]

Jurisdiction over an individual vests with the immigration court upon the filing of a notice to appear that has been properly served.[1] Proper service of the notice to appear is a prerequisite to the immigration court's jurisdiction. The filing of a notice to appear which "include[s] a certificate showing service on the opposing party" triggers jurisdiction.[2] In addition, the INA and the regulations require service of a notice to appear with the immigration court. Service of the notice to appear with the immigration court is also a jurisdictional issue. Despite the Board's decision in *Matter of Bermudez-Cota*, *Pereira v. Sessions* creates a baseline determination for the issue of jurisdiction. Before there can be service on either the respondent or the immigration court, you must have a notice to appear. Notices to appear without date and time information do not constitute a notice to appear for purposes of the INA.

The validity of the notice to appear is a starting point for representation in removal proceedings. Practitioners should always review the notice to appear for accuracy and completeness. At the beginning of removal proceedings, typically at a master calendar hearing, a respondent will be asked to plead to the accuracy of the notice to appear. If the notice to appear is

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complete and accurate, a practitioner may admit to the allegation in the notice.[3] If, however, a notice to appear misstates an individual's name, country of nationality, manner of entry, or other information, a practitioner should object and deny the allegations in the notice. A practitioner can request that proceedings be terminated for reissuance of a new notice to appear.

As important, practitioners need to review the notice to appear for children for date and time information, as well as the means of service. If the notice to appear does not include time and place information, practitioners can move to terminate proceedings for lack of jurisdiction. Generally, a notice to appear that does not constitute a notice to appear under *Pereira* ought not to constitute a notice to appear for purposes of jurisdiction.

If a notice to appear contains time and place information, practitioners still need to review the notice to appear for proper service. A notice to appear that states "served on conservator" for example or otherwise fails to clearly state the recipient of service may be inadequate for children. Similarly, service directly on a child under the age of 14 years old is in violation of the regulations. It may be easy, in this context, to establish a regulatory violation. The challenge is determining the remedy for practitioners who wish to terminate proceedings. In *Matter of W-A-F-C-*,[4] the Board determined that the proper remedy was to continue the proceedings to allow DHS to reserve the notice to appear. There is value in a continuance to provide proper service of the notice. Children with collateral defenses may benefit from additional time to allow USCIS to adjudicate other forms of relief.

Additionally, *Matter of W-A-F-C-* is subject to federal appellate review as well as en banc consideration by the Board of Immigration Appeals. This is a significant undertaking best suited for experienced counsel. Counsel with the ability and resources may consider an interlocutory appeal to the Board of Immigration Appeals. Although disfavored, interlocutory appeals are available to challenge jurisdictional issues before the Board.[5] Beyond administrative review, final orders of removal are subject to review in the U.S. Courts of Appeals.[6]*Matter of W-A-F-C-* is reviewable by the U.S. Courts of Appeals subject to any deference owed to the agency in considering the interpretation of its own regulations.

Matter of W-A-F-C- applies to children under 14 years old. Service on children 14 years old and older is governed by the Board's decision in *Matter of Cubor-Cruz*.[7] According to the Board, these children may be served in the same way as adults. Like *Matter of W-A-F-C-*, *Matter of Cubor-Cruz* is subject to federal appellate review. Qualified counsel can challenge the validity of *Cubor-Cruz* before the Board of Immigration Appeals en banc, as well as before the U.S. Courts of Appeals.

CUMULATIVE SUPPLEMENT

Cases:

Alien's failure to call as witness in support of his asylum application a relative, his mother, who was living in United States, and who might have been able to corroborate alien's claims that his paternal grandparents' abuse of him in their home country of Honduras was based, at least in part, on his family status as son of a woman whom the paternal grandparents hated, did not support denial of alien's application for lack of corroboration, where immigration judge never informed alien that he had to provide further evidence by putting his mother on stand despite her sworn declaration, and immigration judge made no explicit finding that it was reasonable to expect alien to produce corroboration of grandparents' motives or that his failure to offer corroborative testimony was inadequately explained. Immigration and Nationality Act §§ 101(a)(42)(A), 208(b)(1)(B)(ii), 8 U.S.C.A. §§ 1101(a)(42)(A), 1158(b)(1)(B)(ii). Enamorado-Rodriguez v. Barr, 941 F.3d 589 (1st Cir. 2019).

[Top of Section]

[END OF SUPPLEMENT]

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B. Strategies for Navigating Removal Proceedings

§ 29. Asylum as defense to removal for children

An asylum application stays the ability of the government to remove a child from the United States while the application is pending. Asylum does not proceed along parallel tracks as described above.[1] Typically, either the immigration court or USCIS has jurisdiction in asylum cases but not both at the same time. There are three different exclusive asylum processes available to children: affirmative asylum, UAC asylum, and defensive asylum. Affirmative asylum is available to children who enter the United States and a notice to appear has not been served in their case. They are not in removal proceedings and can file affirmatively with USCIS. Affirmative cases are decided by the asylum office in a nonadversarial interview.[2]

Similarly, unaccompanied alien children (UACs) can file with USCIS and pursue their asylum claims affirmatively.[3]

Defensive asylum is the third type of asylum proceedings. Children who are issued notices to appear including UACs referred from the asylum office pursue asylum defensively in removal proceedings in immigration court. Defensive asylum is an adversarial process. The government is represented by an attorney from the Department of Homeland Security, who cross-examines the applicant, and an immigration judge who decides the applicant's eligibility for asylum.[4] Affirmative asylum is preferential to defensive asylum. The child is subject to a nonadversarial process and gets a second chance for a positive decision in immigration court if referred by the asylum office.

Asylum also offers the benefit of staying the child's removal while asylum proceedings are ongoing. With current backlogs in the asylum office and immigration court, this can be for a period of years. At the asylum division, children's cases have historically taken priority. Typically, a UAC or children's case is heard within a couple of months at an asylum office. The immigration courts on the other hand may take years to resolve a child's application for asylum. It is common for children to be eligible for more than one form of relief. A child eligible for asylum may also be eligible for Special Immigrant Juvenile status,[5] for example, and can pursue both forms of relief. Children granted Special Immigrant Juvenile status cannot later petition for their parents and asylum is the preferred form of relief. If after an affirmative interview a child is granted asylum, he can withdraw his application for special immigrant juvenile status. Alternatively, if his case is referred to immigration court, he can continue to pursue Special Immigrant Juvenile status before USCIS.

§ 30. Collateral matters in removal proceedings

Distinct from asylum, other collateral matters such as pending applications with USCIS for U Visas, VAWA relief, and Special Immigrant Juvenile status do not stay removal of a child during their pendency. Visas for victims of trafficking, known as T visas, mark a notable exception. "[A] victim of a severe form of trafficking" who intends to apply for a T visa may, "[w]ith the concurrence of [DHS] counsel … request that [removal] proceedings be administratively closed … in order to allow the alien to pursue an application for T nonimmigrant status."[1] "If the alien appears eligible for T nonimmigrant status, the immigration judge or the Board … may grant such a request to administratively close the proceeding."[2] For other collateral matters, in the absence of a meritorious claim for asylum, applicants for relief before USCIS in removal proceedings generally have to rely on termination, administrative closure, and continuances to forestall removal while their applications are being adjudicated. In particular, motions to administratively close and continue cases historically have been granted by immigration judges to allow cases to be adjudicated by USCIS.

The Attorney General's decision in *Matter of Castro-Tum*[3] has significantly limited the availability of termination for applicants with collateral claims. *Matter of L-A-B-R-* has done the same for the availability of continuances. Immigration judges are authorized to "grant a motion for continuance for good cause shown."[4] The Attorney General in *Matter of L-A-B-R-* affirmed that continuances were proper to allow an individual to pursue collateral relief but "should not be granted when a respondent's collateral pursuits were merely speculative."[5] The decision may be problematic for immigrant children when "good cause does not exist if the alien's visa priority date is too remote to raise the prospect of adjustment of status above the speculative level."[6] Children applying for Special Immigrant Juvenile Status with an approved I-360 may have to

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wait years for a visa to become available. It is unclear how *Matter of L-A-B-R-* will be applied to their cases. Practitioners need to martial the evidence and positive factors in their case to demonstrate that relief is not speculative for children applicants. The potential for limiting the use of continuances in *Matter of L-A-B-R-* adds importance to motions to terminate under *Pereira v. Sessions.* The treatment of *Matter of Bermudez-Cota* by the U.S. Courts of Appeals will be significant for children applicants and the efficacy of motions to terminate pursuant to *Pereira*. Practitioners may also need to screen clients for asylum relief. The application of *Matter of L-A-B-R-* may have a significant impact on children's cases and their ability to pursue collateral relief while in removal proceedings.

§ 31. Postdecision motions, and appeals to Board of Immigration Appeals

At the conclusion of removal proceedings in immigration court, the immigration judge issues a decision. If a child is ordered removed by an immigration judge, she has a number of post decision options for challenging or requesting reconsideration of the decision. Immigrants can move for reopening or reconsideration of an immigration judge's decision or appeal the decision to the Board of Immigration Appeals. Motions to reopen provide for additional consideration of a decision based on the submission of new evidence.[1] The motion must "state the new facts that will be proven at a hearing if the motion is granted, and shall be supported by affidavits or other evidentiary material."[2] The regulations require that the new evidence "sought to be offered is material and was not available and could not have been discovered or presented at the former hearing."[3] Aliens are limited to one motion to reopen before the immigration court except if the motion is based on changed circumstances in asylum.[4] Generally, a motion based on new evidence must be "filed within 90 days of the date of entry of a final administrative order of removal."[5] There are no time or numerical limitation for motions to reopen an order denying asylum when the motion is based on "changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and would not have been discovered or presented at the previous proceeding."[6] Additionally, motions to reopen to pursue relief under the Violence Against Women Act are subject to distinct standards and requirements.[7] Among other things, individuals can move to reopen within one year of the entry of the final order except in cases that demonstrate "extraordinary circumstances or extreme hardship to the alien's child."[8] Motions to reopen based on ineffective assistance of counsel[9] and lack of notice in in absentia removal proceedings[10] are subject to their own unique requirements.

A motion to reconsider an immigration judge's decision can be filed for review of errors of law and fact.[11] "The motion shall specify the errors of law or fact in the previous order and shall be supported by pertinent authority."[12] An individual is eligible to file one motion to reconsider[13] and the motion must be filed within 30 days of the date of entry of a final administrative order of removal.[14] Generally, motions to reopen and reconsider filed in immigration court do not automatically stay removal while the motions are pending.[15]

An individual has 30 days from the entry of an order of removal to appeal to the Board of Immigration Appeals. After receiving the notice of appeal, the Board will issue a briefing schedule with a date for filing. A brief arguing to vacate an immigration judge's order may incorporate a motion to remand, which follows the substantive requirements of a motion to reopen and allows the Board to consider new evidence.[16] Filing a notice of appeal with the Board of Immigration Appeals automatically stays removal while the appeal is pending. Jurisdiction with the Board is exclusive to the immigration courts. When a notice of appeal is filed with the Board, the case file is transferred to the Board and the immigration court loses jurisdiction.[17] Motions to reconsider or reopen filed with the immigration court will be dismissed for lack of jurisdiction.[18]

§ 32. Challenging in absentia orders in immigration court

Children may fail to appear for hearings because they did not receive proper service and notice. Children with in absentia orders based on ineffective service and notice can move to reopen their proceedings.[1] A motion to reopen proceedings based on a lack of proper notice can be filed at any time.[2] Filing of the motion automatically stays removal while the motion is pending.[3] Motions to reopen in absentia proceedings in children's cases require service consistent with the regulations for children. *Matter of Amaya-Castro* required that the recipient of service be identified as the Director of the International Emergency Shelter in Los Fresnos, Texas.[4]*Matter of Mejia-Andino* affirms the regulatory mandate of service, whenever possible, upon an alien child's near relative.[5] In that case, an eight-year-old child entered the country with a man who

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purported to be the child's uncle and the Board held service upon the man was not sufficient.[6] When the agency was aware that the child was reuniting with her parents, the immigration judge required service upon the parents.[7] In cases involving children ordered removed in absentia, practitioners should look closely at the notice to appear and method of service to ensure the child received adequate notice. *Pereira v. Sessions* provides additional authority to challenge in absentia orders when the underlying notice to appear did not include time and place information. Although that argument has been called into question by the Board in *Matter of Bermudez-Cota*, the U.S. Courts of Appeals will have an opportunity to weigh in on the issue.

In absentia orders can also be challenged when a child received sufficient notice but failed to appear for a removal hearing because of exceptional circumstances.[8] Motions to reopen based on exceptional circumstances must be filed within 180 days of the issuance of an in absentia order.[9] Filing the motion triggers an automatic stay of removal that is in effect while the motion is pending before the immigration judge.[10] "Exceptional circumstances" is defined as "exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien."[11]*In re J-P-* provides guidance on the steps practitioners should take in developing exceptional circumstances for a successful motion to reopen.[12] There is a considerable body of case law identifying what circumstances are exceptional. Illness can be an exceptional circumstance.[13] Ineffective assistance of counsel can also be an exceptional circumstance supporting a motion to reopen.[14] Motions to reopen based on ineffective assistance of counsel must comply with the requirements in *Matter of Lozada*.[15]

IV. Conclusion

§ 33. Representing children in changing system

This article provides a broad overview of removal proceedings for children. It gives practitioners a general framework for considering removal proceedings in connection with some defenses to removal and other forms of immigration relief. It is not exclusive to the availability of defenses and relief available to immigrant children. But it should provide guidance to managing removal proceedings while pursuing other forms of relief.

Practitioners need to consider the cases of immigrant children strategically. Thus, for the case of a 14-year-old in removal proceedings who is eligible for Special Immigrant Juvenile status and has an I-360 petition pending with USCIS, a practitioner will want to review the sufficiency of the notice to appear under *Pereira*. If the notice to appear does not contain time and place information, then the child will want to move to terminate proceedings. Under the Board's existing precedent of *Matter of Bermudez-Cota*, that motion will likely be denied but attorneys need to preserve the issue for their clients. On appeal to the Board of Immigration Appeals, the client's removal order is automatically stayed. Even if DHS later reissues a notice to appear, the child will, at a minimum, have gained time to allow USCIS to adjudicate his claim. Subsequently, he can move for a continuance pursuant to note 13 in *Matter of Castro-Tum*. The attorney will also want to explore the availability of asylum relief in the child's case. In that case, if an immigration Judge is unwilling to continue the case, the child can file for asylum with the court, which stays removal until the asylum claim is decided.

Practitioners also face strategic decisions for children who are not in proceedings or whose proceedings have been terminated. Filing for asylum for children not in removal proceedings creates the risk that they will be put in proceedings if their case is not successful at the asylum office. Practitioners must weigh the strength of the claim, the cost of delay, and the risk of removal when advising child clients. Similarly, when considering collateral matters with USCIS, practitioners must now consider the possibility of USCIS issuing a notice to appear if the application is denied. The availability of other forms of relief, such as asylum or VAWA cancellation of removal in proceedings may play a role in deciding whether to file. Children with strong claims for relief should go forward with claims, but practitioners need to consider the larger context when providing advice.

At the writing of this article, the fate of children in the immigration system is in the news. In response to a request from the ACLU, a federal judge in the U.S. district court in San Diego enjoined the government from separating families and ordered immigrant children to be reunited with their parents.[1] The order did not implicate the government's authority to enforce

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immigration laws but addressed "the circumstances under which the Government may separate [parents] from their children."[2] The injunction order found that it was likely that the complainants would succeed on their substantive due process claims. The court opined that separating parents and children without procedures to ensure their reunification was so brutal and offensive that it would not "comport with traditional ideas of fair play and decency."[3]

The administration also has requested an exemption from the Flores Agreement to allow the government to detain children with their parents for extended periods. A U.S. district court in California rejected the request.[4] The court found the "Defendants seek to light a match to the Flores Agreement and ask this Court to upend the parties' agreement by judicial fiat."[5] The protections for children in the Flores Agreement remain in place but immigration procedures are changing rapidly. Attorneys representing immigrant children undertake a serious commitment and need to stay informed.

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Footnotes

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6 C.J.L.G. v. Sessions, 880 F.3d 1122, 1142–43 (9th Cir. 2018).

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1 Pereira v. Sessions, 138 S. Ct. 2105, 201 L. Ed. 2d 433 (2018).

2 See §§ [3] to [5].

3 See §§ [6] to [14].

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6 See §§ [19], [24].

7 See § [17].

8 See § [18].

9 See §§ [25] to [32].

1 8 U.S.C.A. § 1101(b)(1), (c)(1).

2 8 C.F.R. § 1236.3(a).

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in an institution, and in the case of a minor under 14 years of age, service shall be made upon the person with whom the incompetent or the minor resides; whenever possible, service shall also be made on the near relative, guardian, committee, or friend.).

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13 In re Mejia-Andino, 23 I. & N. Dec. 533, 2002 WL 31733182 (B.I.A. 2002).

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2 Matter of W-A-F-C-, 26 I. & N. Dec. 880, 882, 2016 WL 7386159 (B.I.A. 2016).

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3 Flores-Chavez v. Ashcroft, 362 F.3d 1150, 1157 (9th Cir. 2004).

4 8 C.F.R. § 242.24.

5 See Flores-Chavez v. Ashcroft, 362 F.3d 1150, 1162 (9th Cir. 2004).

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8 Matter of Castro-Tum, 27 I. & N. Dec. 271, 279, 2018 WL 2299243 (U.S. Att'y Gen. 2018)

9 Matter of Castro-Tum, 27 I. & N. Dec. 271, 279, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

10 Matter of Castro-Tum, 27 I. & N. Dec. 271, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

11 Matter of Castro-Tum, 27 I. & N. Dec. 271, 278, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

12 Matter of Castro-Tum, 27 I. & N. Dec. 271, 277, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

13 Matter of Castro-Tum, 27 I. & N. Dec. 271, 284, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

14 Matter of Castro-Tum, 27 I. & N. Dec. 271, 284, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

15 Matter of Castro-Tum, 27 I. & N. Dec. 271, 284, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

16 Matter of Castro-Tum, 27 I. & N. Dec. 271, 284–85, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

17 Matter of Castro-Tum, 27 I. & N. Dec. 271, 291, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

18 Matter of Castro-Tum, 27 I. & N. Dec. 271, 291, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

19 Matter of Castro-Tum, 27 I. & N. Dec. 271, 291–92 n.13, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

20 Matter of Castro-Tum, 27 I. & N. Dec. 271, 292, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

21 Matter of Castro-Tum, 27 I. & N. Dec. 271, 292, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

22 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 415–16, 2018 WL 3955559 (B.I.A. 2018).

23 8 C.F.R. § 1214.2(a).

24 McHenry, Executive Office of Immigration Review, "Case Priorities and Immigration Court Performance Measures" (January 17, 2018), available at https://www.justice.gov/eoir/page/file/1026721/download (last accessed October 9, 2018).

25 McHenry, Executive Office of Immigration Review, "Case Priorities and Immigration Court Performance Measures" at Appendix A note 7 (January 17, 2018), available at https://www.justice.gov/eoir/page/file/1026721/download (last accessed October 9, 2018).

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1 8 C.F.R. § 1003.14(a).

2 8 C.F.R. § 1003.13. And see 8 C.F.R. § 1239.1(a) ("Every removal proceeding conducted under section 240 of the Act … is commenced by the filing of a notice to appear with the immigration court.").

3 8 U.S.C.A. § 1229(a)(1)(G)(i).

4 Pereira v. Sessions, 138 S. Ct. 2105, 2108, 201 L. Ed. 2d 433 (2018).

5 MATTER OF GERMAN BERMUDEZ-COTA, RESPONDENT, 27 I. & N. Dec. 441, 2018 WL 4204259 (B.I.A. 2018).

6 Pereira v. Sessions, 138 S. Ct. 2105, 2116, 201 L. Ed. 2d 433 (2018).

7 MATTER OF GERMAN BERMUDEZ-COTA, RESPONDENT, 27 I. & N. Dec. 441, 443, 2018 WL 4204259 (B.I.A. 2018).

8 Pereira v. Sessions, 138 S. Ct. 2105, 2116, 201 L. Ed. 2d 433 (2018).

9 8 U.S.C.A. § 1229(b)(1).

10 Pereira v. Sessions, 138 S. Ct. 2105, 2108 (2018).

11 Pereira v. Sessions, 138 S. Ct. 2105, 2115, 201 L. Ed. 2d 433 (2018).

12 Pereira v. Sessions, 138 S. Ct. 2105, 2115, 201 L. Ed. 2d 433 (2018).

13 Pereira v. Sessions, 138 S. Ct. 2105, 2115, 201 L. Ed. 2d 433 (2018).

14 Webster v. Fall, 266 U.S. 507, 511, 45 S. Ct. 148, 69 L. Ed. 411 (1925).

15 See U.S. v. L. A. Tucker Truck Lines, Inc., 344 U.S. 33, 38, 73 S. Ct. 67, 97 L. Ed. 54 (1952) ("Even as to our own judicial power or jurisdiction, this Court has followed the lead of Chief Justice Marshall who held that this Court is not bound by a prior exercise of jurisdiction in a case where it was not questioned and it was passed sub silentio.").

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16 See, e.g., Dababneh v. Gonzales, 471 F.3d 806, 810 (7th Cir. 2006).

17 See, e.g., Busby v. Crown Supply, Inc., 896 F.2d 833, 840–41 114 Lab. Cas. (CCH) ¶ 12032, R.I.C.O. Bus. Disp. Guide (CCH) ¶ 7424 (4th Cir. 1990) (allowing for overturning earlier circuit court decisions based on a "superseding contrary decision of the Supreme Court").

18 See 8 C.F.R. §§ 239.1, 1239.1.

19 MATTER OF GERMAN BERMUDEZ-COTA, RESPONDENT, 27 I. & N. Dec. 441, 446, 2018 WL 4204259 (B.I.A. 2018).

20 MATTER OF GERMAN BERMUDEZ-COTA, RESPONDENT, 27 I. & N. Dec. 441, 442, 2018 WL 4204259 (B.I.A. 2018).

21 Pereira v. Sessions, 138 S. Ct. 2105, 2108, 201 L. Ed. 2d 433 (2018).

22 Pereira v. Sessions, 138 S. Ct. 2105, 2108, 201 L. Ed. 2d 433 (2018).

23 Pereira v. Sessions, 138 S. Ct. 2105, 2116, 201 L. Ed. 2d 433 (2018).

24 Pereira v. Sessions, 138 S. Ct. 2105, 2114, 201 L. Ed. 2d 433 (2018).

25 Pereira v. Sessions, 138 S. Ct. 2105, 2114, 201 L. Ed. 2d 433 (2018) (quotations and citations omitted).

26 8 U.S.C.A. § 1229b(d)(1)(A).

27 See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 313, 70 S. Ct. 652, 656–57, 94 L. Ed. 865 (1950) (Due process requires "that deprivation of life, liberty or property by adjudication be preceded by notice and opportunity for hearing appropriate to the nature of the case.").

28 See In re G-Y-R-, 23 I. & N. Dec. 181, 184, 2001 WL 1515819 (B.I.A. 2001) ("The alien must be properly served with the [NTA] before … the Immigration Judge is authorized to proceed…."); Matter of Hernandez, 21 I. & N. Dec. 224, 226 (BIA 1996) (distinguishing explanation of the meaning of the NTA from jurisdictional requirements of service); In re Mejia-Andino, 23 I. & N. Dec. 533, 2002 WL 31733182 (B.I.A. 2002) (terminating proceedings when service was improper).

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29 See In the Matter of C——-, 6 I. & N. Dec. 366, 370–71, 1954 WL 7887 (B.I.A. 1954) (The Board considered the failure to comply with a statutory mandate that "notice shall be given in the manner provided by the laws of the state." The Board concluded that "[w]ithout proper notice to the holder of the certificate the court never secured jurisdiction over that person, and its judgment is void.").

30 See Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 94, 118 S. Ct. 1003, 1012, 140 L. Ed. 2d 210, 46 Env't. Rep. Cas. (BNA) 1097, 28 Envtl. L. Rep. 20434 (1998) ("Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.") (citation omitted).

31 See Matter of Castro-Tum, 27 I. & N. Dec. 271, 283 n.6, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

32 See Matter of Hernandez-Puente, 20 I. & N. Dec. 335, 339, 1991 WL 353520 at *4 (B.I.A. 1991) ("Our jurisdiction is defined by the regulations and we have no jurisdiction unless it is affirmatively granted by the regulations."); In re G-N-C, 22 I. & N. Dec. 281, 1998 WL 646918 (B.I.A. 1998) (rejected on other grounds by, Castro-Cortez v. I.N.S., 239 F.3d 1037 (9th Cir. 2001)) (Referencing 8 C.F.R. § 239.2(c) which "marks a clear boundary between the time prior to commencement of proceedings, when a service officer has decisive power to cancel proceedings, and the time following commencement, where the service officer merely has the privilege to move for dismissal of proceedings.").

33 See Flores-Chavez v. Ashcroft, 362 F.3d 1150, 1163 (9th Cir. 2004) (Asserting the principle of constitutional avoidance to reopen in absentia proceedings when the issue of sufficiency of notice could raise serious constitutional due process questions.).

34 See Matter of Castro-Tum, 27 I. & N. Dec. 271, 283 n.6, 2018 WL 2299243 (U.S. Att'y Gen. 2018) (Immigration judges are limited "to authorities that are 'appropriate and necessary' to resolving cases in a manner consistent with existing statutes and regulations, rather than authorizing novel tools for adjudication."); Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc., 467 U.S. 837, 845, 104 S. Ct. 2778, 81 L. Ed. 2d 694, 21 Env't. Rep. Cas. (BNA) 1049, 14 Envtl. L. Rep. 20507 (1984) (Courts will not disturb an agency's choice if is a reasonable accommodation of conflicting policies that were committed to the agency's care by the statute.).

35 In re Mejia-Andino, 23 I. & N. Dec. 533, 537, 2002 WL 31733182 at *4 (B.I.A. 2002).

36 Matter of Castro-Tum, 27 I. & N. Dec. 271, 2018 WL 2299243 (U.S. Att'y Gen. 2018); Matter of Avetisyan, 25 I. & N. Dec. 688, 2012 WL 390562 (B.I.A. 2012), and a related case, Matter of W-Y-U-, 27 I. & N. Dec. 17, 2017 WL 1407265 (B.I.A. 2017), were overruled to the extent that they are inconsistent with the holding in *Castro-Tum*.

37 Matter of Castro-Tum, 27 I. & N. Dec. 271, 293 n.13, 2018 WL 2299243 (U.S. Att'y Gen. 2018).

38 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 413, 2018 WL 3955559 (B.I.A.

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39 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 413, 2018 WL 3955559 (B.I.A. 2018).

40 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 413, 2018 WL 3955559 (B.I.A. 2018).

41 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 415, 2018 WL 3955559 (B.I.A. 2018).

42 8 U.S.C.A. § 1232(f)(8).

43 8 C.F.R. § 1003.10(b).

44 Osorio-Martinez v. Attorney General United States of America, 893 F.3d 153, 173 (3d Cir. 2018) (other citations omitted).

1 8 U.S.C.A. § 1158(a)(2)(B).

2 Gonzalez-Medina v. Holder, 641 F.3d 333, 336–37 (9th Cir. 2011) (equal protection challenge rejected); Ticoalu v. Gonzales, 472 F.3d 8, 11 (1st Cir. 2006) (no due process right because asylum is discretionary); Sukwanputra v. Gonzales, 434 F.3d 627, 631–32 (3d Cir. 2006) (rejecting Supremacy Clause and due process challenges).

3 8 U.S.C.A. § 1158(a)(2)(D); 8 C.F.R. § 208.4(a)(2)(i)(B).

4 8 U.S.C.A. § 1158(a)(2)(E).

5 See U.S. Citizenship and Immigration Services, "Affirmative Asylum Interview Scheduling," available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling (last accessed October 9, 2018).

1 6 U.S.C.A. § 279(g)(2).

2 8 U.S.C.A. § 1158(a)(2)(E).

3 See 8 U.S.C.A. § 1158(b)(3)(C).

4 Kim, Acting Chief, Asylum Division, USCIS, Updated Procedures for determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children, May 28, 2013, available at https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/determ-juris-asylum-app-file-unaccom

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5 Kim, Acting Chief, Asylum Division, USCIS, Updated Procedures for determination of Initial Jurisdiction over Asylum Applications Filed by Unaccompanied Alien Children, May 28, 2013, available at https://www.uscis.gov/sites/default/files/USCIS/Humanitarian/Refugees%20%26%20Asylum/Asylum/Minor%20Children%20Applying%20for%20Asylum%20By%20Themselves/determ-juris-asylum-app-file-unaccompanied-alien-children.pdf (last accessed October 8, 2018).

6 King, General Counsel, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 8, 2018).

7 McHenry, Acting Director, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 9, 2018).

8 Keller, Chief Immigration Judge, U.S. Dept. of Justice, Executive Office for Immigration Review, "Operating Policies and Procedures Memorandum 17-03, Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children," (Dec. 20, 2017), available at https://www.justice.gov/eoir/file/oppm17-03/download (last accessed October 8, 2018).

9 McHenry, Acting Director, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 9, 2018) (emphasis omitted).

10 McHenry, Acting Director, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 9, 2018).

11 McHenry, Acting Director, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 9, 2018).

12 McHenry, Acting Director, Executive Office for Immigration Review, "Legal Opinion re: EOIR's Authority to Interpret the term Unaccompanied Alien Child for Purposes of Applying Certain Provisions of TVPRA," (September 19, 2017), available at https://cliniclegal.org/sites/default/files/resources/King-9-19-17-UAC-TVPRA.pdf (last accessed October 9, 2018).

13 See Catholic Legal Immigration Network, Inc., "Immigration judges' authority to review 'unaccompanied alien child' (UAC) determinations," available at https://cliniclegal.org/resources/immigration-judges-authority-review-unaccompanied-alien-child-uac-determinations (last accessed October 9, 2018).

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[1] Himri v. Ashcroft, 378 F.3d 932, 936 (9th Cir. 2004), opinion amended, 2004 WL 1879255 (9th Cir. 2004) and as amended, (Aug. 24, 2004).

[2] Bernal-Rendon v. Gonzales, 419 F.3d 877, 880–81 (8th Cir. 2005).

[3] Matter of A-D-AXXX XXX 526 (BIA MAY 22,2017). This is consistent with USCIS practice of excusing all applicants under the age of 18 under 8 C.F.R. § 1208.4(a)(5)(ii).
USCIS Asylum Division, Asylum Officer Basic Training Course, Guidelines for Children's Asylum Claims (March 21, 2009), available at https://cliniclegal.org/sites/default/files/AOBTC_Lesson_29_Guidelines_for_Childrens_Asylum_Claims_0.pdf (last accessed October 9, 2018).

[1] 8 U.S.C.A. § 1101(b)(1).

[2] 8 U.S.C.A. § 1101(a)(15)(F)(ii), (H)(iii), (J), (K)(iii), (L), (M)(ii) and 8 U.S.C.A. § 1255(d).

[3] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[4] Matter of Y-C-, 23 I. & N. Dec. 286, 2002 WL 393174 (B.I.A. 2002).

[5] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[6] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[7] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[8] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[9] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[10] Matter of A-D-AXXX XXX 526 (BIA MAY 22, 2017).

[11] See U.S. Citizenship and Immigration Services, "Affirmative Asylum Interview Scheduling," available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-interview-scheduling (last accessed October 9, 2018).

[1] See 8 U.S.C.A. § 1158(b)(1)(B(i).

[2] See Matter of A-B-, 27 I. & N. Dec. 316, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

[3] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 2014 WL 4259462 (B.I.A. 2014).

[4] Matter of A-B-, 27 I. & N. Dec. 316, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

[5] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 2014 WL 4259462 (B.I.A. 2014).

[6] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 2014 WL 4259462 (B.I.A. 2014).

[7] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 393, 2014 WL 4259462 (B.I.A. 2014).

[8] Matter of A-R-C-G-, 26 I. & N. Dec. 388, 394, 2014 WL 4259462 (B.I.A. 2014) (citations and quotations

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omitted).

9 Matter of A-B-, 27 I. & N. Dec. 316, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

10 Matter of A-B-, 27 I. & N. Dec. 316, 333, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

11 Matter of A-B-, 27 I. & N. Dec. 316, 337, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

12 Matter of A-B-, 27 I. & N. Dec. 316, 335, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

13 Matter of A-B-, 27 I. & N. Dec. 316, 336, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

14 Matter of A-B-, 27 I. & N. Dec. 316, 338–339, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

15 Matter of A-B-, 27 I. & N. Dec. 316, 339, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

16 Matter of A-B-, 27 I. & N. Dec. 316, 337, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

17 Matter of S-E-G-, 24 I. & N. Dec. 579, 583–84, 2008 WL 2927590 at *5 (B.I.A. 2008).

18 Matter of A-B-, 27 I. & N. Dec. 316, 336, 2018 WL 3091048 (U.S. Att'y Gen. 2018).

19 Hernandez-Avalos v. Lynch, 784 F.3d 944 (4th Cir. 2015).

20 Crespin-Valladares v. Holder, 632 F.3d 117 (4th Cir. 2011).

21 Villatoro v. Sessions, 685 Fed. Appx. 242, 249 (4th Cir. 2017).

22 Zavaleta-Policiano v. Sessions, 873 F.3d 241, 244–45, 249 (4th Cir. 2017).

23 Matter of L-E-A-, 27 I. & N. Dec. 40, 2017 WL 2305431 (B.I.A. 2017).

24 Tchoukhrova v. Gonzales, 404 F.3d 1181 (9th Cir. 2005), cert. granted, judgment vacated, 549 U.S. 801, 127 S. Ct. 57, 166 L. Ed. 2d 7 (2006).

Caution:
Note that *Tchoukhrova* was vacated by the Supreme Court in Gonzales v. Tchoukhrova, 549 U.S. 801, 127 S. Ct. 57, 166 L. Ed. 2d 7 (2006), on the basis that the Ninth Circuit was not permitted to consider the question of social group membership de novo but was instead required to remand to the Board of Immigration Appeals. See Anker, Law of Asylum in the United States § 5:44.

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25 See, e.g., Kadri v. Mukasey, 543 F.3d 16, 21 (1st Cir. 2008).

26 Cece v. Holder, 733 F.3d 662 (7th Cir. 2013) (rejecting "young, attractive Albanian women who are forced into prostitution").

27 Matter of B-F-O-, A# XXX-XXX-XXX (BIA 2001).

28 Matter of B-F-O-, A# XXX-XXX-XXX (BIA 2001).

29 Matter of "X" (BIA April 28, 2017).

30 Matter of "X" (BIA April 28, 2017).

31 Matter of "X" (BIA April 28, 2017).

32 Matter of "X" (BIA April 28, 2017).

33 Matter of "X" (BIA April 28, 2017).

34 Matter of "X" (BIA April 28, 2017).

35 Matter of "X" (BIA April 28, 2017).

1 See U.S. Department of Justice, Board of Immigration Appeals Practice Manual, available at https://www.justice.gov/eoir/page/file/1079696/download (last accessed October 9, 2018).

2 See U.S. Citizenship and Immigration Services, "Humanitarian," available at https://www.uscis.gov/humanitarian (last accessed October 9, 2018).

1 See American Bar Association Commission on Immigration, "Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States," Section V (Aug. 2004), available at https://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/Immigrant_Standards.authcheckdam.pdf (last accessed October 9, 2018).

2 American Bar Association Commission on Immigration, "Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States," Section V (Aug. 2004), available at https://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/Immigrant_Standards.authcheckdam.pdf (last accessed October 9, 2018).

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4 American Bar Association Commission on Immigration, "Standards for the Custody, Placement and Care; Legal Representation; and Adjudication of Unaccompanied Alien Children in the United States," Section V (Aug. 2004), available at https://www.americanbar.org/content/dam/aba/migrated/Immigration/PublicDocuments/Immigrant_Standards.authcheckdam.pdf (last accessed October 9, 2018).

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7 See Kids In Need of Defense, "Chapter 1: Representing Children in Immigration Matters" (April 12, 2015), available at https://supportkind.org/wp-content/uploads/2015/04/Chapter-1-Representing-Children-In-Immigration-Matters.pdf (last accessed October 9, 2018).

8 Kids In Need of Defense, "Chapter 1: Representing Children in Immigration Matters" (April 12, 2015), available at https://supportkind.org/wp-content/uploads/2015/04/Chapter-1-Representing-Children-In-Immigration-Matters.pdf (last accessed October 9, 2018).

1 USCIS Policy Memorandum PM-602-0050.1: "Updated Guidance for the Referral of Cases and Issuance of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens" p. 7 (June 28, 2018), available at https://www.uscis.gov/sites/default/files/USCIS/Laws/Memoranda/2018/2018-06-28-PM-602-0050.1-Guidance-for-Referral-of-Cases-and-Issuance-of-NTA.pdf (last accessed October 9, 2018).

1 8 U.S.C.A. § 239(a)(1), 1229.

2 8 C.F.R. § 1003.14(a).

3 See U.S. Department of Justice, "Immigration Court Practice Manual" at Appendix M, available at https://www.justice.gov/sites/default/files/pages/attachments/2017/11/02/practicemanual.pdf (last accessed October 9, 2018) (providing sample oral pleadings).

4 See § 7.

5 Board of Immigration Appeals Practice Manual, § 4.14(c) ("The Board does not normally entertain interlocutory appeals and generally limits interlocutory appeals to instances involving either important jurisdictional questions regarding the administration of the immigration laws or recurring questions in the handling of cases by Immigration Judges."). See Higgs v. Atty. Gen. of the U.S., 655 F.3d 333 (3d Cir. 2011), as amended, (Sept. 19, 2011).

6 8 U.S.C.A. § 1240.

7 See § 8.

1 See § 25.

2 See U.S. Citizenship and Immigration Services, "The Affirmative Asylum Process," available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/affirmative-asylum-process (last accessed October 9, 2018).

3 See U.S. Citizenship and Immigration Services, "Minor Children Applying for Asylum By Themselves,"

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available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/minor-children-applying-asylum-themselves (last accessed October 9, 2018). UAC's who receive a notice to appear and are in removal proceedings in immigration court have their cases transferred to the asylum office for resolution. All children, who are not granted asylum by the asylum office, may receive notices to appear and be referred to immigration court for defensive proceedings.

4 U.S. Citizenship and Immigration Services, "Obtaining Asylum in the United States," available at https://www.uscis.gov/humanitarian/refugees-asylum/asylum/obtaining-asylum-united-states (last accessed October 9, 2018).

5 See 8 C.F.R. § 204.11.

1 8 C.F.R. § 1214.2(a).

2 8 C.F.R. § 1214.2(a).

3 See § 18.

4 8 C.F.R. § 1003.29.

5 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 414, 2018 WL 3955559 (B.I.A. 2018).

6 MATTER OF L-A-B-R- ET AL., RESPONDENTS, 27 I. & N. Dec. 405, 418, 2018 WL 3955559 (B.I.A. 2018).

1 8 U.S.C.A. § 1229a(c)(7).

2 8 U.S.C.A. § 1229a(c)(7)(B).

3 8 C.F.R. § 1003.2(c).

4 8 U.S.C.A. § 1229a(c)(A).

5 8 U.S.C.A. § 1229a(c)(7)(C)(i).

6 8 U.S.C.A. § 1229a(c)(7)(C)(ii).

7 8 U.S.C.A. § 1229a(c)(7)(C)(iv).

8 8 U.S.C.A. § 1229a(c)(7)(C)(iv)(III).

9 See, e.g., Hovakimyan v. Holder, 350 Fed. Appx. 123 (9th Cir. 2009); In re Assaad, 23 I. & N. Dec. 553, 556, 2003 WL 327497 (B.I.A. 2003) (overruled by, Matter of Compean, 24 I. & N. Dec. 710, 2009 WL 47338 (U.S. Att'y Gen. 2009)) (*Compean* itself subsequently vacated in Matter of Compean, 25 I. & N. Dec. 1, 2009 WL 1570283 (U.S. Att'y Gen. 2009).

10 8 U.S.C.A. § 1229a(b)(5)(C)(ii).

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11 8 U.S.C.A. § 1229a(c)(6).

12 8 U.S.C.A. § 1229a(c)(6)(C).

13 8 U.S.C.A. § 1229a(c)(6)(A).

14 8 U.S.C.A. § 1229a(c)(6)(B).

15 8 C.F.R. § 1003.23(b)(1)(v).

16 See Matter of Coelho, 20 I. & N. Dec. 464, 471, 473, 1992 WL 195806 at *6–*7 (B.I.A. 1992).

17 See Fonua v. Holder, 474 Fed. Appx. 542 (9th Cir. 2012).

18 See 8 C.F.R. § 1003.23(b)(1); Shuai Zheng v. Holder, 333 Fed. Appx. 603, 605 (2d Cir. 2009).

1 8 U.S.C.A. § 1229a(b)(5)(C)(ii).

2 8 U.S.C.A. § 1229a(b)(5)(C)(ii).

3 8 U.S.C.A. § 1229a(b)(5)(C).

4 Matter of Amaya-Castro, 21 I. & N. Dec. 583, 584, 1996 WL 507350 (B.I.A. 1996); see § 6.

5 In re Mejia-Andino, 23 I. & N. Dec. 533, 2002 WL 31733182 (B.I.A. 2002).

6 In re Mejia-Andino, 23 I. & N. Dec. 533, 2002 WL 31733182 (B.I.A. 2002).

7 In re Mejia-Andino, 23 I. & N. Dec. 533, 2002 WL 31733182 (B.I.A. 2002).

8 8 U.S.C.A. § 1229a(b)(5)(C).

9 8 U.S.C.A. § 1229a(b)(5)(C).

10 8 U.S.C.A. § 1229a(b)(5)(C).

11 8 U.S.C.A. § 1229a(e)(1).

12 In re J-P-, 22 I. & N. Dec. 33, 34–35, 1998 WL 299471 (B.I.A. 1998).

13 8 U.S.C.A. § 1229a(e)(1).

14 In re Grijalva-Barrera, 21 I. & N. Dec. 472, 473–74, 1996 WL 413571 at *2 (B.I.A. 1996).

15 Matter of Lozada, 19 I. & N. Dec. 637, 1988 WL 235454 (B.I.A. 1988) (overruled by, Matter of Compean, 24 I. & N. Dec. 710, 2009 WL 47338 (U.S. Att'y Gen. 2009)) (*Compean* itself subsequently vacated in Matter of Compean, 25 I. & N. Dec. 1, 2009 WL 1570283 (U.S. Att'y Gen. 2009).

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1 Ms. L. v. U.S Immigration and Customs Enforcement ("ICE"), 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

2 Ms. L. v. U.S Immigration and Customs Enforcement ("ICE"), 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

3 Ms. L. v. U.S Immigration and Customs Enforcement ("ICE"), 310 F. Supp. 3d 1133 (S.D. Cal. 2018).

4 See Flores v. Sessions, Order Denying Defendants'"Ex Parte Application for Limited Relief from Settlement Agreement," Case No. CV 85-4544-DMG (U.S.D.C. C.D.C. July 9, 2018), available at https://www.aila.org/File/Related/14111359ac.pdf (last accessed October 2, 2018); 95 No. 27 Interpreter Releases Art. 8.

5 See Flores v. Sessions, Order Denying Defendants'"Ex Parte Application for Limited Relief from Settlement Agreement," Case No. CV 85-4544-DMG (U.S.D.C. C.D.C. July 9, 2018), available at https://www.aila.org/File/Related/14111359ac.pdf (last accessed October 2, 2018).

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SPEAKING ENGAGEMENTS

PURPOSE:	To update the policy surrounding speaking engagements and the procedures employees must follow when requesting approval to speak at outside engagements.
OWNER:	Office of the Director
AUTHORITY:	18 U.S.C. § 209; 5 CFR § 2635.201-205, 2635.807(a)(2)(iii)(D); 8 CFR § 1003.0(b)(l); 41 CFR Chapter 304.
CANCELLATION:	*Submission and Processing of Requests for Speaking Engagements*, January 2020

I. Introduction

Our agency's stakeholders and other members of the public continue to be interested in hearing about, and understanding, what the agency does and specifically how immigration courts operate. Our immigration judges, appellate immigration judges, and administrative law judges, along with senior EOIR officials and other staff, are frequently invited to speak or write on immigration law and policy at different events across the country. EOIR encourages qualified personnel at all levels to engage in these public speaking opportunities as a means of keeping the public informed of EOIR's mission, operations, and programs.

The agency has issued several memoranda related to speaking engagement approvals, most recently focusing on the process through the Speaking Engagement Team (SET) on the intranet portal. The SET consists of representatives from the Office of Policy, the Office of the General Counsel (OGC), and the Office of the Director, and assists with ensuring compliance with both the law and agency policy while also promoting consistency in all of EOIR's communications.

The following updates to the requirements related to personal and official capacity requests changes the process for seeking approval for official capacity requests and eliminates the requirement to seek approval for personal capacity speaking engagements on subjects unrelated to a person's official duties.

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EOIR appreciates the diversity of our workforce and recognizes that employees engage in many activities outside of the workplace, often unrelated to their official duties. That said, speaking engagements directly related to the employee's official duties provide the public with the impression that the speech has the imprimatur of the agency, and therefore, require close coordination with the employee's supervisor, who may receive guidance from the SET. It is equally important, however, that employees enjoy the uninhibited ability to speak in a personal capacity about those parts of their lives that do not relate to their job.

II. Official Capacity

When an employee is invited to participate in an event because of their official position, is expected to discuss agency policies, programs, or a subject matter that directly relates to their official duties, or otherwise appear on behalf of the agency, the appearance and participation will be considered in an official capacity. Employees must request and receive their supervisor's approval prior to accepting an invitation to speak or participate in a panel in their official capacity. The request for approval must include event logistics and intended materials (i.e., presentations, talking points, handouts). Supervisors are encouraged to grant appropriate requests.

When an EOIR employee is assigned to participate as a speaker or panel participant or otherwise present information on behalf of the agency at a conference or other event, or requests to do so, the employee is doing so in an official capacity. Further, any EOIR employee speaking at an event hosted by a Federal Department, Office, or Agency, or at an event featuring representatives from other Departments, Offices, Agencies or members of Congress, is presumed to be speaking in an official capacity.

Supervisors must consider the nature and purpose of the engagement, the host(s) and sponsor(s) of the event, and whether the event provides an appropriate forum for the dissemination of the information to be presented, before making a determination on the appropriate capacity of an individual employee's involvement. Supervisors may seek assistance from the SET in determining the appropriate capacity for a specific event.

III. Personal Capacity

An employee who seeks to speak in a personal capacity on a topic that is unrelated to official duties is not required to seek supervisory approval for participating in the engagement. However, if the engagement occurs during an official schedule of duty, a leave request submitted through the Time and Attendance process is required, and pursuant to OPM Policy supervisors may inquire how the employee intends to use the time before approving the leave request. Administrative leave is not authorized for a personal capacity speaking engagement. Examples of personal capacity engagements can be found at Appendix A. If a supervisor approves an engagement, the supervisor would then obtain and provide guidance related to any ethical obligations that may impact the individual's decisions regarding participation. Any employee who does not seek supervisory approval for speaking in a personal capacity is responsible for determining any ethical obligations associated with the speaking engagement, and is encouraged to contact the OGC Ethics Program. If an employee believes that there is potential that a speaking engagement may result in the perception by the public that the engagement relates to the employee's official duties or employment with EOIR, the employee is encouraged to discuss the engagement with their supervisor, who will assist in determining if approval is required.

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Supervisors may also provide direction to the employee on the appropriateness of material to be shared and on the substance of information conveyed during the engagement to avoid the perception that the employee is speaking in an official capacity or with EOIR's imprimatur.

Employees and supervisors are encouraged to maintain an open dialogue regarding public speaking engagements. An employee who participates in an event that requires official capacity, or improperly presents the appearance of official capacity, without first obtaining supervisory approval may be subject to discipline.

When an EOIR employee participates in a speaking engagement in a personal capacity, the employee is not appearing at the event as part of the employee's official duties or on behalf of the agency. Therefore, the employee may not state or imply that EOIR endorses or sanctions the speaking engagement, as it is considered an outside speaking activity. When participating in an outside speaking activity in a personal capacity, EOIR employees may not use an official title or position or permit the use of an official title or position to identify themselves in connection with such information is included as one of several biographical details and is given to identify the individual in connection with the activity, provided that the title or position is given no more prominence than other significant biographical details. When an employee's official title and/or position is used as part of an overall biographical sketch of the employee, a disclaimer is not required. When an introduction does not include an overall biographical sketch, an employee may be introduced using an official title or position so long as the employee indicates at the beginning of the remarks that the employee is not speaking on behalf of the agency.[1] Further, as discussed above, employees must be in an annual leave status for any personal capacity event occurring during their schedule of duty.

EOIR employees speaking in a personal capacity are responsible for ensuring that the hosting organization is aware that the employee is appearing in a personal capacity and does not improperly convey appearance of official capacity (*e.g.*, promotional materials including the employee speaker's name and official title outside of the guidelines herein). Whether or not the employee opted to seek supervisory approval for participating in a speaking engagement in their personal capacity, if the circumstances surrounding the speaking event change, the requesting employee should convey such changes to the supervisor to consider the advisability of the employee's continued participation. The supervisor may consult with the SET for additional guidance, if needed.[2]

IV. Supervisor's Decision

Supervisors must submit for guidance from the SET all speaking engagement requests that relate to the employee's official duties—regardless of the employee's proposed capacity. It is important to note that the OGC Ethics Program (Ethics) will receive and review all speaking engagement requests that relate to the employee's official duties, regardless of capacity, that a supervisor has recommended for approval. Note that, while Ethics does not approve or deny requests to speak, it offers guidance to avoid speakers' ethical dilemmas, including the prohibition

[1] An example of a proper disclaimer is "The views and opinions I am expressing today are my personal views and opinions and are not necessarily those of EOIR."

[2] Supervisors seeking additional guidance on an approved request may submit an email directly to the SET team at EOIR.Speakers@EOIR.USDOJ.GOV. The SET email address should only be used for approved requests or for troubleshooting issues with the online portal. All new requests or resubmissions must be submitted through the SET portal.

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against the receipt of compensation for any speaking engagements that are in an official capacity or are related to one's official duties. If, following review, Ethics has guidance to provide to an employee, Ethics will provide its comments to the employee and supervisor. When the supervisor is submitting a speaking engagement request through the portal for informational purposes only, such as a personal capacity engagement or a subsequent official capacity engagement where blanket approval has been granted, (i.e., the supervisor is not seeking SET guidance), no further action is required after submitting the request through the portal.

Supervisors seeking guidance on speaking capacity are encouraged to submit such requests at least ten days before the speaking engagement. If a supervisor is evaluating a request for personal capacity and seeks guidance to determine whether the employee should participate instead in official capacity, the supervisor must include in the request for guidance the employee's talking points and any handouts or presentation materials associated with the speaking engagement. When seeking such guidance, the supervisor must also include specific questions or notes in the Comments section of the speaking engagement Request Form.

After the supervisor completes the final review of an employee's request, including consideration of any guidance received from the SET, the supervisor will make the final decision concerning approval or denial of the request and inform the employee of the supervisor's decision. The supervisor may also advise the employee of any guidance offered by the SET, and will provide any guidance offered by Ethics.

V. Travel

If travel is required for an employee to speak in an official capacity, generally the employee may not accept reimbursement for travel and related expenses from any source other than the government. However, 41 C.F.R. Chapter 304 authorizes the Department (or the employee on the Department's behalf) to accept payment of travel expenses from a non-Federal source, but only "when specifically authorized to do so" and "only for official travel to a meeting." Please note that EOIR has determined, as a matter of policy, that it will not accept any payment for the official travel of its employees by a non-Federal source that is considered a prohibited source for EOIR.[3] A prohibited source is a person or entity who seeks official action from the agency, does business with the agency, appears before the agency, or is an organization a majority of whose members are described in this section.[4] EOIR employees must avoid all improprieties and the appearance of impropriety to ensure complete public confidence in the integrity of our agency. The acceptance of travel reimbursement for official duties from prohibited sources could undermine the public's confidence in the impartiality of EOIR's adjudicators. Likewise, under no circumstances may an EOIR employee receive a supplementation of salary (e.g., an honorarium) from a non-Federal source for a speaking activity that is done in an official capacity.[5]

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[3] 41 C.F.R § 304-5.3 further provides that reimbursement for travel from outside sources must not be authorized if the approving official determines that acceptance of the payment under the circumstances would cause a reasonable person with knowledge of all the facts relevant to a particular case to question the integrity of agency programs or operations. An employee who accepts travel from a non-Federal source in violation of 41 C.F.R. § 304-1.2 may be required to repay the amount of payment accepted from the non-Federal source and could be subject to additional penalties.

[4] 5 C.F.R. § 2635.203(d).

[5] 18 U.S.C. § 209.

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If an EOIR employee travels to speak at an event in a personal capacity, the employee is not entitled to travel reimbursement by the agency. When traveling in a personal capacity, an EOIR employee may accept reimbursements for travel expenses from the entity that is sponsoring the activity.[6] Employees offered travel reimbursement for mere attendance (without a speaking commitment, such as on a panel) at a conference in a personal capacity must contact Ethics for a determination as to whether accepting the reimbursement of travel expenses is appropriate. Ethics will apply the gift rules in deciding whether the employee may accept payment of these expenses. Factors that must be taken into consideration when applying the gift rules include the source and value of the reimbursement.[7] In all circumstances involving reimbursement for travel from a non-government entity, EOIR highly encourages employees to consult their supervisor to ensure the employee's evaluation of the travel reimbursement does not create any ethical conflicts or other issues based on the employee's official duties.

VI. Exception for Teaching

An employee who is interested in teaching an immigration law course, or any course on a subject matter or topic that is related to their official duties, is required to obtain prior approval from their supervisor. Additionally, it is recommended, but not required, that supervisors submit speaking engagements in the form of teaching requests for those courses described above and others to the SET - primarily for informational purposes - but also to confirm if the employee may receive compensation. Of course, supervisors may seek additional guidance as needed or desired.

When engaging in teaching, speaking, or writing in a personal capacity, an employee may not use nonpublic information, or use an official title except as part of other biographical information. An employee may not use their official time or that of another employee for the engagement, including preparation of materials.

VII. Exclusions and Blanket Approvals for Recurring Speaking Engagements

Although speaking in an official capacity, EOIR employees who engage with the public or other agencies as part of their assigned duties or on a recurring or repetitive basis may obtain blanket approval. The supervisor will determine whether a blanket approval is appropriate for the engagement and any subsequent engagements after considering information provided by the employee, including clear descriptions of the purpose, format, audience, participants, and topics covered. When such a blanket approval is granted, employees need only notify their supervisor that they will be attending any subsequent meetings. Employees must take care to stay within the bounds of the approval and to seek additional approvals as necessary.

VIII. Conclusion

This policy may not address every situation that may arise related to speaking engagements. It is intended to restate and clarify the standard for evaluating requests for speaking engagements. If questions arise regarding the application of this policy or the proper determination of a speaking capacity, please contact the Speaking Engagement Team at EOIR.Speakers@EOIR.USDOJ.GOV.

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[6] *Saniour v. Environmental Protection Agency*, 56 F.3d 85 (D.C. Cir. 1995); 5 C.F.R. § 2635.807(a)(2)(iii)(D).
[7] 5 C.F.R. § 2635.201-205.

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All employees speaking to a public group, regardless of the employee's capacity for the specific engagement, must comply with applicable law and agency policies, including all ethics laws, the Hatch Act, any applicable ethics and professionalism guides or rules, Department regulations in title 28 of the Code of Federal Regulations, the Justice Manual, privacy and information disclosure laws, and any other applicable EOIR or Department policies. Further, all employees, especially all non-supervisory adjudicators, seeking approval of a speaking engagement request in either capacity are reminded of the importance of maintaining impartiality and avoiding the appearance of impropriety, favoritism, or preferential treatment.

Please remember that the issuer of the invitation cannot be a prohibited source, and no EOIR employee may receive compensation for any outside speaking activity that relates to their official duties. Supervisors and employees who have questions regarding prohibited sources are encouraged to seek guidance from the SET.

DAVID NEAL Digitally signed by DAVID NEAL Date: 2021.10.12 18:25:55 -04'00'

October 12, 2021

David L. Neal, Director
Executive Office for Immigration Review

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Attachment A

Official and Personal Capacity designations are provided below with examples of appropriate events found within each category. Note that this is not an exclusive list, as some events, activities and forums may not be listed below.

Official Capacity

For any event where at least one DOJ or EOIR official is participating officially, all EOIR participants must speak in their official capacity.

For any event where the host/sponsor is a Federal Government agency or the employee is asked to speak or present at a Government event, the EOIR employee is presumed to speak in their official capacity.

Immigration conferences or similar events where the subject is immigration (including litigation).

Meetings with Stakeholders.

Naturalization ceremony, as guest speaker or to administer the oath.

Court visits that include engagement with outside groups or individuals.

Pro bono training related to immigration.

EOIR Model Hearing Program.

Recruiting.

Personal Capacity

Moot court judge - not immigration related.

Commencement speaker when topic is unrelated to immigration or official duties.

Career day/Alumni career panel - to discuss full career path and experience.

Interview based on book written in appropriate personal capacity.

Speaking at community, religious, youth, or small social groups (e.g., book club) and meetings, not directly related to immigration law or advocacy.

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DM 22-01

Issued: Nov. 5, 2021
Effective: Immediately

ENCOURAGING AND FACILITATING PRO BONO LEGAL SERVICES

PURPOSE:	Provide guidance to immigration courts and court staff on encouraging and facilitating pro bono legal services for respondents; rescind and cancel Policy Memorandum 21-08
OWNER:	David L. Neal, Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Policy Memorandum 21-08

I. Introduction

The Executive Office for Immigration Review (EOIR) recognizes the immense value of legal representation in immigration proceedings, both to the individuals that come before our courts and to the efficiency of our hearings. Competent legal representation better enables persons in proceedings to respond to the charges against them, articulate their circumstances, seek relief, and make informed decisions. Competent legal representation provides the court with a clearer record and can save hearing time through more focused testimony and evidence, which in turn allows the judge to make better-informed and more expeditious rulings.

Pro bono attorneys, authorized legal service providers, and law school clinics perform an invaluable public service by educating otherwise unrepresented individuals, assisting them in the preparation of their cases and providing direct representation. The agency therefore welcomes and encourages pro bono representation, and Immigration Judges and court staff should accommodate and facilitate pro bono representation as much as practicable within the scope described by this Director's Memorandum (DM), as well as in consideration of other agency guidance and applicable law and regulations.

This DM replaces PM 21-08, *Pro Bono Legal Services* (Dec. 10, 2020).

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II. Definition of "Pro Bono Legal Services"

Pro bono legal services are defined in 8 C.F.R. § 1003.61(a)(2):

> *Pro bono legal services are those uncompensated legal services performed for indigent individuals or the public good without any expectation of either direct or indirect remuneration, including referral fees (other than filing fees or photocopying and mailing expenses), although a representative may be regularly compensated by the firm, organization, or pro bono referral service with which he or she is associated.*

Uncompensated initial consultations or initial court appearances, with the ultimate intention or goal of compensation by the respondent, are contrary to the spirit of pro bono representation. While an attorney or representative may be regularly compensated by an employing firm or organization, representation should be provided solely and honestly for the public good.

III. Facilitating Pro Bono Representation

Each court should create a pro bono committee to represent that court in interactions with outside entities regarding pro bono representation and self-help legal services for respondents. Each pro bono committee should include the Assistant Chief Immigration Judge (ACIJ) and other Immigration Judges, the Court Administrator, and interested court personnel, as appropriate. ACIJs should be supportive of the liaison efforts of their pro bono committee. Further, the Chief Immigration Judge will designate a Regional Deputy Chief Immigration Judge who will be responsible for fostering and coordinating the immigration courts' efforts to promote pro bono representation.

The ACIJ, together with appropriate committee members, should meet regularly with local pro bono legal service providers to discuss how best to improve the level and quality of pro bono representation and self-help legal services for that court. The purpose of such meetings is to share observations about best practices, develop proposals for facilitating pro bono representation and access to self-help legal services, and collaborate on ideas that foster broader and better representation in the context of that specific court.

On behalf of each court, the ACIJ should encourage and facilitate discussion between Department of Homeland Security and pro bono representatives. ACIJs should also consult with EOIR's Legal Access Programs (LAP) to strengthen the agency's legal access efforts and better coordinate the agency's support of pro bono representation and self-help legal services. ACIJs are also encouraged to consult with one another, individually or collectively, to share best practices, lessons learned, and insights on facilitating pro bono representation. Further, the Office of the Chief Immigration Judge (OCIJ) should periodically compile these best practices, lessons

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learned, and insights on facilitating pro bono representation, and transmit this information to EOIR's LAP so that they may benefit from the on-the-ground experiences of local liaison. OCIJ should also apply the experience gained from the committees to develop nationwide initiatives that further the agency's efforts to encourage pro bono representation.

A. Training for Pro Bono Counsel

Pro bono training programs conducted by non-governmental groups are effective ways to increase the available pool of pro bono representatives.

Immigration Judges are strongly encouraged to play an active part in pro bono training programs on immigration courtroom practice and procedure, where appropriate and authorized. When an Immigration Judge is interested in participating in a training program, the Immigration Judge must promptly forward the invitation, and any additional information, to the ACIJ for supervisory authorization, consistent with the agency's guidance on speaking engagements.

B. Courtroom Practices

Although EOIR is committed to completing cases promptly, fairness dictates that Immigration Judges consider the particular needs of pro bono representatives who appear before the immigration courts. Immigration Judges are strongly encouraged to be flexible with pro bono representatives, particularly in the scheduling of hearings and in the setting of filing deadlines.

1. Pro Bono Appearances

Immigration Judges should ask representatives appearing pro bono to identify themselves as such. A pro bono representative who wants the immigration court to know that a case is being represented pro bono would inform the court by checking the "yes" box on the Form EOIR-28. If the pro bono representation box is checked "yes," court staff must indicate in the case management system that the representative is appearing pro bono. Immigration Judges should also ask representatives choosing to do so to identify themselves orally on the record as appearing pro bono (e.g., "Jane Doe, appearing pro bono on behalf of John Smith").

Immigration Judges are encouraged to grant pro bono representatives' requests to be called first at master calendar hearings, and judges should call all scheduled cases for that representative in succession, when practicable. Upon request, and with the respondent's consent, Immigration Judges are also encouraged to allow a pro bono representative to "second chair" a hearing with a counsel of record (e.g., a mentor, supervising professor, or another pro bono representative). In addition, and with the respondents' consent, Immigration Judges are encouraged to allow pro

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bono representatives an opportunity, subject to privacy restrictions, to observe master calendar and individual hearings before they have to appear in court.

2. Scheduling of Pro Bono Cases

Immigration Judges should be mindful of the inherent difficulties in the recruitment of pro bono representatives and the burdens that pro bono representatives assume for the benefit of the public good. To facilitate such representation, Immigration Judges are encouraged to give pro bono representatives priority scheduling at master calendar hearings when requested and to consider creating a docket focused on cases with pro bono representatives (i.e., a "pro bono docket") at a particular time of the week or month to accommodate and foster the participation of pro bono providers. Pro bono organizations often recruit pro bono representatives from private law firms or other organizations. Given that pro bono recruitment can take several weeks or more, new volunteers often accept cases shortly before the next scheduled hearing and subsequently request a continuance of that hearing for preparation purposes. To foster volunteerism for pro bono representation, judges should be understanding and flexible with respect to newly appearing representatives.

With respect to individual hearings, Immigration Judges should be especially cognizant of the unique scheduling needs of law school clinics operating on an academic calendar and of other pro bono programs that require sufficient time to recruit and train representatives. Because such clinics and programs often face special staffing and preparation constraints, Immigration Judges should be flexible and are encouraged to accommodate appropriate requests for a continuance or to advance a hearing date. For law school clinics and pro bono programs that routinely provide representation before a specific court, the ACIJ and the pro bono committee should work together to ensure that the entire court is sensitive to the constraints on these entities.

3. Pre-Hearing Statements and Conferences

In the pro bono context, pre-hearing statements can be especially valuable, given the time and resource limitations that often attach to pro bono representation. Immigration Judges should therefore actively and routinely encourage parties to engage in pre-hearing communications, both for the efficiency of the court and for the efficacy of the pro bono representation.

As part of those pre-hearing communications, and pursuant to 8 C.F.R. § 1003.21, Immigration Judges should encourage pre-hearing conferences between the parties to narrow the issues and to prompt the timely submission of evidence. Immigration Judges may also require pre-hearing statements, including stipulations of fact, where appropriate.

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4. Appearance by Remote Technology

As discussed above, Immigration Judges should be mindful of the time and resource challenges facing pro bono representatives, as well as the conditions that complicate or discourage pro bono representation (e.g., emergency operational status). Accordingly, Immigration Judges should be flexible when a pro bono representative seeks to appear via remote technology, such as by telephone or through video teleconference.

As respondents are often detained in locations that make the representatives' in-person visits impracticable, remote technology facilitated through the detention facility or the immigration court can be an important means for communication between pro bono representatives and respondents. Where EOIR video teleconferencing is available in conjunction with a scheduled hearing, and the request to use the equipment is reasonable, courts should allow representatives to use that equipment to facilitate such communications. Courts should be careful, however, to ensure that the use of video teleconferencing by representatives does not disrupt essential court operations.

C. Orientation and Self-Help Legal Assistance

Immigration Judges and court staff are encouraged to support programs providing legal orientation, group rights presentation, and self-help legal services, whether funded by EOIR or non-governmental organizations. These programs can greatly assist local pro bono efforts to disseminate critical legal information, prepare respondents for hearings, help respondents to self-identify eligibility for relief, and identify cases for referral to pro bono representatives. These programs serve a vital role in providing respondents with access to basic legal services, helping respondents to understand the proceedings and thus enhancing the efficiency of court proceedings.

Immigration Judges and court staff can facilitate these types of programs in a variety of ways. Where appropriate, reasonable, and available, the court should allow the use of immigration courtrooms, pro bono rooms, or other suitable court space for pro bono providers to conduct orientation services. If feasible and appropriate, the court can make such space and complementary equipment available for these purposes. The court may also allow time for pro bono providers to give a brief announcement during breaks within a docket (e.g., upon completion of the represented cases but prior to beginning the pro se portion of the docket).

D. Access to Respondent Information

Upon reasonable request, immigration court records should be made available to pro bono providers, where court resources allow and the sharing of information is not prohibited by law

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(e.g., attorney-client privilege, the Freedom of Information Act, the Privacy Act, 8 C.F.R. § 1208.6). Courts should support efforts by pro bono legal service providers to identify potential pro bono cases. With a respondent's properly executed consent for release of records (e.g., Form EOIR-59), courts may share non-classified information with the pro bono legal service provider prior to a formal entry of appearance.

E. Self-Help Legal Centers

Self-Help Legal Centers, located within immigration courts, provide general legal information as well as specific information about the local immigration court to pro se respondents and other interested parties. These centers provide blank forms, such as change of address and fee waiver forms, information on various forms of relief, including asylum and voluntary departure, and answers to frequently asked questions about the immigration courts. These materials increase respondents' understanding of immigration law and removal proceedings. EOIR regularly reviews and updates the materials provided by these centers. All courts hearing non-detained cases will establish Self-Help Legal Centers to make these materials available at the courts.

EOIR's LAP staff welcomes comments and suggestions from Immigration Judges and other court staff on how to improve existing self-help legal materials. However, the supervising ACIJ and the LAP staff must first approve any self-help materials developed by immigration court staff for use at their location.

F. Child Respondents

Given the particular vulnerability of child respondents, Immigration Judges are strongly encouraged to facilitate pro bono representation whenever children are involved. Immigration Judges are reminded to employ the child-friendly practices described in other agency guidance, such as scheduling dedicated juvenile dockets, employing child-sensitive questioning, and allowing the use of a Friend of the Court, among other practices. Many of those practices can and should be applied to any case involving a child, whether unaccompanied, accompanied, non-detained, or in Federal custody.

IV. Ethical Considerations

It is incumbent on every Immigration Judge to facilitate pro bono representation and legal services where appropriate and permissible. In so doing, Immigration Judges must be careful to stay within the bounds of ethics and propriety.

When encouraging pro bono representation, Immigration Judges should be mindful neither to pressure representatives to appear pro bono nor to penalize representatives who do not wish to

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handle pro bono cases. Pro bono representation should be voluntary, and representatives should not feel compelled to appear in specific cases. Immigration Judges are required by regulation to distribute the List of Pro Bono Legal Service Providers ("Pro Bono List"). Beyond distribution of the Pro Bono List, Immigration Judges generally should not refer respondents to specific representatives, groups, or organizations, though they may refer respondents to an organization providing services under contract with EOIR.

As issues regarding Department of Justice ethics and agency policy frequently arise in this area, individual Immigration Judges should consult their supervising ACIJ and the EOIR Ethics Office. Such consultations will ensure that new programs and new practices are permissible. Immigration Judges are also encouraged to review their current practices and consult headquarters personnel as appropriate.

V. Conclusion

The best practices listed above are not exhaustive. Immigration Judges and court staff are invited to submit suggestions—both to OCIJ and to EOIR's LAP— on how to encourage and facilitate pro bono representation and pro bono legal services.

This DM is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or equities, its officers, employees, or agents, or any other person.

Please contact your supervisor if you have any questions regarding this DM.

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Fri, 29 Oct 2021 19:04:56 +0000
To: Alder Reid, Lauren (EOIR)
Cc: Fooshe, Alexis (EOIR); Foster, Sean (EOIR)
Subject: RE: Another Follow-up for LAR: RE: Time sensitive question about SF Courts
Attachments: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks for calling. How about this revision below? She also followed up, again (see attached), but as discussed, (b)(5)

(b)(5)

Draft:

(b)(5)

From: Mattingly, Kathryn (EOIR)
Sent: Friday, October 29, 2021 2:41 PM
To: Alder Reid, Lauren (EOIR) <(b)(6)>
Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: Another Follow-up for LAR: RE: Time sensitive question about SF Courts
Importance: High

Lauren – Tal wants to speak on the datasets and our longstanding practice is to answer with the below.

(b)(5)

BACKGROUND:
The raw dataset is provided as a resource, and is not something that our office can assist with for reporting.

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Friday, October 29, 2021 2:35 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
Do you have a minute to jump on a call real quick? I think we actually made sense of the data, but I want to triple check I'm not misunderstanding anything.

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Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
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tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

From: Kathryn Mattingly (b)(6)
Date: Friday, October 29, 2021 at 2:34 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Good afternoon Tal,

Thank you for letting me know that your story got held until Sunday.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

Best,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
To be clear, this is not a docket with the occasional returned notice, this is a docket specifically for only people with returned notices. Unless the court is denying that (although it said as much to liaisons and we've witnessed these hearings).
Are we able to initiate a statistics request? What do we need to give you to start that process?

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Lastly this is on background as what? How may we attribute the info!
Thank you! Of course our editor just informed us they want to hold the story until Sunday, sigh, sorry I didn't know that sooner.

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
http://SFChronicle.com/Subscribe

On Oct 28, 2021, at 7:06 PM, Mattingly, Kathryn (EOIR) (b)(6) wrote:

Hello Tal – Please see below. Best – Kathryn

BACKGROUND:

Immigration courts throughout the country continue to schedule master calendar hearings. Dockets may include cases in which hearing notices were returned to the court as "undeliverable." This is not new or unusual process.

A special statistics request, which would take at least 15 business days to process, would be necessary to obtain the San Francisco Immigration Court datasets you are seeking. Alternatively, you can find raw datasets through EOIR Case Data (September 2021).

For an *in absentia* removal order to be issued, the immigration judge must find that proper notice was given and that DHS has established removability. EOIR remains committed to ensuring that all who come before its courts will receive due process and a timely and fair adjudication, the outcome of which is based on the law.

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 2:30 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

AMERICAN OVERSIGHT

As of now, we are planning to publish in the morning, so that would be too late to make it into the story. A response is always of use to us, but this is also about whether the Department of Justice wants to have a say in the story. I can let you know if for some reason our timing changes.
If you can't get a full response today, let me know if you could perhaps do a partial one.
Thanks!

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
<image001.jpg>

From: Kathryn Mattingly <(b)(6)>
Date: Thursday, October 28, 2021 at 2:27 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Hi Tal,

I am continuing to work on your inquiry and hope to have a response today. If not, will a response still be of use to you
tomorrow?

Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 1:26 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Hi Kathryn! Just wanted to check in on whether you still think you can get us some answers today, and if you have a sense of timing.
Appreciate it!
Tal

AMERICAN OVERSIGHT

From: Kathryn Mattingly <(b)(6)
Date: Wednesday, October 27, 2021 at 4:17 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: [EXT] RE: Time sensitive question about SF Courts

Hello Tal,

I am working on your inquiry but will not be able to meet your short deadline. Will responses be of use to you tomorrow?

Thanks,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!

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Tal and Deepa

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<image002.jpg>

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From: Kopan, Tal
Sent: Fri, 29 Oct 2021 18:47:02 +0000
To: Mattingly, Kathryn (EOIR)
Cc: Fernandes, Deepa
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Also in addition to whether you have a couple minutes – when you say longstanding below, ("Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups."), how longstanding are we talking about? How long have immigration courts employed dockets for returned notices like this one?
Thanks!
Tal

From: Kathryn Mattingly (b)(6)
Date: Friday, October 29, 2021 at 2:34 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Good afternoon Tal,

Thank you for letting me know that your story got held until Sunday.

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Best,
Kathryn

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Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

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Thanks!
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AMERICAN OVERSIGHT

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If you can't get a full response today, let me know if you could perhaps do a partial one.
Thanks!

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SFChronicle.com/Subscribe
<image001.jpg>

From: Kathryn Mattingly <[(b)(6)]>
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To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
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Sent: Thursday, October 28, 2021 1:26 PM
To: Mattingly, Kathryn (EOIR) [(b)(6)] -
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AMERICAN OVERSIGHT

Hi Kathryn! Just wanted to check in on whether you still think you can get us some answers today, and if you have a sense of timing.
Appreciate it!
Tal

From: Kathryn Mattingly <(b)(6)>
Date: Wednesday, October 27, 2021 at 4:17 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
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Subject: [EXT] RE: Time sensitive question about SF Courts

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Sent: Wednesday, October 27, 2021 12:59 PM
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Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

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A few questions for you:
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-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

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If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

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<image002.jpg>

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From: Mattingly, Kathryn (EOIR)
Sent: Fri, 21 Jan 2022 01:14:00 +0000
To: Kopan, Tal
Subject: RE: [EXT] RE: Comment on FOIA on returned notices

Thanks very much.

From: Kopan, Tal <tal.kopan@sfchronicle.com>
Sent: Thursday, January 20, 2022 7:52 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: [EXTERNAL] Re: [EXT] RE: Comment on FOIA on returned notices

Immigration court officials cheered results of fast-tracked deportation orders, emails reveal

WASHINGTON — Last June, the San Francisco Immigration Court quietly tested a new idea: Fast-track the cases of immigrants whose mail wasn't reaching them. In the trial run, 80% of the immigrants scheduled were ordered deported for not showing up.

Top officials were effusive with praise over the results, emails obtained by The Chronicle show, and rushed to set up more hearings: "Very positive!" emailed one of the top supervising immigration judges overseeing the nation's hundreds of courts.

The newly uncovered emails reveal that the fast-track docket for immigrants with returned mail, which was first reported by The San Francisco Chronicle last fall, was cheered at the highest levels of the courts and pursued with full awareness that scores of immigrants would likely be ordered deported as a result.

Advocates and attorneys for immigrants raised concerns about the practice as a sort of deportation conveyor belt last year, as many of the lawyer-less immigrants may have no idea they missed a court hearing, much less that they were ordered deported during it, because they didn't know how to update their address with the court or thought that Immigration and Customs Enforcement would do so on their behalf. The immigration courts are run by the Justice Department, with judges hired and ultimately overseen by the attorney general.

The emails were obtained through a Freedom of Information Act request by a nonprofit watchdog group, American Oversight, prompted by The Chronicle's reporting. The group shared the records with The Chronicle.

The Department of Justice declined to comment specifically on the emails, noting that removal orders for failing to appear in court are legally valid and that issuing notices with new hearing dates gives unreachable immigrants an opportunity to appear in court and avoid a deportation order.

Chronicle analysis of available data last year found that the practice significantly increased the number of immigrants who were ordered deported for not being present in court, called an "in

AMERICAN OVERSIGHT

absentia" removal order. As many as 173 people were given deportation orders because of such proceedings in August and September — a nearly ninefold increase from the 20 similar orders given the previous seven months combined.

The results do not make clear how those numbers grew by the end of the year, but show a strong appetite for scheduling such hearings.

The pilot for the "returned notice" docket for immigrants whose mail was being returned as undeliverable was conceived by a deputy court administrator in San Francisco, who in May proposed the idea to one of the judges. The two set up a June 15 test run. Though much of the emails are redacted, it's clear the idea was green-lit by the supervising immigration judge for the San Francisco court.

That day, the deputy administrator emailed his superiors with the results of the 21 cases scheduled: Only two immigrants showed up, two cases had to be continued because of procedural issues and "the remaining 17 cases got removal orders."

"That's great," wrote his boss, the court administrator. "Great, good job," wrote the supervising immigration judge at the time, Daren Margolin. He closed his email repeating the praise: "Thanks again ... good job on this."

The court administrator then emailed all the judges at the San Francisco court informing them of the results and inviting them to volunteer to hold similar hearings in August and September. A handful of judges quickly responded with eagerness.

Margolin forwarded that email to his boss, Regional Deputy Chief Immigration Judge Sheila McNulty, who oversees courts from the Justice Department's courts headquarters in Northern Virgnia, with a remark: "On a positive note."

McNulty responded quickly: "Very positive!"

The emails also revealed a larger picture of a Justice Department closely tracking how it can quickly close immigration cases as the backlog of the courts continues to skyrocket. A new analysis this week by the Syracuse University project TRAC, which monitors immigration court data, found the backlog is almost 1.6 million cases and grew at its fastest rate ever the last quarter of 2021. San Francisco's backlog is nearly 80,000 cases, with consistent year-to-year growth unlike the recent precipitous increase nationwide.

In emails, court managers were asked to send in reports frequently about how effective special dockets were at closing cases, and to keep close track of the numbers.

But the tactics weren't all about deportations. The San Francisco court, for example, also set up a docket to fast-track deportation cases that could be dismissed through prosecutorial discretion by ICE, freeing the immigrants involved of the threat of deportation.

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From: Kathryn Mattingly <(b)(6)>
Date: Thursday, January 20, 2022 at 5:22 PM
To: "Kopan, Tal" <tal.kopan@sfchronicle.com>
Subject: RE: [EXT] RE: Comment on FOIA on returned notices

Hi Tal – I can't access the article. Can you please send me a copy if it's not too much trouble? Thanks.

From: Kopan, Tal <tal.kopan@sfchronicle.com>
Sent: Thursday, January 20, 2022 4:40 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Subject: [EXTERNAL] Re: [EXT] RE: Comment on FOIA on returned notices

https://www.sfchronicle.com/politics/article/Immigration-court-officials-cheered-results-of-16791798.php

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

From: Kathryn Mattingly <(b)(6)>
Date: Thursday, January 20, 2022 at 4:15 PM
To: "Kopan, Tal" <tal.kopan@sfchronicle.com>
Subject: [EXT] RE: Comment on FOIA on returned notices

Hi Tal – Please see below. Best – Kathryn

BACKGROUND, not for attribution:

As we do not have a copy of what you are reviewing, we suspect some context is missing.

For an immigration judge to order a noncitizen removed *in absentia*, the respondent must have failed to appear for an immigration court hearing, the Department of Homeland Security must have proven the individual is removable under immigration law, and the judge must have verified that notice of the hearing was sent to the individual's most recent address on file.

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When possible, courts may arrange for certain unrepresented respondents—such as those whose notices were returned to the court as "undeliverable"—another opportunity to have their day in court through reissuance of a hearing notice for a new hearing date. If the respondents again fail to appear, the immigration judge will again evaluate the specific facts and may order the individuals removed. Of course, some respondents will have provided updated contact information, receive the second notice, and appear. The ultimate result is fewer removal orders issued *in absentia* than would be issued without these specialized master calendar hearings.

EOIR is unable to confirm the legitimacy of the documents you forwarded. The FOIA office is the source for legitimate agency records.

From: Kopan, Tal <tal.kopan@sfchronicle.com>
Sent: Wednesday, January 19, 2022 8:53 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.
Thanks!
Tal

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
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Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Wed, 3 Nov 2021 14:11:15 +0000
To: Foster, Sean (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts
Attachments: SFArticle_SpecializedDockets_Oct312021.docx, Stats need

-

Good morning Sean,

Just in case you are unaware, Tal Kopan and Deepa Fernandes' story posted on Sunday (see attached). Also, Lauren and I spoke to Mike Tennyson on Friday and she did mention in a follow-up email that we

(b)(5)

FYSA, I only had 2 additional inquiries on this matter, Univision and Telemundo (Bay Area affiliate). We have (b)(5)

If you still want me to proceed with a (b)(5)

(b)(5)

Thank you,
Kathryn

From: Foster, Sean (EOIR) (b)(6)
Sent: Tuesday, November 2, 2021 10:21 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6)
Subject: FW: [EXT] RE: Time sensitive question about SF Courts

Hi Kathryn,
Can you work with PASD to pull ou (b)(5)

(b)(5)

Thanks,
Sean

From: Alder Reid, Lauren (EOIR) (b)(6)
Sent: Friday, October 29, 2021 3:57 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Foster, Sean (EOIR) (b)(6) ooshe, Alexis (EOIR) (b)(6)
Subject: Re: [EXT] RE: Time sensitive question about SF Courts

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Up to you really. INTERNAL FOR US: (b)(5)

(b)(5)

Thanks, Kathryn - great work as always.

On Oct 29, 2021, at 3:30 PM, Mattingly, Kathryn (EOIR) (b)(6) wrote:

Lauren – I really have nothing more to add to assist Tal and Deepa. We have provided a lot of good information now, and I have many other items on my list to handle today. I can either not respond, or send the below. Do you have a preference or another idea?

Draft:

(b)(5)

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Friday, October 29, 2021 3:23 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Do you have two minutes to jump on the phone? I think this is getting lost in email

Tal Kopan
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<image001.jpg>

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AMERICAN OVERSIGHT

Tal,

I am happy our raw datasets may be of use to you. For agency interpretation of that data, i.e., statistics, I am still able to submit a special statistics request. I would be happy to do my best to expedite the request, but I will not be able to get you something today to meet your deadline.

Best,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Friday, October 29, 2021 2:35 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
Do you have a minute to jump on a call real quick? I think we actually made sense of the data, but I want to triple check I'm not misunderstanding anything.

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
<image002.jpg>

From: Kathryn Mattingly (b)(6)
Date: Friday, October 29, 2021 at 2:34 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Good afternoon Tal,

Thank you for letting me know that your story got held until Sunday.

BACKGROUND:

AMERICAN OVERSIGHT

Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

Best,
Kathryn

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Thanks!
To be clear, this is not a docket with the occasional returned notice, this is a docket specifically for only people with returned notices. Unless the court is denying that (although it said as much to liaisons and we've witnessed these hearings).
Are we able to initiate a statistics request? What do we need to give you to start that process?
Lastly this is on background as what? How may we attribute the info!
Thank you! Of course our editor just informed us they want to hold the story until Sunday, sigh, sorry I didn't know that sooner.

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On Oct 28, 2021, at 7:06 PM, Mattingly, Kathryn (EOIR) <(b)(6)> wrote:

AMERICAN OVERSIGHT

Hello Tal – Please see below. Best – Kathryn

BACKGROUND:

Immigration courts throughout the country continue to schedule master calendar hearings. Dockets may include cases in which hearing notices were returned to the court as "undeliverable." This is not new or unusual process.

A special statistics request, which would take at least 15 business days to process, would be necessary to obtain the San Francisco Immigration Court datasets you are seeking. Alternatively, you can find raw datasets through EOIR Case Data (September 2021).

For an *in absentia* removal order to be issued, the immigration judge must find that proper notice was given and that DHS has established removability. EOIR remains committed to ensuring that all who come before its courts will receive due process and a timely and fair adjudication, the outcome of which is based on the law.

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Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

As of now, we are planning to publish in the morning, so that would be too late to make it into the story. A response is always of use to us, but this is also about whether the Department of Justice wants to have a say in the story. I can let you know if for some reason our timing changes.
If you can't get a full response today, let me know if you could perhaps do a partial one.
Thanks!

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<image001.jpg>

AMERICAN OVERSIGHT

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To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

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From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
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Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

Hi Kathryn! Just wanted to check in on whether you still think you can get us some answers today, and if you have a sense of timing.
Appreciate it!
Tal

From: Kathryn Mattingly <(b)(6)
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Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: [EXT] RE: Time sensitive question about SF Courts

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AMERICAN OVERSIGHT

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

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<image002.jpg>

AMERICAN OVERSIGHT

S.F. Immigration Court fast-tracking cases in what critics say call a deportation conveyor belt

Oct. 31, 2021

A San Francisco immigration judge took less than an hour on Tuesday to order 23 people deported. But none of the immigrants was present and it's unclear whether they knew about the hearing — even as they were deported for missing it.

The proceedings are part of a recently enacted effort the San Francisco Immigration Court says it's undertaking to find immigrants it loses track of. Instead, advocates say the court has set up a deportation conveyor belt, one that fast-tracks removal orders before immigrants can make their case to stay in the country.

The practice appears to have started this summer, when immigration attorneys became aware of a subset of hearings being scheduled for immigrants whose mail was being returned as undeliverable. The court was notifying immigrants of the hearings by sending mail to the same incorrect addresses, practically ensuring few would show up.

In immigration law, not showing up at a hearing is enough to be ordered deported on the spot, in what's known as an "in absentia" order of removal.

According to court data reviewed by The Chronicle, as many as 173 people were given deportation orders because of such proceedings in August and September — a nearly ninefold increase from the 20 similar orders given the previous seven months combined.

ACLU of Northern California attorney Sean Riordan, who has been tracking the issue, compared the situation to a criminal proceeding where, if a defendant didn't show up for a routine step, the judge declared them guilty with limited ability to challenge the verdict. What's more, he said, the court scheduled the proceeding expecting the defendant not to show.

"Our society would not tolerate that, it's just grossly unfair, and we shouldn't tolerate something similar happening in the immigration courts," Riordan said. "It's especially problematic that the San Francisco Immigration Court is spending significant time and resources to obtain so many removal orders through a special docket in cases where they know people will not be able to appear for their hearings."

At this time, the effort appears limited to the San Francisco court, one of 70 such venues nationwide that hear immigrants' cases. But advocates fear other courts may see how many cases the San Francisco bench has closed through in-absentia orders and follow suit, saddling scores of immigrants with unknown deportation orders. The immigration court system is run entirely by the Department of Justice, which also employs the judges.

AMERICAN OVERSIGHT

The Justice Department defended the practice as lawful and suggested it was more widespread than advocates realized, saying immigration courts have long created such dockets for returned mail in the name of efficiency.

“Immigration courts throughout the country create dockets in ways most appropriate for each court’s caseload,” spokesperson Kathryn Mattingly said in a statement to The Chronicle.

Data provided by the Justice Department showed a stark jump in in-absentia orders at group proceedings at the San Francisco court starting in August. From January to May of this year, there were only one or two such orders per month, up to 14 in June. In August there were 63, and in September there were 110. October’s numbers are probably comparable, as attorneys tracking the docket counted a similar number of scheduled hearings as September, like the one The Chronicle observed on Tuesday.

H.C. holds an envelope with his change of address forms in San Mateo. The form is weeks late because the instructions were in English, a language he doesn’t speak.

In courtroom number 20, immigration Judge Susan Phan first considered the seven people who appeared before her despite having wrong addresses on file. Each one clarified their correct address and was given a new court date. Then the judge moved on to a stack of blue case files for which no one presented in court.

Grouping the cases by country, Phan opened and closed each file, in the end ordering 23 people from Mexico, Guatemala, Honduras and El Salvador to be deported in what she called “group removal proceedings.” The process took less than an hour.

On Sept. 15, in the courtroom of immigration Judge Ila Deiss, a different scene played out. Before the judge sat several immigrants whose notices were returned as undeliverable. Judge Deiss profusely thanked each for attending.

“If you didn’t show up today you could have been ordered removed,” Deiss told one teenager.

When Deiss moved on to the rest of the docket, cases in which no one was in court to answer, she scoured each application for phone numbers — which she then called from the bench. In one case, the man who was supposed to be in court told her that he was told his next appointment wasn’t until 2022. “Phew!” Deiss exclaimed, rescheduling him for January.

When phone numbers didn’t pan out, Deiss searched the internet. “I like to google addresses to see if it was something in the way it was written,” she explained. But in the few cases in which she could not find a working number, nor clarify the address, she entered an order of removal, in absentia.

The use of the “returned notice” hearings have alarmed advocates because the Biden administration has continued to emphasize a desire to cut down on an immigration court backlog that is nearing 1.5 million cases, according to a tracking database housed by Syracuse University. Though Biden says he wants a fair and humane immigration system, he has also embraced tactics used by the Trump administration to expedite deportations of new migrants and to turn away tens of thousands of people at the border.

AMERICAN OVERSIGHT

Attorneys who have been tracking the hearings say they know of clients who are regularly going to their check-ins with Immigration and Customs Enforcement, and likely have their correct addresses on file. But ICE, a division of the Department of Homeland Security, does not update addresses automatically with the immigration courts, a division of the Justice Department, an arcane feature of a system where one government agency employs the prosecutors and a sibling department employs the judges.

Attorney Milli Atkinson, program director at Immigrant Legal Defense, said the address change requirements are especially onerous for non-English-speaking immigrants. “It’s a huge bureaucracy and it’s an outdated system,” Atkinson said.

For those navigating the process, understanding exactly what is required of them to stake a claim to stay in the country can be confounding. Many are fleeing brutal gangs or gender-based violence and believe their lives are at stake if they’re deported.

H.C. walks into a San Mateo post office to send his change of address forms to the Office of the Chief Counsel of San Francisco.

Constanza Hevia H./Special to The Chronicle

H.C. showed up to Judge Deiss’ courtroom in mid-September despite his mail being returned for an invalid address. (In keeping with its policy on anonymous sources, The Chronicle is identifying H.C. only by his initials because he fears violence from the gangs he fled in Guatemala.)

He had moved to the next apartment and his neighbor had passed on the notice, H.C. told the judge. She thanked him for coming.

AMERICAN OVERSIGHT

There was no interpreter available for H.C.'s primary language, the Indigenous Poqomchi, so he communicated in limited Spanish. He was handed a notice in English with his next court date and instructions to change his address with the court if he moved.

When The Chronicle reached him a month later, H.C. had had no luck finding an attorney and was just filing his change-of-address form, weeks late. He didn't know any English speakers to help him, he said. He wondered why the judge or a clerk couldn't have entered his new address into the system while he was in court.

Maria did not change her address with the San Francisco court and was ordered deported in absentia last month. The Chronicle is only identifying Maria by her first name because she now has a deportation order and fears imperiling her case further by speaking out.

In June, Maria arrived at the Bay Area home of a relative with her two small children. She said ICE officers installed an app on her phone and every eight days she receives a notification that prompts her to take a selfie and send it in — a virtual ICE check-in. She has fully complied, she said.

Yet Maria says she experienced abuse where she was staying, so she relocated with her children to a domestic violence shelter in the Bay Area. There, she reached an uncle in Connecticut who arranged for Maria and the children to join him.

Maria continued her selfie check-ins with ICE but didn't inform the San Francisco Immigration Court that she had moved. When she didn't show up to her Sept. 29 hearing, the judge ordered her deported.

Atkinson was in the courtroom that day and remembered Maria from an intake interview. In the hour it took Atkinson to reach Maria, the judge had already ordered her removed. Atkinson pleaded with the judge to do a telephonic hearing, but the judge had moved on. Now Maria has to fight to have her case reopened and contest her order of removal to pursue a claim for asylum.

That procedure, called a motion to reopen, is the only hope for the unknown number of immigrants who have been ordered deported in absentia by the San Francisco court. It's hard without a lawyer, advocates say, which many of them lack.

Judge Deiss acknowledged as much last month, when she reluctantly ordered the removal of an absent person she was unable to reach from the bench.

"Hopefully there will be a motion to reopen," Deiss told the one attorney present in her court, Malvina De La Canal, when she objected to the removal. But De La Canal told The Chronicle she worries that most of those being ordered removed won't even know the option exists.

San Francisco Chronicle data visualization developer Nami Sumida contributed to this report.

Tal Kopan and Deepa Fernandes are San Francisco Chronicle staff writers.
Email: tal.kopan@sfchronicle.com, deepa.fernandes@sfchronicle.com Twitter: @deepafern, @talkopan

AMERICAN OVERSIGHT

From: Alder Reid, Lauren (EOIR)
Sent: Fri, 29 Oct 2021 18:33:05 +0000
To: Tennyson, Mike (EOIR)
Cc: Mattingly, Kathryn (EOIR)
Subject: Stats need

Mike –

We are off the hook for today on the SF/nationwide stats we discussed. More to come next week maybe.

Best,

Lauren Alder Reid
Assistant Director for Policy
Executive Office for Immigration Review
Department of Justice
(b)(6)
(b)(6)
@DOJ_EOIR

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Fri, 29 Oct 2021 18:33:06 +0000
To: Alder Reid, Lauren (EOIR)
Cc: Fooshe, Alexis (EOIR); Foster, Sean (EOIR)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

(b)(5)

From: Alder Reid, Lauren (EOIR) <(b)(6)>
Sent: Friday, October 29, 2021 2:33 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

No thanks. (b)(5)

Best,
Lauren

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Friday, October 29, 2021 2:27 PM
To: Alder Reid, Lauren (EOIR) (b)(6)>
Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Sorry. One more thing. Is it okay that we (b)(5)

(b)(5)

From: Mattingly, Kathryn (EOIR)
Sent: Friday, October 29, 2021 2:11 PM
To: Alder Reid, Lauren (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Very good. If (b)(5)
Thanks again!

From: Alder Reid, Lauren (EOIR) (b)(6)
Sent: Friday, October 29, 2021 2:06 PM
To: Mattingly, Kathryn (EOIR) (b)(6)

AMERICAN OVERSIGHT

Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

That works. Thank you!

Best,
Lauren

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Friday, October 29, 2021 2:00 PM
To: Alder Reid, Lauren (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Thanks very much. I think we need (b)(5) See red addition below. Or do you have something else in mind.

From: Alder Reid, Lauren (EOIR) (b)(6)
Sent: Friday, October 29, 2021 1:55 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6) Foster, Sean (EOIR) (b)(6)
Subject: FW: [EXT] RE: Time sensitive question about SF Courts

Please send to Tal and then let Dena know of the status of this one. Thanks.

Best,
Lauren

From: Alder Reid, Lauren (EOIR)
Sent: Friday, October 29, 2021 1:53 PM
To: Mattingly, Kathryn (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6) Fooshe, Alexis (EOIR) (b)(6)
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

BACKGROUND:

(b)(5)

ON THE RECORD:

(b)(5)

AMERICAN OVERSIGHT

Best,
Lauren

From: Mattingly, Kathryn (EOIR) <(b)(6)>
Sent: Thursday, October 28, 2021 7:16 PM
To: Alder Reid, Lauren (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6)>
Subject: FW: [EXT] RE: Time sensitive question about SF Courts

All – FYSA, and since the story is holding until Sunday, I have time to work on our follow-up reply.

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Thursday, October 28, 2021 7:12 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

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On Oct 28, 2021, at 7:06 PM, Mattingly, Kathryn (EOIR) <(b)(6)> wrote:

Hello Tal – Please see below. Best – Kathryn

AMERICAN OVERSIGHT

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Date: Thursday, October 28, 2021 at 2:27 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>

AMERICAN OVERSIGHT

Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Hi Tal,

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Subject: [EXTERNAL] Re: [EXT] RE: Time sensitive question about SF Courts

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 28 Oct 2021 23:06:20 +0000
To: Kopan, Tal
Cc: Fernandes, Deepa
Subject: RE: [EXT] RE: Time sensitive question about SF Courts

Hello Tal – Please see below. Best – Kathryn

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San Francisco Chronicle

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Date: Wednesday, October 27, 2021 at 4:17 PM
To: "Kopan, Tal" <Tal.Kopan@sfchronicle.com>
Cc: Deepa Fernandes <Deepa.Fernandes@sfchronicle.com>
Subject: [EXT] RE: Time sensitive question about SF Courts

Hello Tal,

I am working on your inquiry but will not be able to meet your short deadline. Will responses be of use to you tomorrow?

Thanks,
Kathryn

AMERICAN OVERSIGHT

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fernandes, Deepa <Deepa.Fernandes@sfchronicle.com>
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

Tal Kopan
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SFChronicle.com/Subscribe
San Francisco Chronicle

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 1 Nov 2021 14:21:23 +0000
To: Tyche Hendricks
Subject: RE: [EXT] Reporter questions

Good morning Tyche,

Please see EOIR's FOIA webpage for instructions on how to request EOIR records.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

Best,
Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org>
Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

AMERICAN OVERSIGHT

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
(b)(6) M

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On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto:(b)(6)> wrote:

EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) (b)(6) <mailto:(b)(6)>
Cc: EOIR, PAO (EOIR) <(b)(6) mailto:(b)(6)>
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized "returned notice" docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

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On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto: (b)(6) > wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

Kathryn

AMERICAN OVERSIGHT

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir>>

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR) <(b)(6) mailto:(b)(6)>
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

Tyche

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Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

(b)(6) M

We've moved temporarily. You can find us at:

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AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 21 Mar 2022 15:20:46 +0000
To: Siobhan Waldron; McDaniel, Scott (EOIR); AILA NorCal EOIR Liaison
Cc: eoir (eoir@ailanorcal.com); Isabel Soto Wagner; Maleeha Haq; Misha Seay; McDaniel, Scott (EOIR)
Subject: RE: [EXTERNAL] Questions for 3/21/2022 meeting
Attachments: Questions for 3212022 EOIR SF-AILA meeting.pdf

All:
Please find attached the prepared answers to the questions. Sorry that it is a bit late as I just received all the feedback required by HQ. I'll provide any additional clarification during the meeting.
Thank you –

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

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- Please provide any updates on the status of the dockets of judges that have recently left the bench, including IJ Marks and IJ Jackson.
    - Lettricea Jefferson-Webb will take the bench on March 28, 2022, to replace Judge Simmons' former docket
    - Two additional IJs will take the bench around June 2022 to replace former Judges Marks and Jackson. Additional information will be provided about these judges as it becomes available to distribute.
    - There may be additional judges after this round; information will be provided as it becomes available
- Are there any other hiring or other staff updates?
    - Although we have had some recent staff hiring, we continue to be understaffed
    - Website should eventually contact updates on staff contacts; until then, we will continue to provide
- Can the Court provide an updated list of which IJs are hearing cases exclusively via WebEx (as opposed to bring physically present in their courtrooms)?
    - At this time only one IJ – Judge Figuero – is fully virtual.
    - At this time, seven additional judges – Judges Walker, Halperin, Nelson, Gambill, Park, Johnson, and Green – appear via Webex.
- Can you provide any updates on the resumption of non-detained masters for non-dedicated docket cases? Is the Court still operating at 50% staff capacity in the courthouse at any given time? Have most IJs resumed hearing 100% of their merits hearings, or are some hearings still being cancelled for pandemic-related reasons?
    - The Court is still currently operating at 50% capacity: each judge appears 3 days per week with the remaining cases being reset 30 days in advance. Master calendar hearings are reset 30 days in advance.
    - On April 4, 2022, staff will return to the Court at 100%.
    - Judges will resume hearing individual merits cases at 100% capacity on April 18, 2022.
    - Master calendar hearings will resume on a reduced basis. Additional information will be provided once these hearings have been solidified.
- Relatedly, is there a criteria for why certain cases get postponed and not others?
    - Cases are reset if a judge is not appearing in court on a specific date.
- Can you provide information about the judges' legal assistants' responsibilities? What are things that legal assistants should be able to tell counsel or help counsel with so that things run more smoothly?
    - Legal Assistants' responsibilities are limited to administrative tasks.
    - Legal Assistants are limited to communicating information that cannot be construed as legal in nature to avoid *ex parte* communication.
- Besides the dedicated docket, are any other special masters being heard at the moment?
    - The Court does not currently have the staffing capacity to create additional special dockets on a consistent basis.
    - Individual IJs may create status conferences to determine the status of aged cases, aged-out juveniles, or other cases as deemed appropriate by the IJ.
- Have 100% of cases been removed from the status docket?
    - All status docket cases have been addressed through special master calendars.

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- What is the status of the returned notice docket? Are there current plans to schedule any returned notice dockets in the future?
    - The Court does not currently have the staffing capacity to create additional special dockets on a consistent basis.
    - These cases will likely be addressed upon resumption of regular master calendar hearings as they were pre-COVID.
- We receive many inquiries about motions to advance. It appears there are many respondents who are ready to proceed with their merits, but are unable to do so due to lack of docket space. Can you provide updated information about how motions to advance are being handled by the Court? Specifically, can you explain what the trial ready queue is and how it is used by the Court? How is a respondent notified that their case has been placed in the trial ready queue? How many cases are currently in the trial ready queue?
    - Motions to Advance are adjudicated on a cases-by-case, judge-by-judge basis. If an IJ determines that a case is ready to move forward and merits advancement but does not have docket space, they can place the case on the trial queue. Notification of placement on the trial queue will be provided on the order for the Motion.
    - If an IJ has an opening on their docket, their clerk will notify counsel of the proposed new date and time.
    - The number of cases on the trial queue is constantly in flux but rests around 10-15 at any given time.
- A member spoke with Leslie Ungerman in response to a PD request that was filed with OPLA in a strong 42B case. The member was seeking non-opposition from OPLA to a motion to adjudicate the case on the submissions. The member reports that Ms. Ungerman explained that her office will refuse to non-opp such requests when the qualifying relative isn't aging out, but would like to find a way to adjudicate such cases earlier, possibly at a short matter hearing. The member reports that Ms. Ungerman asked her to reach out to AILA liaisons to raise the issue with the Court, and that Ms. Ungerman indicated she would also be reaching out to the Court about the issue. Has the Court considered created these type of short matter dockets?
    - The Court does not currently have the staffing capacity to create additional special dockets on a consistent basis.
    - In such cases, counsel should file a Motion to Advance, noting if DHS joins in the motion, and providing information on the merits and proposed amount of time for the hearing. Individual IJs have discretion to move the case forward or create short matter dockets as staffing is available.
- Minutes from the national AILA-EOIR meeting in February state that Wifi is available in all courtrooms now. Is that true in San Francisco? Will Wifi instructions be released to the immigration bar?
    - Public wifi is available at the court. Domain name is EOIR-GUEST. There is no password required. The user just needs to accept the terms and conditions
- DHS recently announced a backlog reduction initiative. EOIR should know that DHS has explicitly said it will NOT contact respondents' counsel ahead of filing these motions to dismiss. Are IJs being instructed to wait the 10 days for counsel to respond? These motions to dismiss cannot be presumed to be uncontested. A member reports that an IJ

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granted DHS's motion 2 days after it was filed, not allowing the respondent a chance to oppose the motion.
    - IJs have been instructed to wait the full 10-day call-up on every motion.
    - The Court is aware of a case in which the IJ granted a motion to dismiss prior to the Court being informed that respondents were not notified prior to the motion being filed.
- In the case of a visa retrogression (like the March 2022 retrogression for EB4 SIJS case), can EOIR still adjudicate an AOS as long as it was filed when a visa was available, or will the matter have to be postponed until a visa becomes available again? Or is there some other system for locking in a priority date?
    - The Court can only adjudicate an AOS if DHS confirms there is a visa available at the time of adjudication.
- In the past, some attorneys reported that the Court would accept E-33s for respondents whose NTAs had not yet been filed and hold onto them in a folder until the cases were officially opened. Does the Court still accept such E-33s on an informal basis? If not, is there any other way to report a change in address to EOIR so that mail goes to the correct address once the NTA is filed? Unfortunately, ICE does not always update the address properly even when changes of address are reported at ICE check-ins.
    - Yes, the court accepts E-33s for inactive and unfiled cases. The respondent can submit a paper E-33 or use the online E-33 portal available to unrepresented respondents.
- What is the status of the 42B visa backlog? Have any of the visas released on 10/1/2021 been made available by the Court? If not, why? If so, are all accounted for at this time, or what is the status?
    - The FY22 release is almost complete. The release only advanced the cap queue by a few months of 2019. While there may be a small handful of cases released in September 2022, in anticipation of the end of the fiscal year, the next substantial release will not occur until the first or second quarter of FY23. Yearly, SFR reserves between 800-1200 42B cases. Our yearly allocation of visas, however, is anywhere from 450-550. Attorney are reminded that the 42B queue wait time for newly reserved cases exceeds 5 years.
- How does the court determine which IJ to consolidate two cases before? Is there one consistent rule? E.g. before the IJ/case with the oldest NTA, or with the earliest next hearing date?
    - If a Motion to Consolidate is granted, all cases will be consolidated under the proposed lead respondent.
- Currently, USCIS is supposed to give Afghans priority adjudications on asylum cases. Does EOIR have the same policy? If so, how is it doing so?
    - EOIR does not have a stated policy on Afghan priority adjudications.
    - Should either party wish to advance a case, a Motion to Advance may be filed.
- EOIR announced a new policy for getting EOIR records on 3/7/22 and updated the ICPM. It appears records can be requested by parties and their reps to a designated email inbox. Has SF EOIR changed the email address to which they wish to receive this ROP Review requests (as the standard email in the updated ICPM differs from those SF EOIR has used for many years)? see https://www.justice.gov/eoir/eoir-policy-manual/ii/1/5
    - This issue likely has been addressed by intervening circumstances.

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- Members report issued with USCIS scheduling biometrics appointments. What guidance, if any, have judges received about what to do when respondents have been unable to complete biometrics before the ICH? For example, continue the hearing, or hold the hearing and wait to issue their decision (if a grant) until confirmation from DHS that biometrics complete?
    - IJs have been instructed to assess each case individually and determine the most efficient use of court time. For instance, if DHS raises a concern that biometrics may reveal something upon which extensive testimony would need to be taken, the IJ may determine a continuance is necessary. If the parties agree there is nothing within their files to indicate biometrics would, *at that point*, require additional testimony, the IJ may determine it is most efficient to move forward.
- Members report receiving scheduling orders requesting pleadings in withholding-only proceedings, and also in cases where pleadings to the NTA have already been entered. Why is this? How does the Court determine when a scheduling order is appropriate?
    - Case Flow Processing requires an initial scheduling order to be provided in all in all initial master calendar cases.
    - While staff may make the determination not to send an initial scheduling order where it is unnecessary (such as in the cases mentioned), there are still instances in which the orders go out.
    - If pleadings are not required or if they have already been taken, compliance with the orders is not required and the parties may either file a notification that the information is already in the file with an indication of the proposed direction of the case (contested removability hearing or scheduling of a final merits hearing) or await the next scheduling order.
- Earlier this year all of the standing orders were removed from EOIR San Francisco's website. Why is that? Is the Court considering re-issuing or re-posting any standing orders?
    - Standing orders were removed and replaced with a nationwide Operational Status allowing the virtual appearance of parties.
    - Parties are encouraged to provide notification to the court regarding choice of appearance and information will be provided on a case by case basis.
    - San Francisco is awaiting guidance regarding any future standing orders and will notify parties of any upcoming standing orders through the PIO.
- Can you provide any updates on converting paper cases to ECAS?
    - At this time, paper ROPs are being converted to ECAS based on size and staff availability: as staff have availability, they will scan smaller ROPs to ECAS.
- East Bay Court
    - We have been notified that there is a potential site for the East Bay court located in Contra Costa county. As more details arise and are made available, we will update you on location, size, projected opening date.
    - There will be no movement on this during this calendar year.
- Many of the scheduling orders being sent out have standard language stating that the respondent "must" any applications for relief, prima facie evidence, legal briefs, and supporting documents within 60 days of the order, even when no hearing date is set and might not take place for several. The plain language interpretation of this order (which is worrying many attorneys) suggests that an entire merits hearing packet would be required

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within 60 days. As a result, attorneys are now starting to file motions to rescind that part of the scheduling order, or motions to follow the practice manual, which is creating unnecessary motions and taking up attorney and court time. Can the court clarify what it's expectations are with respect to the filing of legal briefs and supporting documents in particular? Is the court merely inviting attorneys to file all the documents that are available at that time, but they still have up until 15 days prior to the hearing (per the Immigration Court Practice Manual) to submit additional evidence and briefing?

- CFM has three separate orders – an initial order requesting pleadings; a subsequent order finding removability and requiring an application and supporting documents; and a final pre-hearing scheduling order.
- The language this question refers to is in the second order requiring the application with prima facie evidence and supporting documents. Under this order, attorneys are only required to submit sufficient information to make out a prima facie case. You are correct that per the final scheduling order, attorneys are provided additional time according to the ICPM to file any supplemental motions, briefs, or supporting documents.

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 6 Dec 2021 16:40:15 +0000
To: Misha Seay
Cc: McDaniel, Scott (EOIR); Isabel Soto Wagner; maleeha@haq-law.com; St Jean, Amanda (EOIR); AILA NorCal EOIR Liaison; Siobhan Waldron
Subject: RE: [EXTERNAL] Re: EOIR - AILA
Attachments: 2021 - December - AILA-SFR Stakeholder Meeting.pdf

All:
I wanted to provide this to you in advance of the meeting, but am just now getting final feedback from internal stakeholders. Hopefully you have time to review before the meeting – if not, we can cover the issues during the meeting.

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Misha Seay <mseay@clsepa.org>
Sent: Monday, November 29, 2021 2:24 PM
To: Young, Elizabeth L. (EOIR) (b)(6)
Cc: McDaniel, Scott (EOIR) (b)(6); Isabel Soto Wagner <isabel.mehrlaw@gmail.com>; maleeha@haq-law.com; St Jean, Amanda (EOIR) (b)(6); AILA NorCal EOIR Liaison <eoir@ailanorcal.com>; Siobhan Waldron <siobhan@ild.org>
Subject: [EXTERNAL] Re: EOIR - AILA

Hi ACIJ Young,

Please see the proposed agenda attached. In past years, the ACIJ would answer the questions in writing on the same document, which we would share with AILA members in pdf format. We are also happy to take notes of the answers in real time if that is easier.

We look forward to speaking next week!

Best,
Misha

On Tue, Nov 16, 2021 at 7:13 AM Young, Elizabeth L. (EOIR) (b)(6) wrote:

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All:
Again, I have included the contacts I have for AILA liaisons but please let me know if there are any other liaisons I have left off. If you can get a comprehensive list of issues you want to discuss at least a week prior, I can get thorough answers for you.
Thank you and look forward to seeing you all again!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

-

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--
MISHA SEAY, ESQ. | MANAGING ATTORNEY, IMMIGRATION PROGRAM
pronouns: she / her / hers
Community Legal Services in East Palo Alto
www.clsepa.org
Phone: (650) 391-0361 | Fax: (866) 688-5204
Mailing Address: 1861 Bay Road | East Palo Alto, CA 94303

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AILA
Northern California Chapter

-

AILA NORCAL LIAISON QUESTIONS
DECEMBER 6, 2021
SAN FRANCISCO IMMIGRATION COURT

Master Calendar Hearings / Court Operations / Standing Orders

1. We have heard that the Sacramento Immigration Court is resuming "limited" non-detained Master Calendar Hearings in January 2022. Does the San Francisco Immigration Court have any tentative plans to resume regular Master Calendar Hearings (apart from the specialized dockets already operating)?

   As of right now, the only master calendar hearings moving forward are on the dedicated docket. Any changes to that plan will be announced as soon as we receive information that changes COVID-19 capacity policies.

2. What is the current status of court operations in light of COVID-19? Is the court still operating at 50% capacity, such that only 50% of court personnel can be in the office building at any given time?

   The Court is still operating under 50% operational capacity for COVID-19 capacity concerns.

3. Which judges are currently hearing exclusively via Webex? For those judges who do not hear cases exclusively via Webex, is there a way to find out whether they will appear in person or via Webex in advance of the hearing, other than by calling the clerk?

   Judges currently exclusively hearing cases on WebEx are: Johnson, Gambill, Greene, Figueroa, Nelson, and Park. In additions, Judges Halperin and Walker are appearing via WebEx from Adelanto. No other judges appear via WebEx in any capacity or on an ad hoc basis, so there would be no need to contact a clerk to determine if they would be appearing in person.

4. Is it possible to provide the schedule for each immigration judge at least one month in advance? E.g. EOIR recently released the November 2021 schedule (albeit part way through the month). Will EOIR continue releasing such schedules, and is it possible to have this one calendar month ahead of time for planning purposes?

   The Court provides the PIO the judges' schedule, which is then emailed. Additionally, merits hearings are scheduled 60 days out – accordingly, if a case is set to move forward within the next 60 days, it will move forward absent emergent circumstances related to either Court-wide closures or individual judge circumstances (such as sick leave).

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5. Some Immigration Judges have their own standing orders about individual calendar hearing information, Webex and telephonic appearances, etc. Does the court have a comprehensive list of such standing orders? If not, can the court collect all individual standing orders and disseminate them to ensure that practitioners are aware of and comply with them?

   Standing orders related to WebEx and telephonic appearances by counsel are located on the San Francisco Immigration Court website and are courtwide. Individual IJ preferences for hearing preparation as issued in pre-hearing statements will be served individually. If Respondent and/or counsel was not served with a pre-hearing order, the Practice Manual applies. If Respondent and/or counsel was served with a pre-hearing order but no longer has access to that document, they should contact the IJ's clerk to receive a copy of that order.

Rescheduled Hearings

6. Does the court have any policies or practices in place about when a case may be advanced on a Master Calendar or Individual Calendar docket? For example, does the court ensure there is a certain minimum number of business days between when the advanced hearing notice is issued and when the new hearing is scheduled?

   We continue to hear reports of cases being advanced within short periods of time, which can create logistical challenges for attorneys who are managing large caseloads and prioritizing cases according to when their hearing date is scheduled. We have also heard of *pro se* respondents having cases advanced expectedly and not realizing it until after they were ordered removed *in absentia*.

   There are no standard policies or practices for advancement for the Court as a whole.

   The only Master Calendar hearings being held are on the Dedicated Docket – there have occasionally been advancements on this docket but these advancements will be no less than 30 days.

   Specialized Master Calendars in the past were scheduled no less than 45-60 days in advance of the hearing but are no longer being scheduled.

   In the event that an Individual Hearing needs to be rescheduled due to COVID capacity scheduling, the case may be transferred to another judge for a hearing during the same time frame, although not always on the same date/time. In this event, the parties will be notified as soon as the information becomes available.

   In the event counsel has submitted a Motion to Advance, unless otherwise noted in the motion, individual IJs have assumed these cases are prepared for hearing and will schedule these hearings as space becomes available, often for last-minute openings. In

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such case, Counsel will be notified via telephone and/or email as soon as the information becomes available.

7. Would it be possible to have court clerks call or email attorneys of record to notify them of advanced or postponed hearings in cases in which the notice for such a change is particularly short?

   We continue to receive feedback from members with this request due to the significant challenges it creates. As mentioned above, changes to hearings – whether advancements or postponements – can cause significant disruptions for attorneys who are managing large caseloads and prioritizing their work based on when the respondents are scheduled to appear in court. For cases where hearings are being advanced to a date within a particularly short period of time, it would help to have a courtesy phone call to alert the attorney to such a change (e.g. within 4 weeks of the 30-day or 15-day filing *deadline*, rather than the hearing itself). Likewise, for merits hearings that are being postponed within one or two weeks of the 30-day filing deadline, it would be extremely helpful to have a courtesy phone call because attorneys would be actively preparing such cases for filing only to be informed of that fact when it is too late. This can cause a lot of duplication of work and unnecessary preparation that only needs to be updated again before the next rescheduled hearing. The hearing notices sent by the court via regular mail can often take up to a week or longer to arrive (even when checking one's mail diligently), so those several extra days' notice via phone can be extremely useful. Lastly, checking the status of every single case on the online portal to ensure that things have not been cancelled or advanced is highly inefficient and not practicable for many practitioners, in light of caseloads.

   As noted above, cases continued for COVID capacity concerns are done so within 60 days of the hearing. Any continuances past that date are based on either individual IJ issues generally based on emergent circumstances outside of their control or requests by the parties via motion. In these cases, the parties are typically notified as soon as the information becomes available either by telephone or email. Staff will be reminded of this requirement. If there are instances where the parties believe this is not being adhered to, the Court welcomes input on specific cases to help ensure consistency.

Detained Docket

8. What is the status of the detained docket at 630 Sansome? Will IJ Nelson resume hearing detained cases should Yuba County Jail be repopulated at any point?

   We have been notified that Yuba County will begin repopulating in the near future and DHS will be filing NTAs with the court shortly. IJ Nelson is currently set to hear that docket.

Returned Notice Docket

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9. How often is the court holding returned notice docket hearings? Are their particular judges assigned to these hearings?

   There are currently no returned receipt master calendar hearings scheduled. When they are scheduled, they are done so on a volunteer basis based on calendar openings and judge availability.

Dedicated Docket

10. Which immigration judges are currently hearing cases on the dedicated docket? Will those cases remain with the same judge for the duration of the case?

    SFR IJs Kirchner, Seminerio, Phan, Caborn, Gambill, and Price. ADL IJs Halperin and Walker. Absent exigent circumstances, cases will remain with the judge whom it originated with.

11. Practitioners have reported that unrepresented dedicated docket respondents are being rushed to retain counsel within a very short period of time. Some immigration judges have only given continuances of just two weeks, even though many nonprofit organizations have waitlists of several months for a consultation. Would it be helpful for the court if the non-profit community put together an affidavit or some other documentation explaining the timelines for receiving a consultation, securing full-scope legal representation, etc.?

    Any information that would help inform the judges related to continuances would be helpful and welcome.

12. Practitioners have reported that some *pro se* respondents on the dedicated docket are being required to file their Form I-589 at their second Master Calendar Hearing, otherwise that relief will be deemed abandon, despite the rushed timeline outlined above. Does the court provide any guidance to immigration judges about what is an appropriate amount of time *pro se* individuals should be given to prepare and file their Form I-589?

    The Court does not provide per se guidance on when an application should be filed; however, it is standard practice that an application should not be required prior to pleadings being taken. The Court is unaware of cases in which pleadings were taken for a pro se respondent during the first master calendar if a continuance to seek an attorney was requested. If there is a specific case, or cases in which this has happened, the Court welcomes specific input to better understand general circumstances.

13. Practitioners have reported that immigration judges on the dedicated docket often ask DHS to serve the Notice to Appear on unrepresented respondents and then confirm that service was made (suggesting it was procedurally regular) on the record. It is concerning to see immigration judges take on this role and assist DHS in meeting their service obligations, particularly in the case of *pro se* respondents who have greater challenges

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DOJ-22-0370-A-000378

challenging improper service of the NTA.

No question has been posed to answer related to this number. However, a survey of SFR judges indicated that the judges routinely request DHS to provide service, but that it is not being accomplished in the courtroom due to the lack of DHS presence. If specific instances of concern can be pointed out, the issue can be better investigated.

14. Is it possible to request that *pro se* respondents on the dedicated docket with humanitarian issues (e.g. health issues interfering with their ability to secure counsel and/or prepare their case) be removed from the dedicated docket?

    The decision to place a case on the dedicated docket is not within an Immigration Judge's authority, nor is the decision to take the case off the docket.

15. While the new Helpdesk and Family Group Legal Orientation Program is being set up, is it possible to encourage immigration judges to provide longer continuances given that the realistic timeline for seeking resources in the community is much longer than the continuances being granted by the judges?

    Judges are provided both general training on factors to consider for continuances, as well specific information related to consideration of continuances on the dedicated docket. As noted above, the Court welcomes information from the pro bono community to further inform judges as to reasonable time frames for continuances.

Pro Se Legal Services

16. Does the court have any updates about changes made at the San Francisco Immigration Court in order to facilitate more pro se legal services, particularly in light of its new contract with Immigration Center for Women and Children to establish a Family Group Legal Orientation Program?

    There have been no external changes as the agency is still developing a comprehensive and consistent plan. However there are on-going efforts at both the court and national level to develop these plans.

17. The settlement agreement in Nw. Immigrant Rights Project v. Sessions, No. C17-716 RAJ, 2017 WL 6492703 (W.D. Wash. Apr. 17, 2019) allowed for attorneys to assist respondents with limited legal services to unrepresented respondents in removal proceedings, such as the submission of country conditions packets, motions, memoranda, and other limited services. Does the court have any feedback on submissions of this nature to ensure they are properly filed and reviewed by the court?

    To avoid being confused with full representation, attorneys assisting pro se respondents should not include their information on the cover sheet or the proof of service. If an attorney includes information in either of these, the filing window will reject the filing if there is no E-28 on file.

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18. Similar to the above question, some nonprofit legal services providers are interested in providing limited services to respondents with upcoming merits hearings even though they are unable to accept the case for full-scope representation. Does the court have any ideas on areas of need or ways in which nonprofit attorneys can assist *pro se* individuals with their cases that would assist in creating a robust record for review? E.g. country conditions submissions, declaration preparation, appearance at the merits hearing, etc.

    There is no general rule on what would be helpful in a specific case. However, the Pro Bono committee will be communicating with nonprofit legal services in the future to develop ways in which pro se respondents can be connected to legal services; and providing general guidelines for pro bono counsel.

Miscellaneous

19. What is the current status of the EOIR-42B backlog? How long can attorneys expect reserved 42B grants to be pending?

    3-5 years

20. Is ECAS still only operating in newly filed cases, or are there any previously paper ROPs that are now being moved into ECAS? We received reports of a paper ROP being scanned into the electronic system. It is not clear whether this will be happening to other paper ROPs or whether these cases were an anomalies.

    The Court is converting some paper files to ECAS. To what extent this will happen is in flux at this point.

21. What is the court's policy on same-day submissions at a Master Calendar or Individual Hearing, particularly where one or more parties is appearing remotely? We have heard reports of some immigration judges accepting emails directly from DHS attorneys with submissions attached, even where those submissions are not being served in real time on the respondents and instead being served via mail (which by then is too late).

    IJs should be following the requirement that there must be proof of service on the other party and/or an agreement by both parties to allow for a same-day submission.

22. Assuming there are exceptional circumstances to warrant it, are the court clerks allowed to make copies of documents that are being provided to the court or to the opposing party? If not, is it possible to put copy machines in the pro bono rooms on each floor (whether at the government's expense or not)?

    No, the parties must provide their own filings for both the Court and the opposing party. The Court does not have funding to provide these services. However, the request will be considered during assessment by the Pro Bono committee noted in #16.

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23. With the *Mendez Rojas* settlement agreement deadline coming up in April 2022, some practitioners have asked for guidance on how to file notices of class membership in administratively closed cases. Can a respondent file a notice of class membership (with *no* motion attached) into an administratively closed case, or must the recalendar first? For some cases, keeping the case administratively closed but still preserving one's rights under the settlement would be preferred.

    The Court cannot accept filings in a closed case, which includes administratively closed case. This issue is being investigated further; if there is an alternative, that information will be provided at a later date.

Immigration Court Staff Changes

24. We have heard that IJ Simmons will be leaving the bench in San Francisco. If true, do you have an estimated end date?

    The Court cannot divulge private personnel information without express permission.

25. Are any other sitting judges retiring or leaving in the near future?

    The Court cannot divulge private personnel information without express permission. Dana Marks has indicated she will be retiring at the end of December. She is currently on leave and will not return to the bench prior to her retirement.

26. Does the court plan to add anymore immigration judges to the bench in the near future?

    The Court has an ongoing system to replace departing IJs with new hires. New IJs will be announced either upon their express permission or upon their entry on duty.

27. Are there any immigration judges coming up for their two-year probationary review? If so, we are happy to collect feedback from practitioners about those judges.

    The Court is currently gathering information for probation reports on the following IJs: Kim, Masterson, and George. Thank you for participating in this very important process.

28. Are there any other court staff announcements or updates?

    No, but you will be kept apprised of any changes to the above information.

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From: Young, Elizabeth L. (EOIR)
Sent: Thu, 4 Nov 2021 20:47:23 +0000
To: Daugherty, Daniel J (EOIR)
Subject: RE: [EXTERNAL] Returned Notice Docket

We actually don't have one scheduled – I am in the midst of coming up with dates for the next one and we were focusing on the first week of December.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 8:23 AM
To: Young, Elizabeth L. (EOIR (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

When is your next shareholder session

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Cheng, Mary (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 5:22 AM
To: Daugherty, Daniel J (EOIR) (b)(6)
Cc: McNulty, Sheila (EOIR) (b)(6)
Subject: RE: [EXTERNAL] Returned Notice Docket

Doc,

Good morning. When is the next stakeholder/AILA engagement for SFR? I am thinking that (b)(5)
(b)(5)
(b)(5) Just a thought.

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6); Weiss, Daniel H (EOIR) (b)(6); Cheng, Mary (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) (b)(6)
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have several (b)(5) (b)(5) let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

AMERICAN OVERSIGHT

From: Milli Atkinson <matkinson@sfbar.org>
Date: November 2, 2021 at 4:09:58 PM PDT
To: "Young, Elizabeth L. (EOIR)" [(b)(6)]
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc
The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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From: Young, Elizabeth L. (EOIR)
Sent: Tue, 14 Dec 2021 14:26:47 +0000
To: Lampman, Zachary (EOIR) (CTR); Mattingly, Kathryn (EOIR)
Subject: RE: [EXTERNAL] Returned Notice Docket

Great - thank you so much!

From: Lampman, Zachary (EOIR) (CTR) (b)(6)
Sent: Tuesday, December 14, 2021 6:22 AM
To: Young, Elizabeth L. (EOIR) (b)(6); Mattingly, Kathryn (EOIR) (b)(6)
Subject: RE: [EXTERNAL] Returned Notice Docket

Good morning Elizabeth,

PIO Amanda St. Jean provided me a draft that you both worked on. I sent it to OCIJ for their review and then it was approved to send out. I believe it is being physically sent out today.

Attached is a copy of the draft.

Please let me know if you have any questions or concerns.

V/r,

Zachary Lampman

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, December 14, 2021 9:16 AM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Lampman, Zachary (EOIR) (CTR) (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Kathryn and Zachary:
I'm following up on this to determine if there a draft response yet. I am happy to add any details or information outside of what has already been presented below.
Thank you!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

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From: Mattingly, Kathryn (EOIR) <(b)(6)>
Sent: Thursday, November 4, 2021 9:07 AM
To: Daugherty, Daniel J (EOIR) (b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6); Weiss, Daniel H (EOIR) (b)(6); Cheng, Mary (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6); Lampman, Zachary (EOIR) (CTR) (b)(6); St Jean, Amanda (EOIR) <(b)(6)>
Subject: RE: [EXTERNAL] Returned Notice Docket

Hi Judge Doc - Thank you for reaching out. We handle formal correspondence for the agency and (b)(5)

(b)(5)

(b)(5) hanks again – Kathryn

BACKGROUND:

(b)(5)

ON THE RECORD:

(b)(5)

End.

Initial response to SF Chronicle:
BACKGROUND:

(b)(5)

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(b)(5)

End.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6); Weiss, Daniel H (EOIR) (b)(6); Cheng, Mary (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) (b)(6)
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have severa (b)(5)
(b)(5)
Elizabeth

Begin forwarded message:

AMERICAN OVERSIGHT

From: Milli Atkinson <matkinson@sfbar.org>
Date: November 2, 2021 at 4:09:58 PM PDT
To: "Young, Elizabeth L. (EOIR)" [redacted]
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc
The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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From: Mattingly, Kathryn (EOIR)
Sent: Wed, 27 Oct 2021 21:59:51 +0000
To: Fooshe, Alexis (EOIR)
Subject: RE: FOR ALEXIS HOT MEDIA for Tonight

Thanks! I will plus Sean ☺.

From: Fooshe, Alexis (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 5:59 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: Re: FOR ALEXIS HOT MEDIA for Tonight

(b)(5)

On Oct 27, 2021, at 5:56 PM, Mattingly, Kathryn (EOIR) (b)(6) wrote:

How is this? The draft below?

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) (b)(5) The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:

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-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

(b)(5)

End.

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

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From: Mattingly, Kathryn (EOIR)
Sent: Wed, 27 Oct 2021 22:37:02 +0000
To: Daugherty, Daniel J (EOIR); Young, Elizabeth L. (EOIR)
Cc: Lin, Austin (EOIR); Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Sounds good.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 6:25 PM
To: Mattingly, Kathryn (EOIR) (b)(6); Young, Elizabeth L. (EOIR) <Elizabeth.L.Young@usdoj.gov>
Cc: Lin, Austin (EOIR) (b)(6) Foster, Sean (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Kathryn

I have reached out to the other RDCs for any input they may have.

I will be in touch as soon as I can.

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) (b)(6); Young, Elizabeth L. (EOIR) (b)(6)
Cc: Lin, Austin (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6)
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

AMERICAN OVERSIGHT

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) I've been in meetings and tied up so I've asked the SF Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
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-How many people have been ordered removed in absentia through this docket?
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End.

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 28 Oct 2021 18:39:21 +0000
To: Daugherty, Daniel J (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Hi Judge Doc – I like all the extra details and I see (b)(5) (b)(5) but just waiting for final OCIJ clearance, and I also want to send this by OGC. I tried to get more time for us but Ms. Kopan just responded to me with the bulleted language below. Is the latest draft language below okay for me to move into OGC, then OPFO clearance? (b)(5) likely as an FYSA. Thanks so much. – Kathryn

- **As of now, we are planning to publish in the morning, so that would be too late to make it into the story. A response is always of use to us, but this is also about whether the Department of Justice wants to have a say in the story. I can let you know if for some reason our timing changes. If you can't get a full response today, let me know if you could perhaps do a partial one.**

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 2:05 PM
To: Weiss, Daniel H (EOIR) (b)(6)
Cc: Mattingly, Kathryn (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

(b)(5)

Doc

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 8:36 PM
To: McNulty, Sheila (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

(b)(5)

Thanks
Doc

D. J. Daugherty
RDCIJ West

On Oct 27, 2021, at 4:31 PM, McNulty, Sheila (EOIR) (b)(6) wrote:

Hi Judge,
Yes, I was aware (b)(5)
(b)(5)

AMERICAN OVERSIGHT

(b)(5) . Not sure if it helps, but ….there you go!
Sheila

From: Daugherty, Daniel J (EOIR) (b)(6)>
Sent: Wednesday, October 27, 2021 5:24 PM
To: McNulty, Sheila (EOIR) (b)(6)>
Cc: Cheng, Mary (EOIR (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

RDC's

(b)(5) ght.

Draft:

(b)(5)

All thoughts are greatly appreciated!

AMERICAN OVERSIGHT

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) (b)(6)
Cc: Lin, Austin (EOIR) (b)(6); Foster, Sean (EOIR) (b)(6) Fooshe, Alexis (EOIR) (b)(6)
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AMERICAN OVERSIGHT

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(b)(5)

End.

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Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Thu, 28 Oct 2021 13:40:52 +0000
To: McDaniel, Scott (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

I think we're good. Doc said that (b)(5) (b)(5) Thanks for the background – it will be helpful for him when is putting together info.

From: McDaniel, Scott (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:26 PM
To: Young, Elizabeth L. (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Is this all just FYI or do you need additional info. The docket (b)(5) (b)(5) (b)(5)

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:21 PM
To: McDaniel, Scott (EOIR) (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

From: Young, Elizabeth L. (EOIR)
Sent: Wednesday, October 27, 2021 3:21 PM
To: Daugherty, Daniel J (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

This docket was (b)(5)

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

From my perspective, (b)(5)
(b)(5)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) (b)(6); Young, Elizabeth L. (EOIR) (b)(6)
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AMERICAN OVERSIGHT

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(b)(5)

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Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Wed, 27 Oct 2021 22:21:01 +0000
To: Daugherty, Daniel J (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Attachments: SFR specialized completion log.xlsx

This docket was (b)(5)

(b)(5)

From my perspective, (b)(5)
(b)(5)

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Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) (b)(6); Young, Elizabeth L. (EOIR) (b)(6)
Cc: Lin, Austin (EOIR (b)(6) Foster, Sean (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6)
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AMERICAN OVERSIGHT

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End.

Draft:

(b)(5)

End.

From KQED Inquiry:
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Draft:

(b)(5)

End.

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Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
Young	7A Status Docket Juvenile	10/7/2021	135	128	95%
Nelson	7A Status Docket Adult	10/8/2021	14	12	86%
Caborn	Returned Notice Docket	10/13/2021	21	17	81%
Young	7A Status Docket Juvenile	10/14/2021	10	10	100%
Caborn	Returned Notice Docket	10/18/2021	23	16	70%
Young	7A Status Docket Juvenile	10/19/2021	51	47	92%
Phan	Returned Notice Docket	10/26/2021	29		0%
Deiss	7A Status Docket Adult	10/27/2021	20		0%
Star	Returned Notice Docket	10/29/2021	28		0%
Phan	7A Status Docket Adult	11/2/2021	20		0%
Caborn	Returned Notice Docket	11/3/2021	34		0%
Deiss	7A Status Docket Adult	11/3/2021	20		0%
Phan	7A Status Docket Adult	11/4/2021	20		0%
Butler	7A Status Docket Adult	11/4/2021	20		0%
Phan	7A Status Docket Adult	11/9/2021	20		0%
Butler	7A Status Docket Adult	11/9/2021	20		0%
Deiss	7A Status Docket Adult	11/10/2021	20		0%
Butler	7A Status Docket Adult	11/16/2021	20		0%
Deiss	7A Status Docket Adult	11/17/2021	20		0%
Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 15 Nov 2021 21:06:52 +0000
To: Fooshe, Alexis (EOIR)
Subject: RE: HOT MEDIA for Alexis: KQED (Tyche Hendricks) Follow-up

Thanks! Yes. I knew that about the California Report and worked with her predecessors too.

From: Fooshe, Alexis (EOIR) (b)(6)
Sent: Monday, November 15, 2021 4:00 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: RE: HOT MEDIA for Alexis: KQED (Tyche Hendricks) Follow-up

(b)(5)

(b)(5)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Monday, November 15, 2021 12:58 PM
To: Fooshe, Alexis (EOIR) (b)(6)
Subject: HOT MEDIA for Alexis: KQED (Tyche Hendricks) Follow-up
Importance: High

Alexis – Please see Tyche's follow-up below. This is all (b)(5)
(b)(5) . Any edits or concerns? Thanks!

Follow-up:
I also have some questions about the dedicated docket and the San Francisco returned notice docket, especially in regard to this letter<https://protect2.fireeye.com/v1/url?k=0c8af163-5311c9b4-0c8dd586-0cc47adca7d0-2c123432f322166f&q=1&e=dcf069d5-4081-473a-8ad1-0c41ed568b1e&u=https%3A%2F%2Fdocs.google.com%2Fdocument%2Fd%2F1jptcY0XDWvX0fN-s045Uu52c1YcLiZRzcgX-gP2nMxo%2Fedit> that was sent last week by the San Francisco Bar Association and other advocates to Assistant Chief Immigration Judge Elizabeth Young.

I would like to request an interview for next week, in person or over Zoom or telephone, that I would record for radio broadcast. I request to speak with ACIJ Young or with an EOIR official who can address EOIR's response to the letter, as well as answer questions about the dedicated docket -- in particular the pace with which cases are moving and the difficulty respondents are encountering to find legal representation.

Draft:

(b)(5)

BACKGROUND:

AMERICAN OVERSIGHT

(b)(5)

ON THE RECORD:

(b)(5)

End.

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org>
Sent: Wednesday, November 10, 2021 5:51 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thank you for this. I have made three FOIA requests and am hoping for expedited processing.

I also have some questions about the dedicated docket and the San Francisco returned notice docket, especially in regard to this letter<https://protect2.fireeye.com/v1/url?k=0c8af163-5311c9b4-0c8dd586-0cc47adca7d0-2c123432f322166f&q=1&e=dcf069d5-4081-473a-8ad1-0c41ed568b1e&u=https%3A%2F%2Fdocs.google.com%2Fdocument%2Fd%2F1jptcY0XDWvX0fN-s045Uu52c1YcLiZRzcgX-gP2nMxo%2Fedit> that was sent last week by the San Francisco Bar Association and other advocates to Assistant Chief Immigration Judge Elizabeth Young.

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AMERICAN OVERSIGHT

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Thank you,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
Pronounciation: TIE-key HEN-dricks
415.553.2826 T
(b)(6) M

We're back in our reimagined headquarters. Come see us at KQED Live.<https://kqed.org/live> KQED
2601 Mariposa Street
San Francisco, CA 94110-1426
www.kqed.org<https://urldefense.proofpoint.com/v2/url?u=http-3A__www.kqed.org&d=DwMF-g&c=E2nBno7hEddFhl23N5nD1Q&r=7ERcy5z-dXwLGHu0XrDPFA&m=8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc&s=CP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw&e=>

On Nov 1, 2021, at 7:21 AM, Mattingly, Kathryn (EOIR) (b)(6) <mailto:(b)(6)>> wrote:

EXTERNAL

Good morning Tyche,

Please see EOIR's FOIA webpage<https://www.justice.gov/eoir/freedom-information-act-foia> for instructions on how to request EOIR records.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

AMERICAN OVERSIGHT

Best,
Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR) [redacted] <mailto:[redacted]>
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
[redacted] M

We've moved temporarily. You can find us at:
KQED
50 Beale Street, 5th Floor
San Francisco, CA 94105-1813
https://protect2.fireeye.com/v1/url?k=dc0cbdd4-83978498-dc0b9931-0cc47adca7cc-17239752ea1a849f&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=0eee002e-51753962-0ee924cb-0cc47adca7cc-c91695ca974fe6c6&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=dc0cbdd4-83978498-dc0b9931-0cc47adca7cc-17239752ea1a849f&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=0eee002e-51753962-0ee924cb-0cc47adca7cc-c91695ca974fe6c6&q=1&e=869a2e8a-bfdd-418a-80b6-

AMERICAN OVERSIGHT

bbcb1323817b&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>>

On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto (b)(6) <mailto: (b)(6) (b)(6) mailto (b)(6) >>> wrote:

EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) (b)(6) <mailto: (b)(6) mailto: (b)(6) (b)(6) cmailto (b)(6) >>>
Cc: EOIR, PAO (EOIR) (b)(6) <mailto: (b)(6) <mailto (b)(6) 3cmailto: (b)(6) (b)(6)
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized “returned notice” docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto (b)(6) <mailto: (b)(6) (b)(6) 3cmailto: (b)(6) >>> wrote:

AMERICAN OVERSIGHT

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court%3chttps:/www.justice.gov/eoir/san-francisco-immigration-court>>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download%3chttps:/www.justice.gov/file/1398881/download>>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download%3chttps:/www.justice.gov/eoir-operational-status/page/file/1419176/download>>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download%3chttps:/www.justice.gov/eoir/page/file/1079306/download>>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download%3chttps:/www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

AMERICAN OVERSIGHT

Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir<http://www.justice.gov/eoir%3chttp:/www.justice.gov/eoir%3e%3chttp:/www.justice.gov/eoir%3chttp:/www.justice.gov/eoir>>>

-----Original Message-----
From: Tyche Hendricks
<thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR)
<PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov%3cmailto:PAO.EOIR@usdoj.gov>>>
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

AMERICAN OVERSIGHT

Thank you,

Tyche

Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

(b)(6) M

We've moved temporarily. You can find us at:

KQED

50 Beale Street, 5th Floor

San Francisco, CA 94105-1813

https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F><https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 20 Jan 2022 20:59:50 +0000
To: Alder Reid, Lauren (EOIR)
Cc: Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Thanks. This is very helpful in explaining the important work we do.

From: Alder Reid, Lauren (EOIR) <(b)(6)>
Sent: Thursday, January 20, 2022 3:49 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>
Cc: Foster, Sean (EOIR) <(b)(6)> Fooshe, Alexis (EOIR) <(b)(6)>
Subject: Re: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Approved (b)(5)!

BACKGROUND, not for attribution:

(b)(5)

On Jan 20, 2022, at 2:34 PM, Mattingly, Kathryn (EOIR) <(b)(6)> wrote:

Yes. FOIA was able to track it down. Please see the 249 page pdf attached. Since this FOIA was not media-related, CLAD was not notified in advance. I'm meeting with Jeniffer Pérez Santiago tomorrow at 11 a.m. so she can train me on accessing FOIA express and reviewing high-profile non-media FOIAs.

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Please let me know if you need anything else. Thanks.

From: Alder Reid, Lauren (EOIR) <(b)(6)>
Sent: Thursday, January 20, 2022 1:31 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>; Foster, Sean (EOIR) <(b)(6)>
Cc: Fooshe, Alexis (EOIR) <(b)(6)>
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Do we have the full FOIA copy from Joe? If not, can we please get it?

Best,
Lauren

From: Mattingly, Kathryn (EOIR) <(b)(6) <mailto:(b)(6)>>
Sent: Thursday, January 20, 2022 10:04 AM
To: Alder Reid, Lauren (EOIR) <(b)(6) <mailto:(b)(6)>>; Foster, Sean (EOIR) <(b)(6) <mailto:(b)(6)>>
Cc: Fooshe, Alexis (EOIR) <(b)(6) <mailto:(b)(6)>>
Subject: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices
Importance: High

Lauren/Sean – Please see inquiry below and the attached files. I pulled the language (b)(5)

(b)(5)

Inquiry:
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.

Deadline: Today, Jan. 20

Draft:
BACKGROUND:

AMERICAN OVERSIGHT

(b)(5)

End.

From: Kopan, Tal <tal.kopan@sfchronicle.com<mailto:tal.kopan@sfchronicle.com>>
Sent: Wednesday, January 19, 2022 8:53 PM
To: Mattingly, Kathryn (EOIR) <(b)(6) mailto (b)(6)
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
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Thanks!
Tal

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com<mailto:tal.kopan@sfchronicle.com>
Twitter: @TalKopan
SFChronicle.com/Subscribe<http://sfchronicle.com/Subscribe>
[Chron logo]

<Previously released.pdf>

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 20 Jan 2022 19:34:40 +0000
To: Alder Reid, Lauren (EOIR); Foster, Sean (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices
Attachments: Previously released.pdf

Yes. FOIA was able to track it down. Please see the 249 page pdf attached. Since this FOIA was not

(b)(5)

Please let me know if you need anything else. Thanks.

From: Alder Reid, Lauren (EOIR) <(b)(6)>
Sent: Thursday, January 20, 2022 1:31 PM
To: Mattingly, Kathryn (EOIR) (b)(6); Foster, Sean (EOIR) <(b)(6)>
Cc: Fooshe, Alexis (EOIR) <(b)(6)>
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Do we have the full FOIA copy from Joe? If not, can we please get it?

Best,
Lauren

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Thursday, January 20, 2022 10:04 AM
To: Alder Reid, Lauren (EOIR) (b)(6); Foster, Sean (EOIR) <(b)(6)>
Cc: Fooshe, Alexis (EOIR) <(b)(6)>
Subject: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices
Importance: High

Lauren/Sean – Please see inquiry below and the attached files. I pulled the language (b)(5)

(b)(5)

Inquiry:
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Deadline: Today, Jan. 20

Draft:

(b)(5)

ON THE RECORD:

(b)(5)

End.

From: Kopan, Tal <tal.kopan@sfchronicle.com>
Sent: Wednesday, January 19, 2022 8:53 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
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I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
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Thanks!
Tal

AMERICAN OVERSIGHT

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

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IDNCASE	osc_date	Case Type	BASE_CITY	HEARING_LOC_NAME	judge_name	generation	Dec Descript	comp_date	ABS ENTI	Depoted Country	input_date	Paper/e ROP
9722170	7/29/2020	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Phan, Susan	99	Remove	9/28/2021	Y	MEXICO	1/4/2021	Paper ROP
9722171	7/29/2020	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Phan, Susan	99	Remove	9/28/2021	Y	MEXICO	1/4/2021	Paper ROP
9087513	8/11/2019	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Star, Shadee M.	98	Remove	8/16/2021	Y	HONDURAS	3/1/2021	Paper ROP
9744513	2/23/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Phan, Susan	99	Remove	10/26/2021	Y	GUATEMALA	3/1/2021	Paper ROP
9750385	1/31/2019	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Swink, Arwen A.	99	Remove	8/4/2021	Y	HONDURAS	3/11/2021	Paper ROP
9753620	3/10/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Figueroa, Laura C.	99	Remove	8/9/2021	Y	GUATEMALA	3/16/2021	Paper ROP
9753625	3/10/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Figueroa, Laura C.	99	Remove	8/9/2021	Y	GUATEMALA	3/16/2021	Paper ROP
9773005	4/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Caborn, Andrew J.	99	Remove	8/9/2021	Y	HONDURAS	4/22/2021	Paper ROP
9773007	4/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Figueroa, Laura C.	99	Remove	8/9/2021	Y	HONDURAS	4/22/2021	Paper ROP
9798895	3/21/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Swink, Arwen A.	99	Remove	8/4/2021	Y	GUATEMALA	5/20/2021	Paper ROP

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9802139	7/5/2019	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Star, Shadee M.	99	Remove	8/16/2021	Y	HONDURAS	5/20/2021	Paper ROP
9801681	5/18/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	99	Remove	9/2/2021	Y	EL SALVADOR	5/25/2021	Paper ROP
9801686	5/18/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	99	Remove	9/2/2021	Y	EL SALVADOR	5/25/2021	Paper ROP
9802948	5/10/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Caborn, Andrew J.	98	Remove	10/18/2021	Y	INDIA	5/25/2021	Paper ROP
9804964	4/16/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Phan, Susan	99	Remove	9/28/2021	Y	HONDURAS	5/27/2021	Paper ROP
9210492	9/21/2019	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	98	Remove	9/2/2021	Y	VENEZUELA	6/17/2021	Paper ROP
9837845	6/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/22/2021	Y	GUATEMALA	6/29/2021	eROP
9837904	6/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/22/2021	Y	GUATEMALA	6/29/2021	eROP
9808574	5/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	99	Remove	10/7/2021	Y	NICARAGUA	6/29/2021	Paper ROP
9808578	5/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	99	Remove	10/7/2021	Y	NICARAGUA	6/29/2021	Paper ROP

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9808587	5/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Savage, Patrick S.	99	Remove	10/7/2021	Y	NICARAGUA	6/29/2021	Paper ROP
9858436	4/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO, CALIFORNIA	Phan, Susan	99	Remove	9/28/2021	Y	GUATEMALA	7/15/2021	Paper ROP
9845775	6/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	8/26/2021	Y	NICARAGUA	7/26/2021	eROP
9845779	6/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	8/26/2021	Y	NICARAGUA	7/26/2021	eROP
9824606	6/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/17/2021	Y	GUATEMALA	7/26/2021	eROP
9824618	6/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/17/2021	Y	GUATEMALA	7/26/2021	eROP
9898637	6/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/17/2021	Y	GUATEMALA	8/5/2021	eROP
9898652	6/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/17/2021	Y	GUATEMALA	8/5/2021	eROP
9835972	6/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/18/2021	Y	GUATEMALA	8/5/2021	eROP

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9835980	6/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/18/2021	Y	GUATEMALA	8/5/2021	eROP
9864999	7/18/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	8/27/2021	Y	EL SALVADOR	8/6/2021	eROP
9865012	7/18/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	8/27/2021	Y	EL SALVADOR	8/6/2021	eROP
9856894	7/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	TURKEY	8/6/2021	eROP
9856897	7/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	TURKEY	8/6/2021	eROP
9856899	7/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	TURKEY	8/6/2021	eROP
9856900	7/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	TURKEY	8/6/2021	eROP
9856901	7/11/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	TURKEY	8/6/2021	eROP

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9906428	8/9/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/13/2021	Y	GUATEMALA	8/9/2021	eROP
9906467	8/9/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/13/2021	Y	GUATEMALA	8/9/2021	eROP
9896120	8/4/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	GUATEMALA	8/10/2021	eROP
9896130	8/4/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/24/2021	Y	GUATEMALA	8/10/2021	eROP
9898657	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/25/2021	Y	GUATEMALA	8/10/2021	eROP
9898667	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/25/2021	Y	GUATEMALA	8/10/2021	eROP
9900422	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	HONDURAS	8/17/2021	eROP
9902397	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	HONDURAS	8/17/2021	eROP

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9902399	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	HONDURAS	8/17/2021	eROP
9902277	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/8/2021	Y	GUATEMALA	8/17/2021	eROP
9902283	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/8/2021	Y	GUATEMALA	8/17/2021	eROP
9873078	7/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	GUATEMALA	8/18/2021	eROP
9873097	7/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	GUATEMALA	8/18/2021	eROP
9874476	7/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/9/2021	Y	NICARAGUA	8/18/2021	eROP
9874497	7/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/9/2021	Y	NICARAGUA	8/18/2021	eROP
9927953	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	GUATEMALA	8/18/2021	eROP

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9927963	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	GUATEMALA	8/18/2021	eROP
9927967	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/10/2021	Y	GUATEMALA	8/18/2021	eROP
9878007	7/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/13/2021	Y	HONDURAS	8/18/2021	eROP
9915738	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/19/2021	Y	EL SALVADOR	8/19/2021	eROP
9915756	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/19/2021	Y	EL SALVADOR	8/19/2021	eROP
9933814	6/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/19/2021	Y	GUATEMALA	8/19/2021	eROP
9933834	6/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/19/2021	Y	GUATEMALA	8/19/2021	eROP
9883095	7/28/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/13/2021	Y	HONDURAS	8/19/2021	eROP

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9883105	7/28/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/13/2021	Y	HONDURAS	8/19/2021	eROP
9942868	8/3/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/25/2021	Y	GUATEMALA	8/24/2021	eROP
9942875	8/3/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/25/2021	Y	GUATEMALA	8/24/2021	eROP
9943208	7/4/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/27/2021	Y	HONDURAS	8/24/2021	eROP
9943219	7/4/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/27/2021	Y	HONDURAS	8/24/2021	eROP
9943230	7/4/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/27/2021	Y	HONDURAS	8/24/2021	eROP
9943727	6/19/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	EL SALVADOR	8/24/2021	eROP
9943747	6/19/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	EL SALVADOR	8/24/2021	eROP

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9943776	6/19/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	EL SALVADOR	8/24/2021	eROP
9942674	6/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/6/2021	Y	HONDURAS	8/24/2021	eROP
9942695	6/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/6/2021	Y	HONDURAS	8/24/2021	eROP
9901303	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/14/2021	Y	HONDURAS	8/24/2021	eROP
9901318	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/14/2021	Y	HONDURAS	8/24/2021	eROP
9901330	8/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/14/2021	Y	HONDURAS	8/24/2021	eROP
9885749	7/29/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	GUATEMALA	8/25/2021	eROP
9885754	7/29/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	GUATEMALA	8/25/2021	eROP

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9904260	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	HONDURAS	8/25/2021	eROP
9904263	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	HONDURAS	8/25/2021	eROP
9904265	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	HONDURAS	8/25/2021	eROP
9904266	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/2/2021	Y	HONDURAS	8/25/2021	eROP
9946089	7/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/25/2021	eROP
9946098	7/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/25/2021	eROP
9946101	7/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/25/2021	eROP
9943454	6/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	GUATEMALA	8/26/2021	eROP

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9943466	6/6/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	GUATEMALA	8/26/2021	eROP
9848972	6/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/9/2021	Y	GUATEMALA	8/26/2021	eROP
9848973	6/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/9/2021	Y	GUATEMALA	8/26/2021	eROP
9948235	6/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/26/2021	eROP
9948247	6/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/26/2021	eROP
9948282	6/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/7/2021	Y	BRAZIL	8/26/2021	eROP
9872687	7/25/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	HONDURAS	8/27/2021	eROP
9872694	7/25/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	HONDURAS	8/27/2021	eROP

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9872697	7/25/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	HONDURAS	8/27/2021	eROP
9872706	7/25/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	9/8/2021	Y	HONDURAS	8/27/2021	eROP
9948560	6/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/9/2021	Y	HONDURAS	8/27/2021	eROP
9897501	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/18/2021	Y	HONDURAS	8/30/2021	eROP
9897503	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/18/2021	Y	HONDURAS	8/30/2021	eROP
9897507	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/18/2021	Y	HONDURAS	8/30/2021	eROP
9921619	6/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	HONDURAS	8/30/2021	eROP
9921639	6/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/28/2021	Y	HONDURAS	8/30/2021	eROP

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9951399	6/2/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/29/2021	Y	GUATEMALA	8/30/2021	eROP
9951410	6/2/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/29/2021	Y	GUATEMALA	8/30/2021	eROP
9920032	8/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/3/2021	Y	GUATEMALA	8/30/2021	eROP
9920034	8/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/3/2021	Y	GUATEMALA	8/30/2021	eROP
9954641	8/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/17/2021	Y	HONDURAS	8/30/2021	eROP
9954672	8/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/17/2021	Y	HONDURAS	8/30/2021	eROP
9954130	8/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/18/2021	Y	HONDURAS	8/30/2021	eROP
9954145	8/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/18/2021	Y	HONDURAS	8/30/2021	eROP

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9954161	8/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/18/2021	Y	HONDURAS	8/30/2021	eROP
9908174	8/10/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/15/2021	Y	HONDURAS	8/31/2021	eROP
9908176	8/10/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	11/15/2021	Y	HONDURAS	8/31/2021	eROP
9959344	8/5/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/28/2021	Y	GUATEMALA	9/1/2021	eROP
9933506	8/19/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/20/2021	Y	HONDURAS	9/1/2021	eROP
9937683	8/22/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/21/2021	Y	HONDURAS	9/1/2021	eROP
9937743	8/22/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/21/2021	Y	HONDURAS	9/1/2021	eROP
9901841	8/7/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/26/2021	Y	HONDURAS	9/1/2021	eROP

AMERICAN OVERSIGHT

9901847	8/7/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	10/26/2021	Y	HONDURAS	9/1/2021	eROP
9919418	8/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/10/2021	Y	HONDURAS	9/1/2021	eROP
9919423	8/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	11/10/2021	Y	HONDURAS	9/1/2021	eROP
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9931119	8/18/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	12/22/2021	Y	GUATEMALA	9/2/2021	eROP
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9964701	7/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/8/2021	Y	GUATEMALA	9/3/2021	eROP

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9964707	7/30/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/8/2021	Y	GUATEMALA	9/3/2021	eROP
9925145	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/15/2021	Y	GUATEMALA	9/7/2021	eROP
9925147	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/15/2021	Y	GUATEMALA	9/7/2021	eROP
9965519	7/24/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	11/10/2021	Y	HONDURAS	9/7/2021	eROP
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9969175	7/23/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/8/2021	Y	NICARAGUA	9/7/2021	eROP
9969182	7/22/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/8/2021	Y	NICARAGUA	9/7/2021	eROP

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9969188	7/23/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/8/2021	Y	NICARAGUA	9/7/2021	eROP
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9904042	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/27/2021	Y	BRAZIL	9/13/2021	eROP
9905273	8/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	9/27/2021	Y	BRAZIL	9/13/2021	eROP
9985505	9/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/20/2021	Y	GUATEMALA	9/15/2021	eROP
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9926364	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	12/22/2021	Y	GUATEMALA	9/15/2021	eROP

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9926375	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	12/22/2021	Y	GUATEMALA	9/15/2021	eROP
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9926395	8/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	12/22/2021	Y	GUATEMALA	9/15/2021	eROP
9989239	7/27/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/22/2021	Y	HONDURAS	9/15/2021	eROP
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9989270	7/27/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/22/2021	Y	HONDURAS	9/15/2021	eROP
9947544	8/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/13/2021	Y	EL SALVADOR	9/16/2021	eROP
9947552	8/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Walker, Nathaniel B.	99	Remove	12/13/2021	Y	EL SALVADOR	9/16/2021	eROP

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9917422	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/13/2021	Y	BRAZIL	9/20/2021	eROP
9917425	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/13/2021	Y	BRAZIL	9/20/2021	eROP
9917428	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/13/2021	Y	BRAZIL	9/20/2021	eROP
9917430	8/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Halperin, Ravit R.	99	Remove	10/13/2021	Y	BRAZIL	9/20/2021	eROP
9982209	9/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	HONDURAS	9/20/2021	eROP
9982215	9/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	HONDURAS	9/20/2021	eROP
9982223	9/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	HONDURAS	9/20/2021	eROP
9982224	9/12/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	HONDURAS	9/20/2021	eROP

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9988538	9/15/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	TURKEY	9/20/2021	eROP
9988549	9/14/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	TURKEY	9/20/2021	eROP
9988583	9/15/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/9/2021	Y	TURKEY	9/20/2021	eROP
9957059	9/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/15/2021	Y	EL SALVADOR	9/20/2021	eROP
9957065	9/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/15/2021	Y	EL SALVADOR	9/20/2021	eROP
9957071	9/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/15/2021	Y	EL SALVADOR	9/20/2021	eROP
9957080	9/1/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/15/2021	Y	EL SALVADOR	9/20/2021	eROP
10013235	9/27/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/6/2021	Y	HONDURAS	9/27/2021	eROP

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10013239	9/27/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/6/2021	Y	HONDURAS	9/27/2021	eROP
10013245	9/27/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/6/2021	Y	HONDURAS	9/27/2021	eROP
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9993247	9/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	11/4/2021	Y	COLOMBIA	9/29/2021	eROP
9993249	9/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	11/4/2021	Y	COLOMBIA	9/29/2021	eROP
9993250	9/17/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	11/4/2021	Y	COLOMBIA	9/29/2021	eROP
9972564	9/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/20/2021	Y	EL SALVADOR	9/29/2021	eROP
9972570	9/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/20/2021	Y	EL SALVADOR	9/29/2021	eROP

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9997601	9/20/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/8/2021	Y	TURKEY	10/1/2021	eROP
9997614	9/20/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Kirchner, Steven M.	99	Remove	12/8/2021	Y	TURKEY	10/1/2021	eROP
10011137	9/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	TURKEY	10/6/2021	eROP
10011138	9/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	TURKEY	10/6/2021	eROP
10011140	9/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	TURKEY	10/6/2021	eROP
10011143	9/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	TURKEY	10/6/2021	eROP
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10011145	9/26/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	TURKEY	10/6/2021	eROP

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10037774	10/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	EL SALVADOR	10/8/2021	eROP
10037780	10/8/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/7/2021	Y	EL SALVADOR	10/8/2021	eROP
10038535	7/2/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/16/2021	Y	HONDURAS	10/12/2021	eROP
10038538	7/2/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/16/2021	Y	HONDURAS	10/12/2021	eROP
10075498	10/28/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Phan, Susan	99	Remove	12/16/2021	Y	GUATEMALA	10/29/2021	eROP
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10044396	10/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/17/2021	Y	GUATEMALA	11/1/2021	eROP

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10044397	10/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/17/2021	Y	GUATEMALA	11/1/2021	eROP
10044398	10/13/2021	Removal	SAN FRANCISCO	SAN FRANCISCO - Dedicated Docket – DD	Seminerio, Frank A.	99	Remove	12/17/2021	Y	GUATEMALA	11/1/2021	eROP

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Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR)
Cc: Young, Elizabeth L. (EOIR); Weiss, Daniel H (EOIR); Cheng, Mary (EOIR); McNulty, Sheila (EOIR)
Subject: FW: [EXTERNAL] Returned Notice Docket
Attachments: image002.png (b)(5) Return Notice Docket. 11.2.2021.pdf

Categories: Blue Category

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell (b)(6)

From: Young, Elizabeth L. (EOIR) < (b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) < (b)(6) >
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have (b)(5) Let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

> **From:** Milli Atkinson <matkinson@sfbar.org>
> **Date:** November 2, 2021 at 4:09:58 PM PDT

AMERICAN OVERSIGHT

To: "Young, Elizabeth L. (EOIR)" (b)(6)
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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ACLU Northern California

AILA Northern California Chapter

JUSTICE & DIVERSITY CENTER OF THE BAR ASSOCIATION OF SAN FRANCISCO

NATIONAL LAWYERS GUILD · S.F. BAY AREA CHAPTER · NLG

11/2/2021

Assistant Chief Immigration Judge Elizabeth Young
Executive Office of Immigration Review
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Returned Notice Docket

Dear ACIJ Elizabeth Young,

We write regarding the San Francisco Immigration Court's recent creation of the "Returned Notice Docket" which poses a high risk of removal to hundreds of vulnerable individuals whose hearings have been rescheduled unexpectedly. The Returned Notice Docket was first brought to our attention when we learned of a respondent who had been ordered removed *in absentia* after she missed a hearing that had been advanced and rescheduled while she was recovering from side effects from the COVID-19 vaccine. After reaching out to Court personnel, we learned that the Court has created a new docket and is rescheduling hundreds of respondents for hearings when the Court receives returned mail from the respondent's address of record. It is our understanding that the Court then sends a new notice with an advanced hearing date, expecting the respondent to appear to correct their address and/or for the Court to confer with DHS about any alternative addresses in their A-file.

Our court observers have already witnessed and documented dozens of individuals ordered removed *in absentia* at these hearings when they fail to appear. This practice is resulting in the *in absentia* removal orders of asylees and other vulnerable immigrants who the Court knows are unlikely to receive actual notice of their hearing.

We have grave concerns about the sudden implementation of these special dockets, without stakeholder engagement beforehand and using the Court's already limited resources, that are resulting in an unprecedented wave of removal orders. We respectfully request that the practice be reconsidered immediately.

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1. **This is not the time to create a special docket with high levels of *in absentia* removal orders in the midst of a pandemic when housing instability has been well documented and access to the court, ERO, and legal services has been limited.**

The COVID-19 pandemic led to local and statewide shutdowns in early 2020. As a result, our immigration system, along with the entire nation, has had to adjust and adapt to a new normal. During the last 18 months, the disproportionate impact of the pandemic on immigrant communities has been well documented. Not only have they seen higher rates of COVID-19 infections compared to the general population, they have also been more likely to work in service jobs where they are more likely to contract COVID-19 and live in multi-family housing situations where it is impossible to safely quarantine. Immigrants were more likely to lose their jobs during the pandemic and are more likely to have experienced housing insecurity as a result of the pandemic.

Compounding the issue is the fact that many legal service providers were forced to limit or decrease capacity to provide services to the immigrant community during the pandemic. Many regular legal clinics were cancelled and many organizations were closed for intake and consultation while organizations shifted to a remote work environment. Both the private bar and community-based organizations have had to adapt to ever changing restrictions on when and how they are able to meet with clients to provide services, which further limits their capacity to provide services. In addition, many respondents face technological barriers to access services that are no longer provided in person.

Making the situation even more dire, the government offices responsible for enforcing our immigration laws have been less accessible, with limited information provided directly to respondents about changes in their cases and where to obtain information. There has been a great deal of confusion to both respondents and their legal representatives regarding appointments and hearings that have been rescheduled multiple times, often with little or late notice.

It is therefore extremely problematic for the San Francisco Immigration Court to expend its limited resources to create a special docket that is highly likely to result in an *in absentia* order of removal during a time when respondents are more likely to experience housing instability, more likely to suffer from a deadly illness, less likely to have access to legal services, and less likely to be able to access the court or their ERO officer because of travel and other COVID related restrictions.

2. **The consideration given to each of the cases on the Returned Notice Docket is inconsistent.**

Since August 24, 2021, we have had volunteer advocates observe six of the Returned Notice Docket hearings in order to observe and better understand what, if any, safeguards

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have been put in place to avoid *in absentia* removal orders being given *en masse*. We have seen huge differences among immigration judges in how they are proceeding during these dockets. While some judges take great care in requesting address information from OPLA attorneys or calling clients directly during the hearing, others proceed with an *in absentia* removal order as long as there is a Form I-213 on file.

In the hearings we have observed, we have seen as many as 70% of respondents scheduled for the docket ordered removed *in absentia.* On average, we have observed fewer than three respondents appear in person at these dockets, where more than twenty individuals are scheduled to appear. In most cases, the only evidence the government is able to provide is a Form I-213 which solely contains uncorroborated allegations made by the government. We have observed several instances where the Notice to Appear that was filed with the court had a hearing date that was incorrect. We have also observed *in absentia* orders entered against individuals who were represented and had their cases terminated in 2018 and did not receive notice when the case was remanded to the immigration court. During one hearing, the Judge stated that she did not believe the Department of Homeland Security had met its burden regarding removability, and then proceeded with ordering the respondent removed *in absentia.* Another case involved a 19 year old who had entered the United States as a minor and it was clear that the guardian had not been served with the NTA. That case was continued to give the Department an opportunity to serve the respondent's aunt, however there was no discussion of the requirements of the Department to serve the Form I-770 or other protections specific to unaccompanied children. In many cases, these *in absentia* orders are entered against entire families, including against children who are completely reliant on their parents in notifying the court of address changes.

We acknowledge that during regular Master Calendar hearings, there may be one or two individuals that fail to appear and that the IJ may be justified in ordering removal if the government has met their burden of proof. In these cases, we often see that the respondents had received adequate notice in court and were aware of their future hearing date. Also, when only one or two individuals fail to appear, the IJ has adequate time to review each file individually and take into account any circumstances that may have prevented the respondent's appearance. We do not believe the same can be said for the Returned Notice Docket. In these hearings, every IJ is reviewing 15-25 cases at a time and some are ordering individuals removed in groups with little attention paid to each individual case besides a cursory review of the form I-213.

3. The Returned Notice Dockets violate a respondent's Fifth Amendment right to due process.

The practice of sending a notice to reschedule an existing hearing date, to an address known to be invalid, with the logically anticipated outcome of ordering a large number of individuals removed *in absentia* is fundamentally unfair and denies respondents the

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opportunity to reasonably present their case. This process clearly results in prejudice to the respondent who is unaware of the change in his hearing date and therefore is ordered removed by default. Furthermore, in the majority of these cases on the Returned Notice Docket, the respondent is *pro se*. "Because aliens appearing *pro se* often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the IJ's scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

The creation of the Returned Notice Docket during an unprecedented public health crisis is likely to impede the Court's ability to meet its obligations to *pro se* respondents. Rescheduling hearings using an unworkable address where respondents are unlikely to receive notice not only denies the respondent of their right to have their cases heard, but it also denies the individual IJ's the opportunity to "scrupulously and conscientiously" explore the reasons that a respondent failed to appear. The IJ must rely entirely on evidence provided by the government in order to move forward, and because it is likely that the respondent has no knowledge that the hearing is taking place, there is nobody in these proceedings to speak on their behalf or protect their rights.

As attorneys, we understand that the respondent has the responsibility of informing the Court of an address change within five days of moving. However, the consequences to those who fail to meet this requirement in a timely manner is severe, and there are myriad reasons why this responsibility has become more difficult during the COVID-19 pandemic. Many respondents do not fully understand when and how to inform the court of an address change, the process is often confusing to those who are unfamiliar with our legal system, and those who are illiterate and have limited education and do not understand service requirements. It is especially difficult for many because the change of address form is only provided in English and not everyone has access to translation services. Access to free or low cost legal services where *pro se* respondents would often receive this information and advice has also been more limited during the pandemic.

Additionally, we often meet with individuals who have informed ERO of their new address and mistakenly believe that this information will be submitted to the Court. Many of these respondents are under the impression that they have complied with the Court's address requirements. There is no publicly-available information about what ERO officers do with these updated addresses, and whether this information is timely shared with OPLA attorneys, let alone the Court. While we often see OPLA attorneys in Court with updated contact information, we have also seen multiple instances where an individual with regular ERO check-ins has to repeatedly inform their deportation officer of their new address. Since the COVID-19 pandemic began, hundreds of community members have had difficulty contacting ERO and have reported to our organizations that they would often call or send emails and not receive any response. Their regular check-ins were cancelled with no information on how or when they could check in or update their address. In one instance, the Justice and Diversity Center helped a *pro se* community member update their address with ERO, in writing, via email. The respondent was later reprimanded by her deportation officer when she was eventually able to check

AMERICAN OVERSIGHT

in and accused of not informing the office of her address change. We are also concerned that this information may not make it to OPLA's files in a timely manner, or at all, especially when these hearings are re-scheduled to be heard in the next 1-2 months. Additionally, those that do not have a secure address often rely on the EOIR Automated Case Information system to obtain information about their hearing date and are not expecting a hearing they believe to be scheduled in 2022 or 2023 to suddenly advance to within a few weeks.

It would be a mistake to assume that all respondents who fail to appear at their hearings are deliberately evading our laws. Indeed, studies have shown that those respondents who receive notice of their hearings attend them at exceptionally high rates. For example, data released by the Department of Justice on this topic suggests that asylum applicants attend their hearings at very high rates. By advancing their hearing dates and sending notices to addresses that the Court knows have already failed to reach the respondent, the Court is creating additional barriers that make it difficult for immigrants to access the judicial system and have their cases heard. While they legally have the option to file a motion to reopen after the hearing, there are strict time and numerical limitations on these motions that are difficult to overcome without the assistance of an attorney. Even if the time limitations are tolled for lack of notice, it creates yet another logistical and financial barrier for *pro se* respondents to find an attorney to help them with such a motion. In these cases, it is doubtful that a *pro se* respondent would be able to prepare and file a timely motion to reopen when they have already struggled with preparing and filing a Form EOIR-33. Again, we believe the vast majority of these respondents are eager to have their cases heard and proceed with their hearings. Instead they are being set up for failure, by having their hearings advanced unexpectedly.

4. The Returned Notice Docket is a misuse of the Court's limited resources.

Again, we are greatly concerned about the timing of the Returned Notice Dockets: they were created during a public health crisis when the Court has very limited capacity to hear cases and many respondents who are seeking a decision on the merits of their case are having their hearings postponed to 2024 and 2025. Immigration Judge, legal assistant, and OPLA attorney time is being used to schedule and attend these hearings, when such time could go to countless other cases that are being cancelled and reset far into the future. In many of the cases on the Returned Notice Docket, the issue related to the returned notice could be easily resolved by a phone call from a clerk to the respondent, without setting the stage for what is inevitably the failure to appear by many of the respondents. We are now seeing judges spend their time at hearings making phone calls or reviewing documents in the A-file to try to find a correct address and order multiple notices sent out, when their time would be better spent adjudicating cases that are ready to move forward. We are also seeing these hearings continued where there are issues related to service and notice. If there is any question regarding adequate notice, this should be resolved by terminating the case completely, instead of keeping it on the docket indefinitely and scheduling multiple hearings where the respondent is unlikely to appear.

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As representatives of the non-profit legal community, there are several avenues for collaboration that would allow us to use our resources to help individuals with returned notices to update their addresses. The Justice & Diversity Center's volunteer-driven Attorney of the Day Program is able to assist by reaching out to individuals on the court's behalf and assist them with filing a Form EOIR-33. Additionally, a local non-profit is currently building an EOIR-funded program, the Immigration Court Help Desk, to provide orientations and clinics that would help respondents better understand the Court's address requirements and assist them in properly filing a change of address form.

In conclusion, we would like to offer the following recommendations to the Court:

1. Pause or discontinue the use of the Returned Notice Docket all together, or

2. If the docket continues, solicit further feedback from local stakeholders and consider greater collaboration with the local bar to prevent negative consequences arising out of the docket.

In either scenario, we hope the Court will collaborate with the local bar and non-profit community to ensure that *pro se* respondents are fully advised of their legal obligations and are getting adequate notice of their hearings before the Court. You may contact Milli Atkinson via phone or email at matkinson@sfbar.org, (415) 782-8926, if you wish to discuss this letter further.

We appreciate your time and consideration in addressing these concerns.

Sincerely,

ACLU of Northern California
AILA NorCal Advocacy Liaisons
Justice and Diversity Center of the Bar Association of San Francisco
National Lawyers Guild – San Francisco Bay Area Chapter

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Tuesday, August 24, 2021 4:57 PM
To: Weiss, Daniel H (EOIR)
Subject: FW: 4:30pm Specialized Docket Update
Attachments: Specialized Docket Nationwide Report_As of August 23, 2021.xlsx

Categories: Blue Category

Latest report is attached.

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (West)

Office (b)(6)
Cell: (b)(6)

WarningAttorney/Client Privilege***Attorney Work Product***
This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this e-mail has been misdirected and immediately destroy all originals and copies. Furthermore, do not print, copy, re-transmit, disseminate, or otherwise use this information. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).

From: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Sent: Tuesday, August 24, 2021 1:39 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Chaban, Roman (EOIR) <Roman.Chaban@usdoj.gov>; Johnson, Hunter (EOIR) <(b)(6)>
Subject: 4:30pm Specialized Docket Update

Good Afternoon,

Please see the most up to date Specialized Docket Reporting for this week.

If I receive any additional responses, I will provide an update tomorrow.

Have a great afternoon.

AMERICAN OVERSIGHT

DOJ-22-0370-A-000452

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Clerk
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
703-756-8577 (office)

AMERICAN OVERSIGHT

Immigration Court	Number of Cases Scheduled	Number of Cases Completed	Percentage Completed	Notes
Adelanto	0	0	No Data Received	(b)(5)
Arlington	188	167	89%	
Atlanta - Peachtree	103	33	32%	(b)(5)

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				(b)(5)
Atlanta – Ted Turner	143	61	43%	
Aurora	0	0	No Data Received	Detained Court
Baltimore	332	212	64%	
Batavia	0	0	No Data Received	Detained Court
Boston	313	152	49%	Boston judges were assigned on a rotating basis to the specialized dockets since 4/19.
Buffalo	0	0	No Data Received	No backlog of cases and no need for specialized docket at this time.
Charlotte	29	28	97%	
Chicago	279	196	70%	47 scheduled cases for 6/25
Cleveland	712	463	65%	
Conroe	0	0	No Data Received	Detained Court
Dallas	0	0	No Data Received	Added on July 26, 2021
Denver	674	463	69%	
Detroit	8	6	75%	
El Paso	104	18	17%	Scheduled cases start on July 8th
El Paso SPC	0	0	No Data Received	Detained Court
Elizabeth	0	0	No Data Received	Detained Court
Eloy	0	0	No Data Received	Added on July 26, 2021
Fishkill	47	0	0%	Detained Court
Florence	0	0	No Data Received	Added on July 26, 2021
Ft. Snelling	89	0	0%	Added on July 26, 2021
Harlingen	0	0	No Data Received	Added on July 26, 2021
Hartford	44	11	25%	
Honolulu	16	3	19%	No cases to report.
Houston	53	0	0%	Added on July 26, 2021
Houston Greenspoint Park	0	0	No Data Received	Scheduled cases start on July 27th

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Houston South Gessner	29	1	3%	Added on July 26, 2021
Imperial	152	12	8%	
Kansas City	0	0	No Data Received	Added on July 26, 2021
Krome	0	0	No Data Received	Detained Court
LaSalle	0	0	No Data Received	Detained Court
Las Vegas	41	27	66%	
Louisville	0	0	No Data Received	Added on July 26, 2021
Los Angeles – Olive Street	1117	524	47%	
Los Angeles – North Los Angeles Street	165	16	10%	
Los Angeles - Van Nuys Blvd.	447	314	70%	
Memphis	0	0	No Data Received	Added on July 26, 2021
Miami	189	138	73%	
Newark	601	473	79%	
New Orleans	1206	23	2%	Most cases are scheduled in the future.
New York - Broadway	0	0	No Data Received	Added on July 26, 2021
New York - Federal Plaza	0	0	No Data Received	Added on July 26, 2021
Oakdale	0	0	No Data Received	Detained Court
Omaha	10	0	0%	Scheduled cases start in July.
Orlando	404	24	6%	
Otay Mesa	0	0	No Data Received	Added on July 26, 2021
Otero	0	0	No Data Received	Operating out of SND
Pearsall	0	0	No Data Received	Detained Court
Philadelphia	29	13	45%	
Phoenix	144	87	60%	
Port Isabel	0	0	No Data Received	Detained Court
Portland	0	0	No Data Received	Court will not reopen until July 6th.
Sacramento	41	19	46%	
Saipan	5	0	0%	
Salt Lake City	102	54	53%	

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San Antonio	0	0	No Data Received	Added on July 26, 2021
San Diego	147	59	40%	
San Francisco	1706	432	25%	
San Juan	120	3	3%	Added on July 26, 2021
Seattle	36	13	36%	
Stewart	0	0	No Data Received	Added on July 26, 2021
Tacoma	0	0	No Data Received	Detained Court
Tucson	21	13	62%	
Ulster	29	4	14%	Detained Court
Varick	326	0	0%	Added on July 26, 2021
York	0	0	No Data Received	No longer operating
Total	**10201**	**4062**	**40%**	

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Rosen, Scott (EOIR)
Sent: Monday, December 6, 2021 1:02 PM
To: Weiss, Daniel H (EOIR)
Cc: Short, Tracy (EOIR)
Subject: FW: 189625 - Milli Atkinson
Attachments: RE: [EXTERNAL] Returned Notice Docket; (b)(5) eturn Notice Docket. 11.2.2021.pdf; Milli Atkinson response.docx

Judge Weiss,

Please see Zachery's email below. I have revised the response (attached) to the letter to ACIJ Young regarding the Returned Notice Docket at the San Francisco Immigration Court. I am going to recommend tha (b)(5)

Please let me know when you are available to discuss. Thanks.

Scott
(703) 926-0738

From: Lampman, Zachary (EOIR) (CTR) <Zachary.Lampman@usdoj.gov>
Sent: Friday, December 3, 2021 11:41 AM
To: Rosen, Scott (EOIR) <Scott.Rosen@usdoj.gov>; Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>
Cc: Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: 189625 - Milli Atkinson

Good morning Austin and Scott,

I hope you both are doing well.

Scott, I have had the opportunity to interact with Austin before but not with you just quite yet. My name is Zach and I help CLAD coordinate responses to external communications. Pleasure to virtually meet you!

I am reaching out today because PIO Amanda St. Jean and ACIJ Young collaborated on drafting content for a response to the attached incoming. I have attached the draft response in hopes to get your assessment on this response. Additionally, I provided the email conversation on (b)(5)
(b)(5)

Please let me know if you have any questions or concerns.

V/r,

Zachary Lampman | Contractor
Communications and Legislative Affairs Division
Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
(b)(6) Mobile
703 756-8476, Office
ZACHARY.LAMPMAN@USDOJ.GOV

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Mattingly, Kathryn (EOIR)
Sent: Thursday, November 4, 2021 12:07 PM
To: Daugherty, Daniel J (EOIR)
Cc: Young, Elizabeth L. (EOIR); Weiss, Daniel H (EOIR); Cheng, Mary (EOIR); McNulty, Sheila (EOIR); Fooshe, Alexis (EOIR); Lampman, Zachary (EOIR) (CTR); St Jean, Amanda (EOIR)
Subject: RE: [EXTERNAL] Returned Notice Docket
Attachments: (b)(5) Return Notice Docket. 11.2.2021.pdf

Hi Judge Doc - Thank you for reaching out. We handle formal correspondence for the agency and I am copying on this email Zachary Lampman who is our correspondence POC in CLAD. See below for (b)(5)

(b)(5)

ft

(b)(5) Thanks again – Kathryn

BACKGROUND:

(b)(5)

ON THE RECORD:

(b)(5)

End.

Initial response to SF Chronicle:
BACKGROUND:

(b)(5)

End.

From: Daugherty, Daniel J (EOIR) <(b)(6)>
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Cc: Young, Elizabeth L. (EOIR) <(b)(6)>; Weiss, Daniel H (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>
Subject: FW: [EXTERNAL] Returned Notice Docket

AMERICAN OVERSIGHT

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Offic
Cell: (b)(6)

From: Young, Elizabeth L. (EOIR) <(b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have (b)(6) Let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

> **From:** Milli Atkinson <matkinson@sfbar.org>
> **Date:** November 2, 2021 at 4:09:58 PM PDT
> **To:** "Young, Elizabeth L. (EOIR)" <(b)(6)
> **Subject: [EXTERNAL] Returned Notice Docket**
>
> Dear ACIJ Young,
>
> I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

AMERICAN OVERSIGHT

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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ACLU Northern California

AILA Northern California Chapter

JUSTICE & DIVERSITY CENTER OF THE BAR ASSOCIATION OF SAN FRANCISCO

NATIONAL LAWYERS GUILD · S.F. BAY AREA CHAPTER · NLG

11/2/2021

Assistant Chief Immigration Judge Elizabeth Young
Executive Office of Immigration Review
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Returned Notice Docket

Dear ACIJ Elizabeth Young,

We write regarding the San Francisco Immigration Court's recent creation of the "Returned Notice Docket" which poses a high risk of removal to hundreds of vulnerable individuals whose hearings have been rescheduled unexpectedly. The Returned Notice Docket was first brought to our attention when we learned of a respondent who had been ordered removed *in absentia* after she missed a hearing that had been advanced and rescheduled while she was recovering from side effects from the COVID-19 vaccine. After reaching out to Court personnel, we learned that the Court has created a new docket and is rescheduling hundreds of respondents for hearings when the Court receives returned mail from the respondent's address of record. It is our understanding that the Court then sends a new notice with an advanced hearing date, expecting the respondent to appear to correct their address and/or for the Court to confer with DHS about any alternative addresses in their A-file.

Our court observers have already witnessed and documented dozens of individuals ordered removed *in absentia* at these hearings when they fail to appear. This practice is resulting in the *in absentia* removal orders of asylees and other vulnerable immigrants who the Court knows are unlikely to receive actual notice of their hearing.

We have grave concerns about the sudden implementation of these special dockets, without stakeholder engagement beforehand and using the Court's already limited resources, that are resulting in an unprecedented wave of removal orders. We respectfully request that the practice be reconsidered immediately.

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1. **This is not the time to create a special docket with high levels of *in absentia* removal orders in the midst of a pandemic when housing instability has been well documented and access to the court, ERO, and legal services has been limited.**

The COVID-19 pandemic led to local and statewide shutdowns in early 2020. As a result, our immigration system, along with the entire nation, has had to adjust and adapt to a new normal. During the last 18 months, the disproportionate impact of the pandemic on immigrant communities has been well documented. Not only have they seen higher rates of COVID-19 infections compared to the general population, they have also been more likely to work in service jobs where they are more likely to contract COVID-19 and live in multi-family housing situations where it is impossible to safely quarantine. Immigrants were more likely to lose their jobs during the pandemic and are more likely to have experienced housing insecurity as a result of the pandemic.

Compounding the issue is the fact that many legal service providers were forced to limit or decrease capacity to provide services to the immigrant community during the pandemic. Many regular legal clinics were cancelled and many organizations were closed for intake and consultation while organizations shifted to a remote work environment. Both the private bar and community-based organizations have had to adapt to ever changing restrictions on when and how they are able to meet with clients to provide services, which further limits their capacity to provide services. In addition, many respondents face technological barriers to access services that are no longer provided in person.

Making the situation even more dire, the government offices responsible for enforcing our immigration laws have been less accessible, with limited information provided directly to respondents about changes in their cases and where to obtain information. There has been a great deal of confusion to both respondents and their legal representatives regarding appointments and hearings that have been rescheduled multiple times, often with little or late notice.

It is therefore extremely problematic for the San Francisco Immigration Court to expend its limited resources to create a special docket that is highly likely to result in an *in absentia* order of removal during a time when respondents are more likely to experience housing instability, more likely to suffer from a deadly illness, less likely to have access to legal services, and less likely to be able to access the court or their ERO officer because of travel and other COVID related restrictions.

2. **The consideration given to each of the cases on the Returned Notice Docket is inconsistent.**

Since August 24, 2021, we have had volunteer advocates observe six of the Returned Notice Docket hearings in order to observe and better understand what, if any, safeguards

AMERICAN OVERSIGHT

have been put in place to avoid *in absentia* removal orders being given *en masse*. We have seen huge differences among immigration judges in how they are proceeding during these dockets. While some judges take great care in requesting address information from OPLA attorneys or calling clients directly during the hearing, others proceed with an *in absentia* removal order as long as there is a Form I-213 on file.

In the hearings we have observed, we have seen as many as 70% of respondents scheduled for the docket ordered removed *in absentia.* On average, we have observed fewer than three respondents appear in person at these dockets, where more than twenty individuals are scheduled to appear. In most cases, the only evidence the government is able to provide is a Form I-213 which solely contains uncorroborated allegations made by the government. We have observed several instances where the Notice to Appear that was filed with the court had a hearing date that was incorrect. We have also observed *in absentia* orders entered against individuals who were represented and had their cases terminated in 2018 and did not receive notice when the case was remanded to the immigration court. During one hearing, the Judge stated that she did not believe the Department of Homeland Security had met its burden regarding removability, and then proceeded with ordering the respondent removed *in absentia.* Another case involved a 19 year old who had entered the United States as a minor and it was clear that the guardian had not been served with the NTA. That case was continued to give the Department an opportunity to serve the respondent's aunt, however there was no discussion of the requirements of the Department to serve the Form I-770 or other protections specific to unaccompanied children. In many cases, these *in absentia* orders are entered against entire families, including against children who are completely reliant on their parents in notifying the court of address changes.

We acknowledge that during regular Master Calendar hearings, there may be one or two individuals that fail to appear and that the IJ may be justified in ordering removal if the government has met their burden of proof. In these cases, we often see that the respondents had received adequate notice in court and were aware of their future hearing date. Also, when only one or two individuals fail to appear, the IJ has adequate time to review each file individually and take into account any circumstances that may have prevented the respondent's appearance. We do not believe the same can be said for the Returned Notice Docket. In these hearings, every IJ is reviewing 15-25 cases at a time and some are ordering individuals removed in groups with little attention paid to each individual case besides a cursory review of the form I-213.

3. The Returned Notice Dockets violate a respondent's Fifth Amendment right to due process.

The practice of sending a notice to reschedule an existing hearing date, to an address known to be invalid, with the logically anticipated outcome of ordering a large number of individuals removed *in absentia* is fundamentally unfair and denies respondents the

AMERICAN OVERSIGHT

opportunity to reasonably present their case. This process clearly results in prejudice to the respondent who is unaware of the change in his hearing date and therefore is ordered removed by default. Furthermore, in the majority of these cases on the Returned Notice Docket, the respondent is *pro se*. "Because aliens appearing *pro se* often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the IJ's scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

The creation of the Returned Notice Docket during an unprecedented public health crisis is likely to impede the Court's ability to meet its obligations to *pro se* respondents. Rescheduling hearings using an unworkable address where respondents are unlikely to receive notice not only denies the respondent of their right to have their cases heard, but it also denies the individual IJ's the opportunity to "scrupulously and conscientiously" explore the reasons that a respondent failed to appear. The IJ must rely entirely on evidence provided by the government in order to move forward, and because it is likely that the respondent has no knowledge that the hearing is taking place, there is nobody in these proceedings to speak on their behalf or protect their rights.

As attorneys, we understand that the respondent has the responsibility of informing the Court of an address change within five days of moving. However, the consequences to those who fail to meet this requirement in a timely manner is severe, and there are myriad reasons why this responsibility has become more difficult during the COVID-19 pandemic. Many respondents do not fully understand when and how to inform the court of an address change, the process is often confusing to those who are unfamiliar with our legal system, and those who are illiterate and have limited education and do not understand service requirements. It is especially difficult for many because the change of address form is only provided in English and not everyone has access to translation services. Access to free or low cost legal services where *pro se* respondents would often receive this information and advice has also been more limited during the pandemic.

Additionally, we often meet with individuals who have informed ERO of their new address and mistakenly believe that this information will be submitted to the Court. Many of these respondents are under the impression that they have complied with the Court's address requirements. There is no publicly-available information about what ERO officers do with these updated addresses, and whether this information is timely shared with OPLA attorneys, let alone the Court. While we often see OPLA attorneys in Court with updated contact information, we have also seen multiple instances where an individual with regular ERO check-ins has to repeatedly inform their deportation officer of their new address. Since the COVID-19 pandemic began, hundreds of community members have had difficulty contacting ERO and have reported to our organizations that they would often call or send emails and not receive any response. Their regular check-ins were cancelled with no information on how or when they could check in or update their address. In one instance, the Justice and Diversity Center helped a *pro se* community member update their address with ERO, in writing, via email. The respondent was later reprimanded by her deportation officer when she was eventually able to check

AMERICAN OVERSIGHT

in and accused of not informing the office of her address change. We are also concerned that this information may not make it to OPLA's files in a timely manner, or at all, especially when these hearings are re-scheduled to be heard in the next 1-2 months. Additionally, those that do not have a secure address often rely on the EOIR Automated Case Information system to obtain information about their hearing date and are not expecting a hearing they believe to be scheduled in 2022 or 2023 to suddenly advance to within a few weeks.

It would be a mistake to assume that all respondents who fail to appear at their hearings are deliberately evading our laws. Indeed, studies have shown that those respondents who receive notice of their hearings attend them at exceptionally high rates. For example, data released by the Department of Justice on this topic suggests that asylum applicants attend their hearings at very high rates. By advancing their hearing dates and sending notices to addresses that the Court knows have already failed to reach the respondent, the Court is creating additional barriers that make it difficult for immigrants to access the judicial system and have their cases heard. While they legally have the option to file a motion to reopen after the hearing, there are strict time and numerical limitations on these motions that are difficult to overcome without the assistance of an attorney. Even if the time limitations are tolled for lack of notice, it creates yet another logistical and financial barrier for *pro se* respondents to find an attorney to help them with such a motion. In these cases, it is doubtful that a *pro se* respondent would be able to prepare and file a timely motion to reopen when they have already struggled with preparing and filing a Form EOIR-33. Again, we believe the vast majority of these respondents are eager to have their cases heard and proceed with their hearings. Instead they are being set up for failure, by having their hearings advanced unexpectedly.

4. The Returned Notice Docket is a misuse of the Court's limited resources.

Again, we are greatly concerned about the timing of the Returned Notice Dockets: they were created during a public health crisis when the Court has very limited capacity to hear cases and many respondents who are seeking a decision on the merits of their case are having their hearings postponed to 2024 and 2025. Immigration Judge, legal assistant, and OPLA attorney time is being used to schedule and attend these hearings, when such time could go to countless other cases that are being cancelled and reset far into the future. In many of the cases on the Returned Notice Docket, the issue related to the returned notice could be easily resolved by a phone call from a clerk to the respondent, without setting the stage for what is inevitably the failure to appear by many of the respondents. We are now seeing judges spend their time at hearings making phone calls or reviewing documents in the A-file to try to find a correct address and order multiple notices sent out, when their time would be better spent adjudicating cases that are ready to move forward. We are also seeing these hearings continued where there are issues related to service and notice. If there is any question regarding adequate notice, this should be resolved by terminating the case completely, instead of keeping it on the docket indefinitely and scheduling multiple hearings where the respondent is unlikely to appear.

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As representatives of the non-profit legal community, there are several avenues for collaboration that would allow us to use our resources to help individuals with returned notices to update their addresses. The Justice & Diversity Center's volunteer-driven Attorney of the Day Program is able to assist by reaching out to individuals on the court's behalf and assist them with filing a Form EOIR-33. Additionally, a local non-profit is currently building an EOIR-funded program, the Immigration Court Help Desk, to provide orientations and clinics that would help respondents better understand the Court's address requirements and assist them in properly filing a change of address form.

In conclusion, we would like to offer the following recommendations to the Court:

1. Pause or discontinue the use of the Returned Notice Docket all together, or

2. If the docket continues, solicit further feedback from local stakeholders and consider greater collaboration with the local bar to prevent negative consequences arising out of the docket.

In either scenario, we hope the Court will collaborate with the local bar and non-profit community to ensure that *pro se* respondents are fully advised of their legal obligations and are getting adequate notice of their hearings before the Court. You may contact Milli Atkinson via phone or email at matkinson@sfbar.org, (415) 782-8926, if you wish to discuss this letter further.

We appreciate your time and consideration in addressing these concerns.

Sincerely,

ACLU of Northern California
AILA NorCal Advocacy Liaisons
Justice and Diversity Center of the Bar Association of San Francisco
National Lawyers Guild – San Francisco Bay Area Chapter

AMERICAN OVERSIGHT

U.S. Department of Justice
Executive Office for Immigration Review
Office of Policy

Communications and Legislative Affairs Division

5107 Leesburg Pike, Suite 1800
Falls Church, Virginia 22041

[Date]

(b)(5)

Dear Ms. (b)(5)

(b)(5)

Sincerely,

Communications and Legislative Affairs Division

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Thursday, October 28, 2021 10:41 AM
To: Weiss, Daniel H (EOIR)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

Sir

Below are the combined edits that I will push to Kathern Mattingly for the response to the San Francisco Chronicle and SFR NPR.

Do you concur?

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell:

From: Cheng, Mary (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 5:24 AM
To: Daugherty, Daniel J (EOIR) <(b)(6)
Cc: McNulty, Sheila (EOIR) <(b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

If it is not too late, I made (b)(5) Thanks,

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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From: Daugherty, Daniel J (EOIR) <(b)(6)>
Sent: Wednesday, October 27, 2021 8:36 PM
To: McNulty, Sheila (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6)>
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Great addition.

Thanks
Doc

D. J. Daugherty
RDCIJ West

On Oct 27, 2021, at 4:31 PM, McNulty, Sheila (EOIR) <(b)(6)> wrote:

Hi Judge,

(b)(5)

(b)(5) Not sure if it helps, but ….there you go!
Sheila

From: Daugherty, Daniel J (EOIR) <(b)(6)>
Sent: Wednesday, October 27, 2021 5:24 PM
To: McNulty, Sheila (EOIR) <(b)(6)>
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized

AMERICAN OVERSIGHT

Masters (Returned Notices)
Importance: High

RDC's

(b)(5)

Draft:

(b)(5)

End.

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)

AMERICAN OVERSIGHT

Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) I've been in meetings and tied up so I've asked the SF Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

End.

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:
(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Wednesday, October 27, 2021 6:31 PM
To: Weiss, Daniel H (EOIR)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Attachments: [EXTERNAL] Time sensitive question about SF Courts; [EXTERNAL] Re: [EXT] Reporter questions

Importance: High

Categories: Blue Category

FYI

The San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week.
Both outlets reached out to PIO regarding the "returned notice" specialized dockets.
Both media outlets intend to report on that docket.

(b)(5) a couple of improvements to the response as follows:

Draft:

(b)(5)

End.

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office
Cell: 7 (b)(6)

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

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Please see below for the two inquiries (full emails attached if needed). I started a draft with the (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5)

From SF Chronicle:
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A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

(b)(5)

AMERICAN OVERSIGHT

End.

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:
(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Kopan, Tal <Tal.Kopan@sfchronicle.com>
Sent: Wednesday, October 27, 2021 12:59 PM
To: Mattingly, Kathryn (EOIR)
Cc: Fernandes, Deepa
Subject: [EXTERNAL] Time sensitive question about SF Courts

Hi Kathryn,
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

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A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?

If you could get back to us by the end of the day, that would be wonderful, but let us know if that's not doable for some reason.

Thank you!
Tal and Deepa

Tal Kopan
Washington Correspondent | *San Francisco Chronicle*
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com
Twitter: @TalKopan
SFChronicle.com/Subscribe
San Francisco Chronicle

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Tyche Hendricks <thendricks@KQED.org>
Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR)
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
(b)(6) M

We've moved temporarily. You can find us at:
KQED
50 Beale Street, 5th Floor
San Francisco, CA 94105-1813
https://protect2.fireeye.com/v1/url?k=dc0cbdd4-83978498-dc0b9931-0cc47adca7cc-17239752ea1a849f&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=0eee002e-51753962-0ee924cb-0cc47adca7cc-c91695ca974fe6c6&q=1&e=869a2e8a-bfdd-418a-80b6-bbcb1323817b&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>

On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov<mailto:Kathryn.Mattingly@usdoj.gov>> wrote:

EXTERNAL

AMERICAN OVERSIGHT

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov<mailto:Kathryn.Mattingly@usdoj.gov>>
Cc: EOIR, PAO (EOIR) <PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov>>
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized "returned notice" docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR)
<Kathryn.Mattingly@usdoj.gov<mailto:Kathryn.Mattingly@usdoj.gov>> wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

AMERICAN OVERSIGHT

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir>>

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR) <PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov>>
Subject: [EXTERNAL] Reporter questions

Good afternoon,

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

AMERICAN OVERSIGHT

DOJ-22-0370-A-000480

Tyche

Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

510.612.7924 M

We've moved temporarily. You can find us at:

KQED

50 Beale Street, 5th Floor

San Francisco, CA 94105-1813

https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F><https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D><https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-

AMERICAN OVERSIGHT

4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D>>>

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Thursday, October 28, 2021 2:43 PM
To: Weiss, Daniel H (EOIR)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

Judge Weiss – we quickly coming up on the deadline, and Kathryn (b)(5)

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office
Cell: 7(b)(6)

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Thursday, October 28, 2021 11:39 AM
To: Daugherty, Daniel J (EOIR) <(b)(6)>
Cc: Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Hi Judge Doc – I like all the (b)(5)

(b)(5)

(b)(5) Thanks so much. – Kathryn

(b)(5)

From: Daugherty, Daniel J (EOIR) <(b)(6)
Sent: Thursday, October 28, 2021 2:05 PM
To: Weiss, Daniel H (EOIR) <(b)(6)
Cc: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

AMERICAN OVERSIGHT

(b)(5)

Doc

(b)(5)

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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From: Daugherty, Daniel J (EOIR) <(b)(6)>
Sent: Wednesday, October 27, 2021 8:36 PM
To: McNulty, Sheila (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6)>
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

AMERICAN OVERSIGHT

Great addition.

Thanks
Doc

D. J. Daugherty
RDCIJ West

On Oct 27, 2021, at 4:31 PM, McNulty, Sheila (EOIR) (b)(6) wrote:

Hi Judge,

(b)(5)

(b)(5) Not sure if it helps, but ….there you go!
Sheila

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 5:24 PM
To: McNulty, Sheila (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

RDC's

(b)(5)

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

End.

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Offic
Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6) Young, Elizabeth L. (EOIR) <(b)(6)
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) I've been in meetings and tied up so I've asked the SF Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:

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(b)(5)

End.

Draft:

(b)(5)

End.

From KQED Inquiry:

Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

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Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Tuesday, August 24, 2021 12:19 PM
To: Lin, Austin (EOIR)
Cc: Weiss, Daniel H (EOIR)
Subject: FW: Monday 5:00pm Update: Specialized Docket Reporting
Attachments: Specialized Docket Nationwide Report_As of August 23, 2021.xlsx

Categories: Blue Category

Austin

This is as of last night.

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (West)

Offic
Cell: (b)(6)

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This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this e-mail has been misdirected and immediately destroy all originals and copies. Furthermore, do not print, copy, re-transmit, disseminate, or otherwise use this information. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).

From: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Sent: Monday, August 23, 2021 2:04 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6); McNulty, Sheila (EOIR) <(b)(6)
Subject: Monday 5:00pm Update: Specialized Docket Reporting

Good Afternoon RDCIJ Daugherty,

I am attaching the Monday update for the Specialized Docket report. I am sure that I will receive some additional updates overnight and tomorrow so I will provide an updated version tomorrow.

Have a great day and stay safe!

Naleshia Spencer
Program Manager, CGI Federal

AMERICAN OVERSIGHT

Executive Office For Immigration Review
Office of the Chief Clerk
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
703-756-8577 (office)

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Immigration Court	Number of Cases Scheduled	Number of Cases Completed	Percentage Completed	Notes
Adelanto	0	0	No Data Received	(b)(5)
Arlington	188	167	89%	
Atlanta - Peachtree	103	33	32%	
Atlanta – Ted Turner	143	61	43%	
Aurora	0	0	No Data Received	Detained Court
Baltimore	294	186	63%	
Batavia	0	0	No Data Received	Detained Court
Boston	292	141	48%	Boston judges were assigned on a rotating basis to the specialized dockets since 4/19.
Buffalo	0	0	No Data Received	No backlog of cases and no need for specialized docket at this time.
Charlotte	29	28	97%	
Chicago	279	196	70%	47 scheduled cases for 6/25
Cleveland	712	463	65%	
Conroe	0	0	No Data Received	Detained Court
Dallas	0	0	No Data Received	Added on July 26, 2021

AMERICAN OVERSIGHT

Denver	674	463	69%	
Detroit	8	6	75%	
El Paso	104	18	17%	Scheduled cases start on July 8th
El Paso SPC	0	0	No Data Received	Detained Court
Elizabeth	0	0	No Data Received	Detained Court
Eloy	0	0	No Data Received	Added on July 26, 2021
Fishkill	47	0	0%	Detained Court
Florence	0	0	No Data Received	Added on July 26, 2021
Ft. Snelling	0	0	No Data Received	Added on July 26, 2021
Harlingen	0	0	No Data Received	Added on July 26, 2021
Hartford	44	11	25%	
Honolulu	7	1	14%	No cases to report.
Houston	53	0	0%	Added on July 26, 2021
Houston Greenspoint	0	0	No Data Received	Scheduled cases start on July 27th
Houston South Gessner	29	1	3%	Added on July 26, 2021
Imperial	136	11	8%	
Kansas City	0	0	No Data Received	Added on July 26, 2021
Krome	0	0	No Data Received	Detained Court
LaSalle	0	0	No Data Received	Detained Court
Las Vegas	41	27	66%	
Louisville	0	0	No Data Received	Added on July 26, 2021
Los Angeles – Olive Street	920	458	50%	
Los Angeles – North Los Angeles Street	165	16	10%	
Los Angeles - Van Nuys Blvd.	402	272	68%	
Memphis	0	0	No Data Received	Added on July 26, 2021
Miami	139	96	69%	
Newark	601	473	79%	
New Orleans	1206	23	2%	Most cases are scheduled in the future.
New York - Broadway	0	0	No Data Received	Added on July 26, 2021

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New York - Federal Plaza	0	0	No Data Received	Added on July 26, 2021
Oakdale	0	0	No Data Received	Detained Court
Omaha	10	0	0%	Scheduled cases start in July.
Orlando	404	24	6%	
Otay Mesa	0	0	No Data Received	Added on July 26, 2021
Otero	0	0	No Data Received	Operating out of SND
Pearsall	0	0	No Data Received	Detained Court
Philadelphia	29	13	45%	
Phoenix	144	87	60%	
Port Isabel	0	0	No Data Received	Detained Court
Portland	0	0	No Data Received	Court will not reopen until July 6th.
Sacramento	28	11	39%	
Saipan	5	0	0%	
Salt Lake City	93	47	51%	
San Antonio	0	0	No Data Received	Added on July 26, 2021
San Diego	147	59	40%	
San Francisco	1706	432	25%	
San Juan	120	3	3%	Added on July 26, 2021
Seattle	36	13	36%	
Stewart	0	0	No Data Received	Added on July 26, 2021
Tacoma	0	0	No Data Received	Detained Court
Tucson	21	13	62%	
Ulster	29	4	14%	Detained Court
Varick	326	0	0%	Added on July 26, 2021
York	0	0	No Data Received	No longer operating
Total	**9714**	**3857**	**40%**	

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Mattingly, Kathryn (EOIR)
Sent: Thursday, November 4, 2021 12:07 PM
To: Daugherty, Daniel J (EOIR)
Cc: Young, Elizabeth L. (EOIR); Weiss, Daniel H (EOIR); Cheng, Mary (EOIR); McNulty, Sheila (EOIR); Fooshe, Alexis (EOIR); Lampman, Zachary (EOIR) (CTR); St Jean, Amanda (EOIR)
Subject: RE: [EXTERNAL] Returned Notice Docket
Attachments: Letter of Concern. Return Notice Docket. 11.2.2021.pdf

Categories: Blue Category

Hi Judge Doc - Thank you for reaching out. We handle formal correspondence for the agency and I am copying on this email Zachary Lampman who is our correspondence POC in CLAD. See below (b)(5)

(b)(5)

(b)(5) Thanks again – Kathryn

BACKGROUND:

(b)(5)

ON THE RECORD:

(b)(5)

End.

Initial response to SF Chronicle:
BACKGROUND:

(b)(5)

End.

From: Daugherty, Daniel J (EOIR) <(b)(6)>
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Cc: Young, Elizabeth L. (EOIR) <(b)(6) Weiss, Daniel H (EOIR) <(b)(6)

AMERICAN OVERSIGHT

Cheng, Mary (EOIR) <[redacted]>; McNulty, Sheila (EOIR) <[redacted]>
Subject: FW: [EXTERNAL] Returned Notice Docket

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office
Cell: [redacted]

From: Young, Elizabeth L. (EOIR) [redacted]
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) <[redacted]>
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have se[redacted] Let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

> **From:** Milli Atkinson <matkinson@sfbar.org>
> **Date:** November 2, 2021 at 4:09:58 PM PDT
> **To:** "Young, Elizabeth L. (EOIR) [redacted]
> **Subject: [EXTERNAL] Returned Notice Docket**
>
> Dear ACIJ Young,
>
> I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the

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Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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ACLU Northern California

AILA Northern California Chapter

JUSTICE & DIVERSITY CENTER OF THE BAR ASSOCIATION OF SAN FRANCISCO

NATIONAL LAWYERS GUILD · S.F. BAY AREA CHAPTER · NLG

11/2/2021

Assistant Chief Immigration Judge Elizabeth Young
Executive Office of Immigration Review
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Returned Notice Docket

Dear ACIJ Elizabeth Young,

We write regarding the San Francisco Immigration Court's recent creation of the "Returned Notice Docket" which poses a high risk of removal to hundreds of vulnerable individuals whose hearings have been rescheduled unexpectedly. The Returned Notice Docket was first brought to our attention when we learned of a respondent who had been ordered removed *in absentia* after she missed a hearing that had been advanced and rescheduled while she was recovering from side effects from the COVID-19 vaccine. After reaching out to Court personnel, we learned that the Court has created a new docket and is rescheduling hundreds of respondents for hearings when the Court receives returned mail from the respondent's address of record. It is our understanding that the Court then sends a new notice with an advanced hearing date, expecting the respondent to appear to correct their address and/or for the Court to confer with DHS about any alternative addresses in their A-file.

Our court observers have already witnessed and documented dozens of individuals ordered removed *in absentia* at these hearings when they fail to appear. This practice is resulting in the *in absentia* removal orders of asylees and other vulnerable immigrants who the Court knows are unlikely to receive actual notice of their hearing.

We have grave concerns about the sudden implementation of these special dockets, without stakeholder engagement beforehand and using the Court's already limited resources, that are resulting in an unprecedented wave of removal orders. We respectfully request that the practice be reconsidered immediately.

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1. **This is not the time to create a special docket with high levels of *in absentia* removal orders in the midst of a pandemic when housing instability has been well documented and access to the court, ERO, and legal services has been limited.**

The COVID-19 pandemic led to local and statewide shutdowns in early 2020. As a result, our immigration system, along with the entire nation, has had to adjust and adapt to a new normal. During the last 18 months, the disproportionate impact of the pandemic on immigrant communities has been well documented. Not only have they seen higher rates of COVID-19 infections compared to the general population, they have also been more likely to work in service jobs where they are more likely to contract COVID-19 and live in multi-family housing situations where it is impossible to safely quarantine. Immigrants were more likely to lose their jobs during the pandemic and are more likely to have experienced housing insecurity as a result of the pandemic.

Compounding the issue is the fact that many legal service providers were forced to limit or decrease capacity to provide services to the immigrant community during the pandemic. Many regular legal clinics were cancelled and many organizations were closed for intake and consultation while organizations shifted to a remote work environment. Both the private bar and community-based organizations have had to adapt to ever changing restrictions on when and how they are able to meet with clients to provide services, which further limits their capacity to provide services. In addition, many respondents face technological barriers to access services that are no longer provided in person.

Making the situation even more dire, the government offices responsible for enforcing our immigration laws have been less accessible, with limited information provided directly to respondents about changes in their cases and where to obtain information. There has been a great deal of confusion to both respondents and their legal representatives regarding appointments and hearings that have been rescheduled multiple times, often with little or late notice.

It is therefore extremely problematic for the San Francisco Immigration Court to expend its limited resources to create a special docket that is highly likely to result in an *in absentia* order of removal during a time when respondents are more likely to experience housing instability, more likely to suffer from a deadly illness, less likely to have access to legal services, and less likely to be able to access the court or their ERO officer because of travel and other COVID related restrictions.

2. **The consideration given to each of the cases on the Returned Notice Docket is inconsistent.**

Since August 24, 2021, we have had volunteer advocates observe six of the Returned Notice Docket hearings in order to observe and better understand what, if any, safeguards

AMERICAN OVERSIGHT

have been put in place to avoid *in absentia* removal orders being given *en masse*. We have seen huge differences among immigration judges in how they are proceeding during these dockets. While some judges take great care in requesting address information from OPLA attorneys or calling clients directly during the hearing, others proceed with an *in absentia* removal order as long as there is a Form I-213 on file.

In the hearings we have observed, we have seen as many as 70% of respondents scheduled for the docket ordered removed *in absentia.* On average, we have observed fewer than three respondents appear in person at these dockets, where more than twenty individuals are scheduled to appear. In most cases, the only evidence the government is able to provide is a Form I-213 which solely contains uncorroborated allegations made by the government. We have observed several instances where the Notice to Appear that was filed with the court had a hearing date that was incorrect. We have also observed *in absentia* orders entered against individuals who were represented and had their cases terminated in 2018 and did not receive notice when the case was remanded to the immigration court. During one hearing, the Judge stated that she did not believe the Department of Homeland Security had met its burden regarding removability, and then proceeded with ordering the respondent removed *in absentia.* Another case involved a 19 year old who had entered the United States as a minor and it was clear that the guardian had not been served with the NTA. That case was continued to give the Department an opportunity to serve the respondent's aunt, however there was no discussion of the requirements of the Department to serve the Form I-770 or other protections specific to unaccompanied children. In many cases, these *in absentia* orders are entered against entire families, including against children who are completely reliant on their parents in notifying the court of address changes.

We acknowledge that during regular Master Calendar hearings, there may be one or two individuals that fail to appear and that the IJ may be justified in ordering removal if the government has met their burden of proof. In these cases, we often see that the respondents had received adequate notice in court and were aware of their future hearing date. Also, when only one or two individuals fail to appear, the IJ has adequate time to review each file individually and take into account any circumstances that may have prevented the respondent's appearance. We do not believe the same can be said for the Returned Notice Docket. In these hearings, every IJ is reviewing 15-25 cases at a time and some are ordering individuals removed in groups with little attention paid to each individual case besides a cursory review of the form I-213.

3. The Returned Notice Dockets violate a respondent's Fifth Amendment right to due process.

The practice of sending a notice to reschedule an existing hearing date, to an address known to be invalid, with the logically anticipated outcome of ordering a large number of individuals removed *in absentia* is fundamentally unfair and denies respondents the

AMERICAN OVERSIGHT

opportunity to reasonably present their case. This process clearly results in prejudice to the respondent who is unaware of the change in his hearing date and therefore is ordered removed by default. Furthermore, in the majority of these cases on the Returned Notice Docket, the respondent is *pro se*. "Because aliens appearing *pro se* often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the IJ's scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

The creation of the Returned Notice Docket during an unprecedented public health crisis is likely to impede the Court's ability to meet its obligations to *pro se* respondents. Rescheduling hearings using an unworkable address where respondents are unlikely to receive notice not only denies the respondent of their right to have their cases heard, but it also denies the individual IJ's the opportunity to "scrupulously and conscientiously" explore the reasons that a respondent failed to appear. The IJ must rely entirely on evidence provided by the government in order to move forward, and because it is likely that the respondent has no knowledge that the hearing is taking place, there is nobody in these proceedings to speak on their behalf or protect their rights.

As attorneys, we understand that the respondent has the responsibility of informing the Court of an address change within five days of moving. However, the consequences to those who fail to meet this requirement in a timely manner is severe, and there are myriad reasons why this responsibility has become more difficult during the COVID-19 pandemic. Many respondents do not fully understand when and how to inform the court of an address change, the process is often confusing to those who are unfamiliar with our legal system, and those who are illiterate and have limited education and do not understand service requirements. It is especially difficult for many because the change of address form is only provided in English and not everyone has access to translation services. Access to free or low cost legal services where *pro se* respondents would often receive this information and advice has also been more limited during the pandemic.

Additionally, we often meet with individuals who have informed ERO of their new address and mistakenly believe that this information will be submitted to the Court. Many of these respondents are under the impression that they have complied with the Court's address requirements. There is no publicly-available information about what ERO officers do with these updated addresses, and whether this information is timely shared with OPLA attorneys, let alone the Court. While we often see OPLA attorneys in Court with updated contact information, we have also seen multiple instances where an individual with regular ERO check-ins has to repeatedly inform their deportation officer of their new address. Since the COVID-19 pandemic began, hundreds of community members have had difficulty contacting ERO and have reported to our organizations that they would often call or send emails and not receive any response. Their regular check-ins were cancelled with no information on how or when they could check in or update their address. In one instance, the Justice and Diversity Center helped a *pro se* community member update their address with ERO, in writing, via email. The respondent was later reprimanded by her deportation officer when she was eventually able to check

AMERICAN OVERSIGHT

in and accused of not informing the office of her address change. We are also concerned that this information may not make it to OPLA's files in a timely manner, or at all, especially when these hearings are re-scheduled to be heard in the next 1-2 months. Additionally, those that do not have a secure address often rely on the EOIR Automated Case Information system to obtain information about their hearing date and are not expecting a hearing they believe to be scheduled in 2022 or 2023 to suddenly advance to within a few weeks.

It would be a mistake to assume that all respondents who fail to appear at their hearings are deliberately evading our laws. Indeed, studies have shown that those respondents who receive notice of their hearings attend them at exceptionally high rates. For example, data released by the Department of Justice on this topic suggests that asylum applicants attend their hearings at very high rates. By advancing their hearing dates and sending notices to addresses that the Court knows have already failed to reach the respondent, the Court is creating additional barriers that make it difficult for immigrants to access the judicial system and have their cases heard. While they legally have the option to file a motion to reopen after the hearing, there are strict time and numerical limitations on these motions that are difficult to overcome without the assistance of an attorney. Even if the time limitations are tolled for lack of notice, it creates yet another logistical and financial barrier for *pro se* respondents to find an attorney to help them with such a motion. In these cases, it is doubtful that a *pro se* respondent would be able to prepare and file a timely motion to reopen when they have already struggled with preparing and filing a Form EOIR-33. Again, we believe the vast majority of these respondents are eager to have their cases heard and proceed with their hearings. Instead they are being set up for failure, by having their hearings advanced unexpectedly.

4. The Returned Notice Docket is a misuse of the Court's limited resources.

Again, we are greatly concerned about the timing of the Returned Notice Dockets: they were created during a public health crisis when the Court has very limited capacity to hear cases and many respondents who are seeking a decision on the merits of their case are having their hearings postponed to 2024 and 2025. Immigration Judge, legal assistant, and OPLA attorney time is being used to schedule and attend these hearings, when such time could go to countless other cases that are being cancelled and reset far into the future. In many of the cases on the Returned Notice Docket, the issue related to the returned notice could be easily resolved by a phone call from a clerk to the respondent, without setting the stage for what is inevitably the failure to appear by many of the respondents. We are now seeing judges spend their time at hearings making phone calls or reviewing documents in the A-file to try to find a correct address and order multiple notices sent out, when their time would be better spent adjudicating cases that are ready to move forward. We are also seeing these hearings continued where there are issues related to service and notice. If there is any question regarding adequate notice, this should be resolved by terminating the case completely, instead of keeping it on the docket indefinitely and scheduling multiple hearings where the respondent is unlikely to appear.

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As representatives of the non-profit legal community, there are several avenues for collaboration that would allow us to use our resources to help individuals with returned notices to update their addresses. The Justice & Diversity Center's volunteer-driven Attorney of the Day Program is able to assist by reaching out to individuals on the court's behalf and assist them with filing a Form EOIR-33. Additionally, a local non-profit is currently building an EOIR-funded program, the Immigration Court Help Desk, to provide orientations and clinics that would help respondents better understand the Court's address requirements and assist them in properly filing a change of address form.

In conclusion, we would like to offer the following recommendations to the Court:

1. Pause or discontinue the use of the Returned Notice Docket all together, or

2. If the docket continues, solicit further feedback from local stakeholders and consider greater collaboration with the local bar to prevent negative consequences arising out of the docket.

In either scenario, we hope the Court will collaborate with the local bar and non-profit community to ensure that *pro se* respondents are fully advised of their legal obligations and are getting adequate notice of their hearings before the Court. You may contact Milli Atkinson via phone or email at matkinson@sfbar.org, (415) 782-8926, if you wish to discuss this letter further.

We appreciate your time and consideration in addressing these concerns.

Sincerely,

ACLU of Northern California
AILA NorCal Advocacy Liaisons
Justice and Diversity Center of the Bar Association of San Francisco
National Lawyers Guild – San Francisco Bay Area Chapter

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Short, Tracy (EOIR)
Sent: Thursday, November 4, 2021 2:47 PM
To: Weiss, Daniel H (EOIR)
Subject: RE: [EXTERNAL] Returned Notice Docket

Categories: Blue Category

Do you have time to discuss this?

From: Weiss, Daniel H (EOIR) <(b)(6)
Sent: Thursday, November 4, 2021 12:46 PM
To: Short, Tracy (EOIR) <Tracy.Short@usdoj.gov>
Cc: Cheng, Mary (EOIR) <(b)(6) Daugherty, Daniel J (EOIR) (b)(6); McNulty, Sheila (EOIR) <(b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

FYSA

Daniel H. Weiss
Principal Deputy Chief Immigration Judge

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From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Thursday, November 4, 2021 12:07 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6) Weiss, Daniel H (EOIR (b)(6) Cheng, Mary (EOIR) <(b)(6); McNulty, Sheila (EOIR) <(b)(6); Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; Lampman, Zachary (EOIR) (CTR) <Zachary.Lampman@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>
Subject: RE: [EXTERNAL] Returned Notice Docket

Hi Judge Doc - Thank you for reaching out. We handle formal correspondence for the agency and I am copying on this email Zachary Lampman who is our correspondence POC in CLAD. See below for (b)(5)

(b)(5)

(b)(5) Thanks again – Kathryn

BACKGROUND:

AMERICAN OVERSIGHT

(b)(5)

ON THE RECORD:

(b)(5)

End.

Initial response to SF Chronicle:
BACKGROUND:

(b)(5)

End.

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, November 3, 2021 1:40 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Cc: Young, Elizabeth L. (EOIR) <E (b)(6) , Weiss, Daniel H (EOIR) (b)(6)
Cheng, Mary (EOIR) < (b)(6) ; McNulty, Sheila (EOIR) < (b)(6)
Subject: FW: [EXTERNAL] Returned Notice Docket

Hi Kathryn

This letter from the ACLU of Northern California comes on the heals of the San Francisco Chronical article on the returned notice docket.

Your help in drafting an appropriate response will be greatly appreciated. Is there someone in your office that you would like ACIJ Young to work with on the response?

Please advise on what you see as the best procedure in our response.

Thanks

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

AMERICAN OVERSIGHT

Offic
Cell: (b)(6)

From: Young, Elizabeth L. (EOIR) <E (b)(6)
Sent: Tuesday, November 2, 2021 4:55 PM
To: Daugherty, Daniel J (EOIR) < (b)(6)
Subject: Fwd: [EXTERNAL] Returned Notice Docket

I have (b)(5) Let me know how you like me to proceed.
Elizabeth

Begin forwarded message:

From: Milli Atkinson <matkinson@sfbar.org>
Date: November 2, 2021 at 4:09:58 PM PDT
To: "Young, Elizabeth L. (EOIR)" <E (b)(6)
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

AMERICAN OVERSIGHT

Confidentiality Notice:
The information in this e-mail (including attachments, if any) is considered privileged and/or confidential and is intended only for the recipient(s) listed above. Any review, use, disclosure, distribution or copying of this e-mail is prohibited except by or on behalf of the intended recipient. If you have received this email in error, please notify me immediately by reply email, delete this email, and do not disclose its contents to anyone.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Short, Tracy (EOIR)
Sent: Thursday, October 28, 2021 3:00 PM
To: Weiss, Daniel H (EOIR)
Cc: Cheng, Mary (EOIR); Daugherty, Daniel J (EOIR); McNulty, Sheila (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

(b)(5) Thanks.

From: Weiss, Daniel H (EOIR) <(b)(6)>
Sent: Thursday, October 28, 2021 2:56 PM
To: Short, Tracy (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

(b)(5)

Daniel H. Weiss
Principal Deputy Chief Immigration Judge

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From: Short, Tracy (EOIR) <(b)(6)>
Sent: Thursday, October 28, 2021 2:51 PM
To: Weiss, Daniel H (EOIR) <(b)(6)>
Cc: Cheng, Mary (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>
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I made some minor edits. (b)(5) (b)(5) I welcome feedback. Thanks.

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Cc: Cheng, Mary (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>

AMERICAN OVERSIGHT

McNulty, Sheila (EOIR) (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Judge,

Please see draft below. CLAD is trying to meet a 3 p.m. deadline.

From: Daugherty, Daniel J (EOIR) (b)(6)
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Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Sir, Do you concur?

(b)(5)

Mary Cheng

AMERICAN OVERSIGHT

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Sent: Wednesday, October 27, 2021 8:36 PM
To: McNulty, Sheila (EOIR) (b)(6)
Cc: Cheng, Mary (EOIR (b)(6)
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Great addition.

Thanks
Doc

D. J. Daugherty
RDCIJ West

On Oct 27, 2021, at 4:31 PM, McNulty, Sheila (EOIR) <(b)(6) v> wrote:

Hi Judge,

(b)(5)

(b)(5) Not sure if it helps, but ….there you go!
Sheila

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Sent: Wednesday, October 27, 2021 5:24 PM
To: McNulty, Sheila (EOIR (b)(6)
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

RDC's

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Draft:

(b)(5)

End.

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Offic
Cell: (b)(6)

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6) bung, Elizabeth L. (EOIR) (b)(6) >
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized

AMERICAN OVERSIGHT

Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

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End.

Draft:

(b)(5)

End.

From KQED Inquiry:

AMERICAN OVERSIGHT

Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Thursday, October 28, 2021 2:20 PM
To: Weiss, Daniel H (EOIR)
Cc: McNulty, Sheila (EOIR); Cheng, Mary (EOIR)
Subject: Re: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

None from me.

D. J. Daugherty
RDCIJ West

On Oct 28, 2021, at 11:17 AM, Weiss, Daniel H (EOIR) <(b)(6) wrote:

Doc,

Any further comments/edits before it goes to CIJ?

Daniel H. Weiss
Principal Deputy Chief Immigration Judge

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From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 1:39 PM
To: Weiss, Daniel H (EOIR) <(b)(6)>
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Sir, Do you concur?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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Cc: Cheng, Mary (EOIR) <
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Great addition.

Thanks
Doc

AMERICAN OVERSIGHT

D. J. Daugherty
RDCIJ West

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To: McNulty, Sheila (EOIR) <(b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6)
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

RDC's

(b)(5)

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

End.

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Offic (b)(6)
Cell:

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6) ung, Elizabeth L. (EOIR) <(b)(6)
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

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End.

Draft:

(b)(5)

End.

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Daugherty, Daniel J (EOIR)
Sent: Thursday, October 28, 2021 1:57 PM
To: Weiss, Daniel H (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

Ugg – sorry about that.

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office
Cell: (b)(6)

From: Weiss, Daniel H (EOIR) <(b)(6)
Sent: Thursday, October 28, 2021 10:55 AM
To: Daugherty, Daniel J (EOIR) <(b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Doc,

(b)(5)

Daniel H. Weiss
Principal Deputy Chief Immigration Judge

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To: Weiss, Daniel H (EOIR) (b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

AMERICAN OVERSIGHT

Sir, Do you concur?

(b)(5)

Mary Cheng
Regional Deputy Chief Immigration Judge - Eastern Region

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Sent: Wednesday, October 27, 2021 8:36 PM
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Cc: Cheng, Mary (EOIR) (b)(6)
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Great addition.

AMERICAN OVERSIGHT

Thanks
Doc

D. J. Daugherty
RDCIJ West

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Importance: High

RDC's

(b)(5)

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

End.

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Offic (b)(6)
Cell:

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) <(b)(6)> Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
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Draft:

(b)(5)

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Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Short, Tracy (EOIR)
Sent: Thursday, October 28, 2021 3:04 PM
To: Weiss, Daniel H (EOIR)
Cc: Cheng, Mary (EOIR); Daugherty, Daniel J (EOIR); McNulty, Sheila (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Categories: Blue Category

Yes, please.

From: Weiss, Daniel H (EOIR) <(b)(6)
Sent: Thursday, October 28, 2021 3:00 PM
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Cc: Cheng, Mary (EOIR) <(b)(6); Daugherty, Daniel J (EOIR) <(b)(6)
McNulty, Sheila (EOIR) <(b)(6)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Judge,

After conferring with Doc, we struck the language in green. Ok to send to CLAD?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Daniel H. Weiss
Principal Deputy Chief Immigration Judge

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Sir, Do you concur?

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

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D. J. Daugherty
RDCIJ West

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Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

RDC's

(b)(5)

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

All thoughts are greatly appreciated!

Doc

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office
Cell: 7 (b)(6)

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(b)(5)

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Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

Perez Santiago, Jeniffer (EOIR)

From: Spencer, Naleshia T. (EOIR) (CTR)
Sent: Tuesday, November 2, 2021 2:16 PM
To: Chaban, Roman (EOIR); Johnson, Hunter (EOIR)
Cc: Weiss, Daniel H (EOIR)
Subject: RE: specialized docket inquiry from the CIJ
Attachments: Specialized Docket Nationwide Report_FY 2021.xlsx; FY22 Specialized Docket Nationwide Report_As of November 1, 2021.xlsx

Hi Roman,

Please see the attached spreadsheets for Specialized dockets for FY21 and FY22. Going forward, I will submit updates on the FY22 document.

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Clerk
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
703-756-8577 (office)

From: Chaban, Roman (EOIR) <Roman.Chaban@usdoj.gov>
Sent: Tuesday, November 2, 2021 1:02 PM
To: Johnson, Hunter (EOIR) [(b)(6)]; Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Cc: Weiss, Daniel H (EOIR) <[(b)(6)]
Subject: specialized docket inquiry from the CIJ
Importance: High

[(b)(5)]

Thank you!

_____

[(b)(5)]

_____

Roman M. Chaban
Senior Counsel
Office of the Chief Immigration Judge
Executive Office for Immigration Review

AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Immigration Court	Number of Cases Scheduled	Number of Cases Completed	Percentage Completed	Notes
Adelanto	0	0	No Data Received	(b)(5)
Arlington	188	167	89%	
Atlanta - Peachtree	182	57	31%	
Atlanta – Ted Turner	143	61	43%	
Aurora	0	0	No Data Received	Detained Court
Baltimore	350	224	64%	
Batavia	0	0	No Data Received	Detained Court
Boston	327	307	94%	Boston judges were assigned on a rotating basis to the specialized dockets since 4/19.
Buffalo	0	0	No Data Received	No backlog of cases and no need for specialized docket at this time.
Charlotte	29	28	97%	
Chicago	279	196	70%	47 scheduled cases for 6/25
Cleveland	1138	754	66%	
Conroe	0	0	No Data Received	Detained Court
Dallas	50	45	90%	Added on July 26, 2021
Denver	1180	799	68%	
Detroit	8	6	75%	
El Paso	104	18	17%	Scheduled cases start on July 8th
El Paso SPC	0	0	No Data Received	Detained Court

AMERICAN OVERSIGHT

Elizabeth	0	0	No Data Received	Detained Court
Eloy	0	0	No Data Received	Added on July 26, 2021
Fishkill	226	6	3%	Detained Court
Florence	0	0	No Data Received	Added on July 26, 2021
Ft. Snelling	70	24	34%	Added on July 26, 2021
Harlingen	5	2	40%	Added on July 26, 2021
Hartford	44	11	25%	
Honolulu	31	15	48%	No cases to report.
Houston	12	9	75%	Added on July 26, 2021
Houston Greenspoint	0	0	No Data Received	Scheduled cases start on July 27th
Houston	56	12	21%	Added on July 26, 2021
Imperial	250	28	11%	
Kansas City	0	0	No Data Received	Added on July 26, 2021
Krome	0	0	No Data Received	Detained Court
LaSalle	0	0	No Data Received	Detained Court
Las Vegas	47	33	70%	
Louisville	0	0	No Data Received	Added on July 26, 2021
Los Angeles – Olive Street	1650	816	49%	
Los Angeles – North Los	60	37	62%	
Los Angeles - Van Nuys	723	555	77%	
Memphis	0	0	No Data Received	Added on July 26, 2021
Miami	135	103	76%	
Newark	722	563	78%	
New Orleans	819	66	8%	Most cases are scheduled in the future.
New York - Broadway	0	0	No Data Received	Added on July 26, 2021
New York - Federal Plaza	0	0	No Data Received	Added on July 26, 2021
Oakdale	0	0	No Data Received	Detained Court
Omaha	10	0	0%	Scheduled cases start in July.
Orlando	540	37	7%	
Otay Mesa	0	0	No Data Received	Added on July 26, 2021

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Otero	0	0	No Data Received	Operating out of SND
Pearsall	0	0	No Data Received	Detained Court
Philadelphia	29	13	45%	
Phoenix	192	122	64%	
Port Isabel	0	0	No Data Received	Detained Court
Portland	22	18	82%	Court will not reopen until July 6th.
Sacramento	70	39	56%	
Saipan	7	1	14%	
Salt Lake City	162	99	61%	
San Antonio	0	0	No Data Received	Added on July 26, 2021
San Diego	225	98	44%	
San Francisco	1352	1129	84%	
San Juan	126	126	100%	Added on July 26, 2021
Seattle	310	215	69%	
Stewart	0	0	No Data Received	Added on July 26, 2021
Tacoma	407	49	12%	Detained Court
Tucson	21	13	62%	
Ulster	222	13	6%	Detained Court
Varick	1888	21	1%	Added on July 26, 2021
York	0	0	No Data Received	No longer operating
Total	**14411**	**6935**	**48%**	

AMERICAN OVERSIGHT

Immigration Court	Number of Cases Scheduled	Number of Cases Completed	Percentage Completed	Notes
Adelanto	0	0	No Data Received	(b)(5)
Arlington	0	0	No Data	
Atlanta - Peachtree	27	6	22%	
Atlanta – Ted Turner	0	0	No Data Received	
Aurora	0	0	No Data	Detained Court
Baltimore	0	0	No Data	
Batavia	0	0	No Data	Detained Court
Boston	69	69	100%	Boston judges were assigned on a rotating basis to the specialized dockets since 4/19.
Buffalo	0	0	No Data	No backlog of cases and no need for
Charlotte	8	8	100%	
Chicago	0	0	No Data	47 scheduled cases for 6/25
Cleveland	327	210	64%	
Conroe	0	0	No Data	Detained Court
Dallas	2	2	100%	Added on July 26, 2021
Denver	264	166	63%	
Detroit	0	0	No Data	
El Paso	0	0	No Data	Scheduled cases start on July 8th
El Paso SPC	0	0	No Data	Detained Court
Elizabeth	0	0	No Data	Detained Court
Eloy	0	0	No Data	Added on July 26, 2021
Fishkill	175	9	5%	Detained Court
Florence	0	0	No Data	Added on July 26, 2021
Ft. Snelling	51	15	29%	Added on July 26, 2021
Harlingen	0	0	No Data	Added on July 26, 2021

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Hartford	2	2	100%	
Honolulu	27	16	59%	No cases to report.
Houston	38	22	58%	Added on July 26, 2021
Houston Greenspoint	8	8	100%	Scheduled cases start on July 27th
Houston South Gessner	84	8	10%	Added on July 26, 2021
Imperial	72	10	14%	
Kansas City	0	0	No Data	Added on July 26, 2021
Krome	0	0	No Data	Detained Court
LaSalle	0	0	No Data	Detained Court
Las Vegas	5	5	100%	
Louisville	0	0	No Data	Added on July 26, 2021
Los Angeles – Olive Street	64	37	58%	
Los Angeles – North Los	24	18	75%	
Los Angeles - Van Nuys Blvd.	116	93	80%	
Memphis	0	0	No Data	Added on July 26, 2021
Miami	5	2	40%	
Newark	124	94	76%	
New Orleans	387	23	6%	Most cases are scheduled in the future.
New York - Broadway	0	0	No Data Received	Added on July 26, 2021
New York - Federal Plaza	70	7	10%	Added on July 26, 2021
Oakdale	0	0	No Data	Detained Court
Omaha	10	5	50%	Scheduled cases start in July.
Orlando	74	2	3%	
Otay Mesa	0	0	No Data	Added on July 26, 2021
Otero	0	0	No Data	Operating out of SND
Pearsall	0	0	No Data	Detained Court
Philadelphia	0	0	No Data	
Phoenix	36	24	67%	
Port Isabel	0	0	No Data	Detained Court
Portland	0	0	No Data	Court will not reopen until July 6th.
Sacramento	11	9	82%	
Saipan	2	1	50%	
Salt Lake City	40	25	63%	
San Antonio	0	0	No Data	Added on July 26, 2021
San Diego	58	22	38%	
San Francisco	352	307	87%	
San Juan	0	0	No Data	Added on July 26, 2021
Seattle	25	11	44%	
Stewart	0	0	No Data	Added on July 26, 2021
Tacoma	211	14	7%	Detained Court

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Tucson	18	13	72%	
Ulster	77	4	5%	Detained Court
Varick	3270	98	3%	Added on July 26, 2021
York	0	0	No Data	No longer operating
Total	**6133**	**1365**	**22%**	

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Mon, 9 Aug 2021 19:48:51 +0000
To: Clay, Michael (EOIR)
Subject: 8th Floor Returned Notice Docket: ICD 9/15 at 10:30am

I've initialized it, so you can go ahead and set the cases.

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

Margolin, Daren K. (EOIR)

From: McDaniel, Scott (EOIR)
Sent: Thursday, July 22, 2021 3:50 PM
To: Ungerman, Leslie; Daryl Eremin; Michael Alster
Cc: Jauregui, Maria (EOIR); Margolin, Daren K. (EOIR)
Subject: PSS: Special Master 9-2-2021 @ 8:30
Attachments: PSS Special Master 9-2-2021.pdf

Good Afternoon:

Judge Savage will hold a special master on 9/2 @ 8:30am. The attached calendar is a listing of cases for which repeated hearing notices have been returned as undeliverable. Judge Savage will assess at the hearing if the respondents should be removed in absentia, (b)(5) (b)(5) Please add it to the ACC calendar. The ACC can be present in person or appear by open voice, but I-213s will need to be filed in order for Judge Savage to proceed with the cases.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

Immigration Judge Master Calendar

JUDGE SAVAGE, PATRICK S.. (PSS)

From 09/02/2021 to 09/02/2021

Hearing Date: 09/02/2021 - Thursday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	08:30	12:00	1	SFR	(b)(6)		ARMV	59	RP			TAG			NA	11/30/2021	M	P			SFR COURTROOM 10 CAB 1 IN SFR
	08:30	12:00	2	SFR			ARMV	59	ES			SP			NA	11/04/2021	M	P	M		SFR COURTROOM 6 CAB 01
	08:30	12:00	3	SFR			ARMV	59	BR			POR			NA	12/15/2021	M	P	M		SFR
	08:30	12:00	4	SFR			ARMV	59	GT			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 7 CAB 02
+	08:30	12:00	5	SFR			ARMV	59	GT			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 7 CAB 02
	08:30	12:00	6	SFR			ARMV	9B	VE			SP			NA		M	P			SFR COURTROOM 9 CAB 2 IN SFR
	08:30	12:00	7	SFR			ARMV	59	HO			SP			NA	09/14/2021	M	P			SFR COURTROOM 6 CAB 02
+	08:30	12:00	8	SFR			ARMV	59	HO			SP			NA	09/14/2021	M	P			SFR COURTROOM 6 CAB 02
	08:30	12:00	9	SFR			ARMV	59	CO			SP			NA	02/28/2022	M	P	M		SFR COURTROOM 5 CAB 03
	08:30	12:00	10	SFR			ARMV	59	GT			SP			NA	11/02/2021	M	P	M		SFR COURTROOM 7 CAB 04 IN SFR
+	08:30	12:00	11	SFR			ARMV	59	GT			SP			NA	11/02/2021	M	P	M		SFR COURTROOM 7 CAB 04 IN SFR
	08:30	12:00	12	SFR			ARMV	59	MX			SP			NA	12/09/2021	M	P			SFR

AMERICAN OVERSIGHT

DOJ-22-0370-A-000538

Immigration Judge Master Calendar

JUDGE SAVAGE, PATRICK S.. (PSS)

From 09/02/2021 to 09/02/2021

Hearing Date: 09/02/2021 - Thursday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
+	08:30	12:00	13	SFR			ARMV	59	MX			SP			NA	12/09/2021	M	P			SFR
+	08:30	12:00	14	SFR			ARMV	59	MX			SP			NA	12/09/2021	M	P			SFR
+	08:30	12:00	15	SFR			ARMV	59	MX			SP			NA	12/09/2021	M	P			SFR
	08:30	12:00	16	SFR			ARMV	59	ES			SP			NA	11/12/2021	M	P			SFR COURTROOM 5 CAB 04
	08:30	12:00	17	SFR			ARMV	59	GT			SP			NA	03/04/2022	M	P	M		SFR COURTROOM 5 CAB 04
+	08:30	12:00	18	SFR			ARMV	59	GT			SP			NA	03/04/2022	M	P	M		SFR COURTROOM 5 CAB 04
	08:30	12:00	19	SFR	(b)(6)		ARMV	59	GT			SP			NA	12/22/2021	M	P	M		SFR COURTROOM 3 CAB 05
	08:30	12:00	20	SFR			ARMV	59	MX			SP			NA	11/23/2021	M	P			SFR COURTROOM 10 CAB 5 IN SFR
	08:30	12:00	21	SFR			ARMV	59	GT			SP			NA	06/09/2022	M	P			SFR COURTROOM 3 CAB 06
	08:30	12:00	22	SFR			ARMV	59	GT			SP			NA	09/02/2021	M	P	I		SFR COURTROOM 3 CAB 07
	08:30	12:00	23	SFR			ARMV	59	MX			SP			NA	02/25/2022	M	P			SFR COURTROOM 5 CAB 07 IN SFR
	08:30	12:00	24	SFR			ARMV	59	HO			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 7 CAB 08 IN

AMERICAN OVERSIGHT

DOJ-22-0370-A-000539

Immigration Judge Master Calendar

JUDGE SAVAGE, PATRICK S.. (PSS)

From 09/02/2021 to 09/02/2021

Hearing Date: 09/02/2021 - Thursday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal.	Type		e	ROP Location
																					SFR
+	08:30	12:00	25	SFR	(b)(6)		ARMV	59	HO			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 7 CAB 08 IN SFR
+	08:30	12:00	26	SFR			ARMV	59	HO			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 7 CAB 08 IN SFR
	08:30	12:00	27	SFR			ARMV	59	MX			SP			NA	12/21/2023	M	P			SFR COURTROOM 10 CAB 7 IN SFR
	08:30	12:00	28	SFR			ARMV	59	ES			SP			NA	11/02/2021	M	P	M		SFR COURTROOM 7 CAB 09 IN SFR
+	08:30	12:00	29	SFR			ARMV	59	ES			SP			NA	11/02/2021	M	P	M		SFR COURTROOM 7 CAB 09 IN SFR
	08:30	12:00	30	SFR			ARMV	59	CH			MAN			NA	01/05/2022	M	P	I		SFR COURTROOM 9 CAB 7
	08:30	12:00	31	SFR			ARMV	59	MX			SP			NA	11/23/2021	M	P			SFR

Total Case(s) for Judge PSS: 31

(H/C Type = (Hearing and Case Types) Hearing Types = I - Initial, A - Adjournment, B - Bond)
(Case Type = DEP - Deportation, EXE - Exclusive, REC - Rescission, RMV - Removal, AOC - Asylum Only, CSR - Claim Status Review, CFR - Credible Fear Review)
(T - Telephonic/V - Video Hearing/P - In-Person) (+ = Rider Alien) (* = A Completed Hearing, Bond, Motion to Re-open) (@ = Expedited Asylum Case) (D = Attorney Discipline)
(CY = Custody & Bond), (OP = Other Proceedings). (*Y* = eFiling Opt-in)

AMERICAN OVERSIGHT

Margolin, Daren K. (EOIR)

From: McDaniel, Scott (EOIR)
Sent: Thursday, June 17, 2021 2:49 PM
To: Daryl Eremin; Michael Alster; Ungerman, Leslie
Cc: Jauregui, Maria (EOIR); Margolin, Daren K. (EOIR)
Subject: LCF Special Master 8-9-21 @ 1pm
Attachments: LCF 8-9-21 1pm.pdf

Good Afternoon:

Judge Figueroa will hold a special master on 8/9 @ 1pm. The attached calendar is a listing of cases for which repeated hearing notices have been returned as undeliverable. Judge Figueroa will assess at the hearing if the respondents should be removed in absentia, (b)(5) (b)(5) Please add it to the ACC calendar. The ACC can be present in person or appear by open voice, but I-213s will need to be filed in order for Judge Figueroa to proceed with the cases.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

Immigration Judge Master Calendar

JUDGE FIGUEROA, LAURA C.. (LCF)

From 08/09/2021 to 08/09/2021

Hearing Date: 08/09/2021 - Monday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	01:00	04:30	1	SFR			ARMV	59	HO			SP			NA	11/24/2021	M	P	M		SFR COURTROOM 21 CAB 1 IN SFR
+	01:00	04:30	2	SFR			ARMV	59	HO			SP			NA	11/24/2021	M	P	M		SFR COURTROOM 21 CAB 1 IN SFR
	01:00	04:30	3	SFR			ARMV	59	MX			ENG			NA	07/10/2023	M	P			SFR COURTROOM 13 CAB 1
	01:00	04:30	4	SFR			ARMV	59	GT			SP			NA	09/24/2021	M	P			SFR COURTROOM 18 CAB 02
	01:00	04:30	5	SFR			ARMV	59	IN			PUN			NA	10/05/2021	M	P			SFR COURTROOM 18 CAB 02
	01:00	04:30	6	SFR		(b)(6)	ARMV	59	MX			SP			NA	10/26/2021	M	P	M		SFR COURTROOM 15 CAB 2 IN SFR
+	01:00	04:30	7	SFR			ARMV	59	MX			SP			NA	10/26/2021	M	P	M		SFR COURTROOM 15 CAB 2 IN SFR
+	01:00	04:30	8	SFR			ARMV	59	MX			SP			NA	10/26/2021	M	P	M		SFR COURTROOM 15 CAB 2 IN SFR
+	01:00	04:30	9	SFR			ARMV	59	MX			SP			NA	10/26/2021	M	P	M		SFR COURTROOM 15 CAB 2 IN SFR
	01:00	04:30	10	SFR			ARMV	59	MX			ENG			NA	10/28/2021	M	P			SFR COURTROOM 16 CAB 3
	01:00	04:30	11	SFR			ARMV	59	IN			ENG			NA	11/17/2021	M	P	M		SFR

AMERICAN OVERSIGHT

DOJ-22-0370-A-000542

Immigration Judge Master Calendar

JUDGE FIGUEROA, LAURA C.. (LCF)

From 08/09/2021 to 08/09/2021

Hearing Date: 08/09/2021 - Monday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	01:00	04:30	12	SFR	(b)(6)		ARMV	9A	UE			RUS			NA		M	P	M		SFR COURTROOM 16 CAB 4
+	01:00	04:30	13	SFR			AAOC	9A	NL			UNK			NA		M	P			SFR COURTROOM 16 CAB 4
+	01:00	04:30	14	SFR			AAOC	9A	NL			UNK			NA		M	P			SFR COURTROOM 16 CAB 4
	01:00	04:30	15	SFR			ARMV	59	MX			SP			NA	11/03/2021	M	P			SFR COURTROOM 14 CAB 07
+	01:00	04:30	16	SFR			ARMV	59	MX			SP			NA	11/03/2021	M	P			SFR COURTROOM 14 CAB 07
+	01:00	04:30	17	SFR			ARMV	59	MX			SP			NA	11/03/2021	M	P			SFR COURTROOM 14 CAB 07
+	01:00	04:30	18	SFR			ARMV	59	MX			SP			NA	11/03/2021	M	P			SFR COURTROOM 14 CAB 07
	01:00	04:30	19	SFR			ARMV	59	MX			ENG			NA	08/25/2021	M	P			SFR COURTROOM 14 CAB 08
	01:00	04:30	20	SFR			ARMV	59	GT			SP			NA	10/05/2021	M	P	M		SFR COURTROOM 20 CAB 8 IN SFR
+	01:00	04:30	21	SFR			ARMV	59	GT			SP			NA	10/05/2021	M	P	M		SFR COURTROOM 20 CAB 8 IN SFR

Total Case(s) for Judge LCF: 21

(H/C Type = (Hearing and Case Types) Hearing Types = I - Initial, A - Adjournment, B - Bond)
(Case Type = DEP - Deportation, EXE - Exclusive, REC - Rescission, RMV - Removal, AOC - Asylum Only, CSR - Claim Status Review, CFR - Credible Fear Review)
(T - Telephonic/V - Video Hearing/P - In-Person) (+ = Rider Alien) (* = A Completed Hearing, Bond, Motion to Re-open) (@ = Expedited Asylum Case) (D = Attorney Discipline)
(CY = Custody & Bond), (OP = Other Proceedings). (*Y* = eFiling Opt-in)

AMERICAN OVERSIGHT

Margolin, Daren K. (EOIR)

From: Cheng, Mary (EOIR)
Sent: Tuesday, June 22, 2021 12:52 PM
To: McNulty, Sheila (EOIR); Margolin, Daren K. (EOIR)
Cc: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Specialized dockets

Thank you.

Mary Cheng
Regional Deputy Chief Immigration Judge

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From: McNulty, Sheila (EOIR) <(b)(6)>
Sent: Tuesday, June 22, 2021 3:41 PM
To: Margolin, Daren K. (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Subject: RE: Specialized dockets

Great Judge Margolin.
Thank you very much!
SMN

From: Margolin, Daren K. (EOIR) <(b)(6)>
Sent: Tuesday, June 22, 2021 2:01 PM
To: McNulty, Sheila (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Subject: FW: Specialized dockets

RDCIJs McNulty and Cheng – We don't have any cases for the Specialized Docket to report yet, but we have worked out a way forward.

After consulting with the local CC, (b)(5) (b)(5) We will start a specialized docket, of about (b)(5) cases per day in July. At present, we are planning these dockets for 23, 27, and 30 July. Judge Julie Nelson will be the "lead" IJ for this effort, but we will also include some of our other judges, especially those on the detained docket.

In addition, last week we held an *in absentia* (or "dead letter") docket and in 17 of 21 cases, ROs were issued. We are planning several more of these dockets in the upcoming weeks.

Respectfully,

AMERICAN OVERSIGHT

Daren K. Margolin
Assistant Chief Immigration Judge
Adelanto, CA
San Francisco, CA (Acting)
Gov Cell Phone: (b)(6)
Office Phone: (b)(6)
Email: (b)(6)

WarningAttorney/Client Privilege***Attorney Work Product***
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From: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>
Sent: Monday, June 14, 2021 3:12 AM
To: Cheng, Mary (EOIR) <(b)(6)>; Owens, Alfredia (EOIR) <(b)(6)>; Lampley-Fortson, Joy (EOIR) <(b)(6)>; Jones, David M. (EOIR) (b)(6) Holmes-Simmons, Theresa H. (EOIR) <(b)(6)> McNulty, Sheila (EOIR) <(b)(6)> Kaufman, Matthew W. (EOIR) <(b)(6)> Seppanen, Christopher R.. (EOIR) (b)(6) Perry, Anne (EOIR) (b)(6); Daugherty, Daniel J (EOIR) <(b)(6)>; Rooyani, Rodin (EOIR) <(b)(6)>; Miller, Jeffrey S. (EOIR) <(b)(6)> Laurent, Scott (EOIR) (b)(6); Sukkar, Elisa (EOIR) <(b)(6)>; Dillow, Eric (EOIR) (b)(6) Hoogasian, Amy C (EOIR) (b)(6) Glaser-Allen, Colleen (EOIR) (b)(6) Hitesman, Jonathan W. (EOIR) <(b)(6)> Scala, Theresa M. (EOIR) <(b)(6)>; Feldman, Irene (EOIR) <(b)(6)>; Sanchez, Jose A. (EOIR) <Jose.A.Sanchez@usdoj.gov>; McCarthy III, James F. (EOIR) <(b)(6)> Crooks, Grady (EOIR) (b)(6) Cheng, David (EOIR) (b)(6); Mart, H. Kevin (EOIR) <(b)(6)>
Cc: Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>; McNulty, Sheila (EOIR) (b)(6)
Subject: RE: Specialized dockets

Good Morning ACIJs,

I have created a template for you to use in your reporting that matches the format from ACIJ Rooyani. Please use this format when sending in your reports.

Thank you,

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Clerk
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
703-756-8577 (office)

AMERICAN OVERSIGHT

From: Cheng, Mary (EOIR) (b)(6)
Sent: Friday, June 11, 2021 8:27 AM
To: Owens, Alfredia (EOIR) <(b)(6); Lampley-Fortson, Joy (EOIR) <(b)(6)
(b)(6); Jones, David M. (EOIR) (b)(6); Holmes-Simmons, Theresa H. (EOIR)
(b)(6); McNulty, Sheila (EOIR) (b)(6); Kaufman, Matthew W. (EOIR)
(b)(6); Seppanen, Christopher R.. (EOIR) <(b)(6); Perry,
Anne (EOIR) <Anne.Perry@usdoj.gov>; Daugherty, Daniel J (EOIR) <(b)(6); Rooyani, Rodin
(EOIR) (b)(6) Miller, Jeffrey S. (EOIR) (b)(6); Laurent, Scott (EOIR)
(b)(6) Sukkar, Elisa (EOIR) (b)(6); Dillow, Eric (EOIR) <(b)(6)
Hoogasian, Amy C (EOIR) <(b)(6) aser-Allen, Colleen (EOIR) <(b)(6)
Hitesman, Jonathan W. (EOIR) (b)(6); Scala, Theresa M. (EOIR)
<(b)(6); Feldman, Irene (EOIR) <(b)(6); Sanchez, Jose A. (EOIR)
<Jose.A.Sanchez@usdoj.gov>; McCarthy III, James F. (EOIR) (b)(6); Crooks, Grady (EOIR)
(b)(6) Cheng, David (EOIR) (b)(6); Mart, H. Kevin (EOIR)
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR)
(b)(6) McNulty, Sheila (EOIR) <(b)(6)
Subject: RE: Specialized dockets
Importance: High

Judges,

Good morning. As the specialized dockets have all started at your courts, I will you need to track the dockets (b)(5)
(b)(5) Below is ACIJ Rooyani's reporting format, I would like to duplicate it for all the courts. (Thank you Rodin for sharing!) You can provide the information to Naleshia for compilation. The data should be reported every Monday for the prior week. We should report from the start date. Attached is the specialized docket plan reflecting the start date for each court.
Please send the data for all the dockets if your court has already started the hearings.

Going forward, the first reporting date will be Monday. June 14th. If you have any questions, please reach out to your RDCIJ. Thanks,

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Specialized Docket Running Totals
Los Angeles Court

updated June 9, 2021

Judge	Type of Speciaized Docket	Hearing Date	# Cases Scheduled	# Cases Complete
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/4/2021	18	16
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/6/2021	14	12
Park	AOS/245/42B	5/3/2021 - 5/7/2021	6	6
Everett	Aged Cases	5/10/2021 - 5/14/2021	9	5
Vahid	7A Adult (Special Master)	5/14/2021	15	8
Park	AOS/245/42B	5/17/2021 - 5/21/2021	12	4
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/18/2021	20	20
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/19/2021	21	20
Vahid	7A Adult (Special Master)	5/24/2021	20	7
Park	AOS/245/42B	6/1 - 6/5	12	9
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	6/3/2021	23	20
W. Lee	7A Adult (Special Master)	6/3/2021	22	10
Chon	7A Adult (Special Master)	6/8/2021	26	19
			218	156
			Running Total	

Mary Cheng
Regional Deputy Chief Immigration Judge

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or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

From: Cheng, Mary (EOIR)
Sent: Tuesday, March 23, 2021 11:15 AM
To: Owens, Alfredia (EOIR) <(b)(6); Lampley-Fortson, Joy (EOIR) (b)(6) (b)(6) Jones, David M. (EOIR) (b)(6); Holmes-Simmons, Theresa H. (EOIR) <(b)(6) McNulty, Sheila (EOIR) (b)(6) Kaufman, Matthew W. (EOIR) (b)(6); Seppanen, Christopher R.. (EOIR) <(b)(6) Bartolomei, Jr. Rico (EOIR) <(b)(6)>; Perry, Anne (EOIR) (b)(6) Daugherty, Daniel J (EOIR) <(b)(6) Rooyani, Rodin (EOIR) (b)(6); Miller, Jeffrey S. (EOIR) <(b)(6)>; Laurent, Scott (EOIR) <(b)(6) Sukkar, Elisa (EOIR) <(b)(6); Dillow, Eric (EOIR) <(b)(6)>; Hoogasian, Amy C (EOIR) (b)(6) Hitesman, Jonathan W. (EOIR) <(b)(6); Scala, Theresa M. (EOIR) <(b)(6)>; Feldman, Irene (EOIR) <(b)(6) Sanchez, Jose A. (EOIR) (b)(6) McCarthy III, James F. (EOIR) <(b)(6); Crooks, Grady (EOIR) <(b)(6)>; Cheng, David (EOIR) <(b)(6)>; Mart, H. Kevin (EOIR) (b)(6)
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>
Subject: RE: Specialized dockets

Judges,

I inadvertently left off the specialized docket chart from March 2020. Thanks,

Mary Cheng
Deputy Chief Immigration Judge

This communication, along with any attachments, is covered by Federal and State law governing electronic communications, and may contain sensitive or legally privileged information. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

From: Cheng, Mary (EOIR)
Sent: Monday, March 22, 2021 2:57 PM
To: Owens, Alfredia (EOIR) (b)(6) Lampley-Fortson, Joy (EOIR) <(b)(6) (b)(6); Jones, David M. (EOIR) (b)(6); Holmes-Simmons, Theresa H. (EOIR) (b)(6) McNulty, Sheila (EOIR) <(b)(6) Kaufman, Matthew W. (EOIR) (b)(6) Seppanen, Christopher R.. (EOIR) <Christopher.R.Seppanen@usdoj.gov>; Bartolomei, Jr. Rico (EOIR) <Rico.Bartolomei@usdoj.gov>; Perry, Anne (EOIR) <Anne.Perry@usdoj.gov>; Daugherty, Daniel J (EOIR) (b)(6) Rooyani, Rodin (EOIR) <(b)(6); Miller, Jeffrey S. (EOIR) <(b)(6); Laurent, Scott (EOIR) <Scott.Laurent@usdoj.gov>; Sukkar, Elisa (EOIR) (b)(6); Dillow, Eric (EOIR) <(b)(6) Hoogasian, Amy C (EOIR) (b)(6) Hitesman, Jonathan W. (EOIR) <(b)(6)>; Scala, Theresa M. (EOIR) <Theresa.M.Scala@usdoj.gov>; Feldman, Irene (EOIR) <(b)(6); Sanchez, Jose A. (EOIR) <Jose.A.Sanchez@usdoj.gov>; McCarthy III, James F. (EOIR) (b)(6)>; Crooks, Grady (EOIR) <(b)(6) Cheng, David (EOIR) (b)(6) Mart, H. Kevin (EOIR) <(b)(6)

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Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>
Subject: Specialized dockets
Importance: High

Judges,

Good afternoon. Please see the attached chart from March 2020 on specialized dockets. In the past, we identified AOS, VD, 42bs, aged cases and FGM asylum cases without a one year bar for these specialized dockets. I would like you to start reviewing how you can begin to create specialized dockets to hear these cases. (b)(5)

(b)(5)

(b)(5) The list I provided as to the types of cases to be placed on a specialized docket is not exhaustive, but

(b)(5)

Many of your courts have Web-Ex capabilities, therefore, please consider creating these dockets to be heard virtually. Attached is a list of pending 42b and AOS/245 cases pending at your courts. Please let me know the number of judges to be assigned to these dockets, the number of cases scheduled, and the number of days needed to implement these changes. The range cannot exceed 45 days.

Naleshia is copied on this email. Please send all responses to her by Wednesday (3/24), 12pm EST.

Mary Cheng
Deputy Chief Immigration Judge

This communication, along with any attachments, is covered by Federal and State law governing electronic communications, and may contain sensitive or legally privileged information. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

AMERICAN OVERSIGHT

(b)(6)

From: McDaniel, Scott (EOIR)
Sent: Tuesday, July 13, 2021 4:08 PM
To: Ungerman, Leslie (Leslie.J.Ungerman@ice.dhs.gov); Michael Alster; Daryl Eremin
Cc: Jauregui, Maria (EOIR); Margolin, Daren K. (EOIR)
Subject: SMS: Special Master 8-16-21 @ 8:30am
Attachments: SMS 8-16 Special Master.pdf

Good Afternoon:

Judge Star will hold a special master on 8/16 @ 8:30am. The attached calendar is a listing of cases for which repeated hearing notices have been returned as undeliverable. Judge Star will assess at the hearing if the respondents should be removed in absentia (b)(5) (b)(5) Please add it to the ACC calendar. The ACC can be present in person or appear by open voice, but I-213s will need to be filed in order for Judge Star to proceed with the cases.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

Immigration Judge Master Calendar

JUDGE STAR, SHADEE M.. (SMS)

From 08/16/2021 to 08/16/2021

Hearing Date: 08/16/2021 - Monday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	ROP Location
	08:30	10:00	1	SFR	(b)(6)		ARMV	59	MX			ENG			NA	02/08/2022	M	P			SFR COURTROOM 12 CAB 01
	08:30	10:00	2	SFR			ARMV	59	IN			HIN			NA	10/21/2021	M	P			SFR COURTROOM 17 CAB 01 IN SFR
	08:30	10:00	3	SFR			ARMV	59	HO			SP			NA	08/18/2021	M	P			SFR COURTROOM 17 CAB 01 IN SFR
+	08:30	10:00	4	SFR			ARMV	59	HO			SP			NA	08/18/2021	M	P			SFR COURTROOM 17 CAB 01 IN SFR
	08:30	10:00	5	SFR			ARMV	59	RO			RUP			NA	02/08/2022	M	P			SFR COURTROOM 12 CAB 01
+	08:30	10:00	6	SFR			ARMV	59	RO			RUP			NA	02/08/2022	M	P			SFR COURTROOM 12 CAB 01
+	08:30	10:00	7	SFR			ARMV	59	RO			ROM			NA	02/08/2022	M	P			SFR COURTROOM 12 CAB 01
+	08:30	10:00	8	SFR			ARMV	59	RO			ROM			NA	02/08/2022	M	P			SFR COURTROOM 12 CAB 01
	08:30	10:00	9	SFR			ARMV	59	CU			SP			NA	11/02/2021	M	P		e	SFR COURTROOM 16 CAB 1 IN SFR
	08:30	10:00	10	SFR			ARMV	59	KG			UZB			NA	11/02/2021	M	P	I		SFR COURTROOM 18 CAB 02
	08:30	10:00	11	SFR			ARMV	59	GT			SP			NA	11/16/2021	M	P	I		SFR COURTROOM 16 CAB 2 IN SFR

AMERICAN OVERSIGHT

DOJ-22-0370-A-000551

Immigration Judge Master Calendar

JUDGE STAR, SHADEE M.. (SMS)

From 08/16/2021 to 08/16/2021

Hearing Date: 08/16/2021 - Monday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
+	08:30	10:00	12	SFR	(b)(6)		ARMV	59	GT			SP			NA	11/16/2021	M	P	I		SFR COURTROOM 16 CAB 2 IN SFR
	08:30	10:00	13	SFR			ARMV	59	HO			SP			NA	11/16/2021	M	P	M		SFR COURTROOM 15 CAB 2 IN SFR
	08:30	10:00	14	SFR			ARMV	59	GT			SP			NA	12/09/2021	M	P			SFR COURTROOM 11 CAB 2 IN SFR
+	08:30	10:00	15	SFR			ARMV	59	GT			SP			NA	12/09/2021	M	P			SFR COURTROOM 11 CAB 2 IN SFR
	08:30	10:00	16	SFR			ARMV	59	HO			SP			NA	10/06/2021	M	P	M		SFR COURTROOM 17 CAB 03 IN SFR
	08:30	10:00	17	SFR			ARMV	59	GT			SP			NA	12/06/2021	M	P	M		SFR COURTROOM 11 CAB 5 IN SFR
+	08:30	10:00	18	SFR			ARMV	59	GT			SP			NA	12/06/2021	M	P	M		SFR COURTROOM 11 CAB 5 IN SFR
	08:30	10:00	19	SFR			ARMV	59	GT			SP			NA	08/25/2021	M	P			SFR COURTROOM 17 CAB 06
+	08:30	10:00	20	SFR			ARMV	59	GT			SP			NA	08/25/2021	M	P			SFR COURTROOM 17 CAB 06
	08:30	10:00	21	SFR			ARMV	59	MX			SP			NA	12/16/2021	M	P			SFR COURTROOM 14 CAB 07
+	08:30	10:00	22	SFR			ARMV	59	MX			SP			NA	12/16/2021	M	P			SFR COURTROOM 14 CAB 07

AMERICAN OVERSIGHT

DOJ-22-0370-A-000552

Immigration Judge Master Calendar

JUDGE STAR, SHADEE M.. (SMS)

From 08/16/2021 to 08/16/2021

Hearing Date: 08/16/2021 - Monday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			e	ROP Location
+	08:30	10:00	23	SFR	(b)(6)		ARMV	59	MX			SP			NA	12/16/2021	M	P			SFR COURTROOM 14 CAB 07
	08:30	10:00	24	SFR			ARMV	28	HO			SP			NA	11/16/2021	M	P			SFR COURTROOM 16 CAB 6
	08:30	10:00	25	SFR			ARMV	59	BR			ENG			NA	11/16/2021	M	P	M		SFR COURTROOM 15 CAB 7
	08:30	10:00	26	SFR			ARMV	59	GT			SP			NA	12/02/2021	M	P	M		SFR COURTROOM 11 CAB 8
+	08:30	10:00	27	SFR			ARMV	59	GT			SP			NA	12/02/2021	M	P	M		SFR COURTROOM 11 CAB 8

Total Case(s) for Judge SMS: 27

(H/C Type = (Hearing and Case Types) Hearing Types = I - Initial, A - Adjournment, B - Bond)
(Case Type = DEP - Deportation, EXE - Exclusive, REC - Rescission, RMV - Removal, AOC - Asylum Only, CSR - Claim Status Review, CFR - Credible Fear Review)
(T - Telephonic/V - Video Hearing/P - In-Person) (+ = Rider Alien) (* = A Completed Hearing, Bond, Motion to Re-open) (@ = Expedited Asylum Case) (D = Attorney Discipline)
(CY = Custody & Bond), (OP = Other Proceedings). (*Y* = eFiling Opt-in)

AMERICAN OVERSIGHT

Margolin, Daren K. (EOIR)

From: McDaniel, Scott (EOIR)
Sent: Thursday, July 15, 2021 2:02 PM
To: Ungerman, Leslie; Daryl Eremin; Michael Alster
Cc: Jauregui, Maria (EOIR); Margolin, Daren K. (EOIR)
Subject: SPN: Special Master 8-24-2021 @ 9am
Attachments: SPN Special Master 8-24-2021.pdf

Good Afternoon:

Judge Phan will hold a special master on 8/24 @ 9:00am. The attached calendar is a listing of cases for which repeated hearing notices have been returned as undeliverable. IGNORE THE AFTERNOON MASTERS LISTED. THOSE WILL BE RESET. ONLY REVIEW THE 9AM CASES. Judge Phan will assess at the hearing if the respondents should be removed in absentia, (b)(5) Please add it to the ACC calendar. The ACC can be present in person or appear by open voice, but I-213s will need to be filed in order for Judge Phan to proceed with the cases.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	09:00	09:30	1	SFR	(b)(6)		ARMV	59	KS			KOR			NA	09/17/2021	M	P			SFR COURTROOM 24 CAB 01
	09:00	09:30	2	SFR			ARMV	59	MX			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 20 CAB 2 IN SFR
+	09:00	09:30	3	SFR			ARMV	59	MX			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 20 CAB 2 IN SFR
+	09:00	09:30	4	SFR			ARMV	59	MX			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 20 CAB 2 IN SFR
+	09:00	09:30	5	SFR			ARMV	59	MX			SP			NA	11/09/2021	M	P	M		SFR COURTROOM 20 CAB 2 IN SFR
	09:00	09:30	6	SFR			ARMV	1B	GT			SP			NA	09/07/2021	M	P			SFR COURTROOM 24 CAB 03 IN SFR
	09:00	09:30	7	SFR			ARMV	59	GT			SP			NA	10/19/2021	M	P	M		SFR COURTROOM 20 CAB 3
	09:00	09:30	8	SFR			ARMV	59	MX			SP			NA	10/29/2021	M	P			SFR COURTROOM 23 CAB 05
	09:00	09:30	9	SFR			ARMV	59	ES			SP			NA	05/13/2022	M	P			SFR COURTROOM 23 CAB 05 IN SFR
	09:00	09:30	10	SFR			ARMV	59	MX			ENG			NA	05/20/2022	M	P			SFR COURTROOM 23 CAB 06
+	09:00	09:30	11	SFR			ARMV	59	MX			ENG			NA	05/20/2022	M	P			SFR COURTROOM 23 CAB 06

AMERICAN OVERSIGHT

DOJ-22-0370-A-000555

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	09:00	09:30	12	SFR	(b)(6)		ARMV	59	GT			SP			NA	12/13/2021	M	P	M		SFR COURTROOM 21 CAB 04 IN SFR
+	09:00	09:30	13	SFR			ARMV	59	GT			SP			NA	12/13/2021	M	P	M		SFR COURTROOM 21 CAB 04 IN SFR
	09:00	09:30	14	SFR			ARMV	59	GT			QUI			NA	10/05/2022	M	P			SFR COURTROOM 19 CAB 4
+	09:00	09:30	15	SFR			ARMV	59	GT			QUI			NA	10/05/2022	M	P			SFR COURTROOM 19 CAB 4
	09:00	09:30	16	SFR			ARMV	59	GT			SP			NA	11/22/2021	M	P	M		SFR COURTROOM 19 CAB 5
+	09:00	09:30	17	SFR			ARMV	59	GT			SP			NA	11/22/2021	M	P	M		SFR COURTROOM 19 CAB 5
+	09:00	09:30	18	SFR			ARMV	59	GT			SP			NA	11/22/2021	M	P	M		SFR COURTROOM 19 CAB 5
+	09:00	09:30	19	SFR			ARMV	59	GT			SP			NA	11/22/2021	M	P	M		SFR COURTROOM 19 CAB 5
	09:00	09:30	20	SFR			ARMV	59	RP			TAG			NA	10/21/2021	M	P	M		SFR COURTROOM 20 CAB 5 IN SFR
	09:00	09:30	21	SFR			ARMV	59	GT			SP			NA	12/20/2021	M	P	M		SFR 8TH FL STAFF MAIL BINS
	09:00	09:30	22	SFR			ARMV	59	ID			IND			NA	11/24/2021	M	P			SFR COURTROOM 22 CAB 09 IN SFR
	09:00	09:30	23	SFR			ARMV	59	HO			SP			NA	12/03/2021	M	P			SFR COURTROOM

AMERICAN OVERSIGHT

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
																					23 CAB 11
	09:00	09:30	24	SFR			ARMV	59	HO			SP			NA	09/08/2021	M	P	M		SFR COURTROOM 21 CAB 08
+	09:00	09:30	25	SFR			ARMV	59	HO			SP			NA	09/08/2021	M	P	M		SFR COURTROOM 21 CAB 08
	09:00	09:30	26	SFR			ARMV	59	MX			SP			NA	12/02/2021	M	P	M		SFR COURTROOM 19 CAB 7
	09:00	09:30	27	SFR			ARMV	59	ER			TIG			NA	11/04/2021	M	P	I		SFR COURTROOM 20 CAB 8
	09:00	09:30	28	SFR			ARMV	9B	ES			SP			NA	08/31/2021	M	P			SFR COURTROOM 21 CAB 09 IN SFR
	09:00	09:30	29	SFR	(b)(6)		ARMV	59	MX			SP			NA	11/04/2021	M	P	M		SFR COURTROOM 19 CAB 9 IN SFR
	01:00	01:30	30	SFR			ARMV	59	ES	Y	Purves, Wilson (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 1
+	01:00	01:30	31	SFR			ARMV	59	ES	Y	Purves, Wilson (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 1
	01:00	01:30	32	SFR			ARMV	59	GT			MAM			NA		M	H	M		SFR COURTROOM 20 CAB 4 IN SFR
+	01:00	01:30	33	SFR			ARMV	59	GT			MAM			NA		M	H	M		SFR COURTROOM 20 CAB 4 IN SFR
	01:00	01:30	34	SFR			ADEP	59	MX	Y	Ricci, John Ernest (OP)	SP			NA		M	H			SFR COURTROOM 20 CAB 5

AMERICAN OVERSIGHT

DOJ-22-0370-A-000557

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
	01:00	01:30	35	SFR	(b)(6)		ARMV	9B	JM	Y	Tse, Frank Man-Kit (OP)	ENG			NA		M	P	M		SFR COURTROOM 20 CAB 6 IN SFR
	01:00	01:30	36	SFR			ARMV	59	MX			ENG			NA		M	H			SFR 8TH FL STAFF MAIL BINS
	01:00	01:30	37	SFR			ADEP	59	GT	Y	Sprouls, Frank Patrick (OP)	SP			NA	02/14/2007	M	H			SFR COURTROOM 20 CAB 9
	01:00	01:30	38	SFR			ARMV	59	MX			SP			NA		M	H			SFR COURTROOM 20 CAB 9
+	01:00	01:30	39	SFR			ARMV	59	MX			SP			NA		M	H			SFR COURTROOM 20 CAB 9
+	01:00	01:30	40	SFR			ARMV	59	MX			SP			NA		M	H			SFR COURTROOM 20 CAB 9
	01:30	02:00	41	SFR			ARMV	59	GT	Y	Sac, Leanna M (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 4
	01:30	02:00	42	SFR			ARMV	59	MX			SP			NA		M	H	M		SFR COURTROOM 20 CAB 4 IN SFR
+	01:30	02:00	43	SFR			ARMV	59	MX			SP			NA		M	H	M		SFR COURTROOM 20 CAB 4 IN SFR
	01:30	02:00	44	SFR			ARMV	59	MX	Y	Landerholm, Otis Carl (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 5 IN SFR
+	01:30	02:00	45	SFR			ARMV	59	MX	Y	Landerholm, Otis Carl (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 5 IN SFR

AMERICAN OVERSIGHT

DOJ-22-0370-A-000558

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
+	01:30	02:00	46	SFR	(b)(6)		ARMV	59	MX	Y	Landerholm, Otis Carl (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 5 IN SFR
+	01:30	02:00	47	SFR			ARMV	59	MX	Y	Landerholm, Otis Carl (OP)	SP			NA		M	H	M		SFR COURTROOM 20 CAB 5 IN SFR
	01:30	02:00	48	SFR			ARMV	59	GT	Y	Lara, Maximo (OP)	SP			NA		M	H	M		INTAKE ROP REVIEW REQUEST BIN
	01:30	02:00	49	SFR			ARMV	59	CH			MAN			NA		M	H			SFR COURTROOM 20 CAB 6
	01:30	02:00	50	SFR			IRMV	NA	MX			SP			NA		M		M		SFR COURTROOM 20 CAB 7 IN SFR
+	01:30	02:00	51	SFR			IRMV	NA	MX			SP			NA		M		M		SFR COURTROOM 20 CAB 7 IN SFR
	01:30	02:00	52	SFR			ARMV	59	IN	Y	Gahra, Manpreet Singh (OP)	HIN			NA		M	H			SFR COURTROOM 20 CAB 7
	01:30	02:00	53	SFR			ARMV	59	ES	Y	Martinez, Miguel Angel (OP)	SP			NA		M	H			SFR COURTROOM 20 CAB 7
	01:30	02:00	54	SFR			ARMV	59	IN		Bhakhri, Ashwani K (OP)	PUN			NA		M	H	M		SFR COURTROOM 20 CAB 8 IN SFR
+	01:30	02:00	55	SFR			ARMV	59	IN		Bhakhri, Ashwani K (OP)	PUN			NA		M	H	M		SFR COURTROOM 20 CAB 8 IN SFR
	01:30	02:00	56	SFR			ARMV	59	MX	Y	Wood, Judith Lesley (OP)	UNK			NA		M	H	M		SFR COURTROOM 20 CAB 9 IN

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DOJ-22-0370-A-000559

Immigration Judge Master Calendar

JUDGE PHAN, SUSAN. (SPN)

From 08/24/2021 to 08/24/2021

Hearing Date: 08/24/2021 - Tuesday

	Start Time	End Time	#	H. Loc	Alien Name	A-Number	H/C Type	T/V adj	Nat	Opt-In	Alien Reps.	Lan	Comp. Date	Comp. Type	Adj Rsn	Adjourn To	Cal. Type			ROP e	Location
																					SFR
+	01:30	02:00	57	SFR	(b)(6)		ARMV	59	MX	Y	Wood, Judith Lesley (OP)	UNK			NA		M	H	M		SFR COURTROOM 20 CAB 9 IN SFR

Total Case(s) for Judge SPN: 57

(H/C Type = (Hearing and Case Types) Hearing Types = I - Initial, A - Adjournment, B - Bond)
(Case Type = DEP - Deportation, EXE - Exclusive, REC - Rescission, RMV - Removal, AOC - Asylum Only, CSR - Claim Status Review, CFR - Credible Fear Review)
(T - Telephonic/V - Video Hearing/P - In-Person) (+ = Rider Alien) (* = A Completed Hearing, Bond, Motion to Re-open) (@ = Expedited Asylum Case) (D = Attorney Discipline)
(CY = Custody & Bond), (OP = Other Proceedings). (*Y* = eFiling Opt-in)

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DOJ-22-0370-A-000560

Margolin, Daren K. (EOIR)

From: McDaniel, Scott (EOIR)
Sent: Wednesday, October 27, 2021 4:21 PM
To: Daugherty, Daniel J (EOIR); Margolin, Daren K. (EOIR)
Cc: Roberts, Valerie (EOIR); Young, Elizabeth L. (EOIR)
Subject: RE: Returned Notice of Hearing Dockets

Thanks everyone. Here is the back story:

(b)(5)

If you need further info, please don't hesitate to ask.

Thanks:
Scott

AMERICAN OVERSIGHT

From: Daugherty, Daniel J (EOIR) < (b)(6)
Sent: Wednesday, October 27, 2021 3:55 PM
To: Margolin, Daren K. (EOIR) (b)(6)
Cc: Roberts, Valerie (EOIR) < (b)(6) ; Young, Elizabeth L. (EOIR) < (b)(6)
McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice of Hearing Dockets

Thanks for the information.

(b)(5)

Doc

From: Margolin, Daren K. (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:53 PM
To: Daugherty, Daniel J (EOIR) (b)(6)
Cc: Roberts, Valerie (EOIR) (b)(6) Young, Elizabeth L. (EOIR) < (b)(6)
McDaniel, Scott (EOIR) <S (b)(6)
Subject: RE: Returned Notice of Hearing Dockets

RDCIJ Daugherty, n/a for ADL.

Re: SFR, I did see the email traffic on this yesterday. For the record, (b)(5)

(b)(5)

(b)(5) Thanks. V/r, dkm

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:48 PM
To: Feldman, Irene (EOIR (b)(6) Glaser-Allen, Colleen (EOIR) (b)(6)
(b)(6) Hitesman, Jonathan W. (EOIR) (b)(6) Kaufman, Matthew W. (EOIR)
(b)(6) Laurent, Scott (EOIR) < (b)(6) Margolin, Daren K. (EOIR)
(b)(6) Naselow-Nahas, Tara (EOIR) (b)(6) Perry, Anne (EOIR)
(b)(6) oyani, Rodin (EOIR) < (b)(6) cala, Theresa M. (EOIR)
(b)(6) Young, Elizabeth L. (EOIR (b)(6)
Subject: Returned Notice of Hearing Dockets

ACIJs

(b)(5)

Thanks

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

AMERICAN OVERSIGHT

Office (b)(6)
Cel (b)(6)

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Margolin, Daren K. (EOIR)

From: McNulty, Sheila (EOIR)
Sent: Tuesday, June 15, 2021 4:22 PM
To: Margolin, Daren K. (EOIR)
Subject: RE: Returned Notice Special Master Dockets

Very positive!
I think Matt has a docket like this called th (b)(5) Now get off email and enjoy !

From: Margolin, Daren K. (EOIR) < (b)(6) >
Sent: Tuesday, June 15, 2021 6:20 PM
To: McNulty, Sheila (EOIR) < (b)(6)
Subject: Fwd: Returned Notice Special Master Dockets

On a positive note. And this was all Scott's initiative.

Sent from my iPhone

Begin forwarded message:

From: "McDaniel, Scott (EOIR)" < (b)(6)
Date: June 15, 2021 at 3:54:54 PM PDT
To: "Butler, Jeremy J. (EOIR)" < (b)(6) "Caborn, Andrew J. (EOIR)" (b)(6) >, "Deiss, Ila C. (EOIR)" < (b)(6) "Figueroa, Laura C. (EOIR)" >, "Gambill, Scott D. (EOIR)" < (b)(6) "George, Amber D. (EOIR)" < (b)(6) "Greene, Charles S. (EOIR)" (b)(6) Jackson, Jacqueline J. (EOIR (b)(6) Johnson, Jeremiah (EOIR) < (b)(6) "Kim, Samuel Y. (EOIR)" (b)(6) Lake, Kelly B. (EOIR) (b)(6) "Margolin, Daren K. (EOIR)" (b)(6) "Marks, Dana (EOIR) (b)(6) Masterson, Jason R. (EOIR)" < (b)(6) McCleskey, Lori L. (EOIR) (b)(6) Nelson, Julie L. (EOIR)" < (b)(6) "O'Brien, Patrick S. (EOIR)" (b)(6) "Park, Joseph Y. (EOIR) (b)(6) Phan, Susan (EOIR)" (b)(6) Picton, Cory M. (EOIR) (b)(6) "Price, Justin M (EOIR)" < (b)(6) "Savage, Patrick S. (EOIR)" (b)(6) "Simmons, Gregory L. (EOIR)" (b)(6) Star, Shadee M. (EOIR)" (b)(6) Swink, Arwen A. (EOIR) (b)(6) Young, Elizabeth L. (EOIR)" (b)(6) >
Cc: "Jauregui, Maria (EOIR)" <Maria.Jauregui@usdoj.gov>, "Clay, Michael (EOIR)" <Michael.Clay2@usdoj.gov>
Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2

AMERICAN OVERSIGHT

more had to be reset due to address issues/DHS not having the file to provide the I-213. For the remaining cases he was able to do an in absentia removal order. If you are interested in conducting one or a few of these types of special masters in the August/September time frame, please let me know. (b)(5)

(b)(5)

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
(b)(6)

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Wed, 3 Nov 2021 18:56:13 +0000
To: McDaniel, Scott (EOIR)
Subject: FW: Returned Notice Docket
Attachments: (b)(5) Return Notice Docket. 11.2.2021.pdf

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, November 2, 2021 4:09 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)>
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

JUSTICE & DIVERSITY CENTER
OF THE BAR ASSOCIATION OF SAN FRANCISCO

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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ACLU Northern California

AILA Northern California Chapter

JUSTICE & DIVERSITY CENTER OF THE BAR ASSOCIATION OF SAN FRANCISCO

NATIONAL LAWYERS GUILD · S.F. BAY AREA CHAPTER · NLG

11/2/2021

Assistant Chief Immigration Judge Elizabeth Young
Executive Office of Immigration Review
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104

Re: Returned Notice Docket

Dear ACIJ Elizabeth Young,

We write regarding the San Francisco Immigration Court's recent creation of the "Returned Notice Docket" which poses a high risk of removal to hundreds of vulnerable individuals whose hearings have been rescheduled unexpectedly. The Returned Notice Docket was first brought to our attention when we learned of a respondent who had been ordered removed *in absentia* after she missed a hearing that had been advanced and rescheduled while she was recovering from side effects from the COVID-19 vaccine. After reaching out to Court personnel, we learned that the Court has created a new docket and is rescheduling hundreds of respondents for hearings when the Court receives returned mail from the respondent's address of record. It is our understanding that the Court then sends a new notice with an advanced hearing date, expecting the respondent to appear to correct their address and/or for the Court to confer with DHS about any alternative addresses in their A-file.

Our court observers have already witnessed and documented dozens of individuals ordered removed *in absentia* at these hearings when they fail to appear. This practice is resulting in the *in absentia* removal orders of asylees and other vulnerable immigrants who the Court knows are unlikely to receive actual notice of their hearing.

We have grave concerns about the sudden implementation of these special dockets, without stakeholder engagement beforehand and using the Court's already limited resources, that are resulting in an unprecedented wave of removal orders. We respectfully request that the practice be reconsidered immediately.

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1. **This is not the time to create a special docket with high levels of *in absentia* removal orders in the midst of a pandemic when housing instability has been well documented and access to the court, ERO, and legal services has been limited.**

The COVID-19 pandemic led to local and statewide shutdowns in early 2020. As a result, our immigration system, along with the entire nation, has had to adjust and adapt to a new normal. During the last 18 months, the disproportionate impact of the pandemic on immigrant communities has been well documented. Not only have they seen higher rates of COVID-19 infections compared to the general population, they have also been more likely to work in service jobs where they are more likely to contract COVID-19 and live in multi-family housing situations where it is impossible to safely quarantine. Immigrants were more likely to lose their jobs during the pandemic and are more likely to have experienced housing insecurity as a result of the pandemic.

Compounding the issue is the fact that many legal service providers were forced to limit or decrease capacity to provide services to the immigrant community during the pandemic. Many regular legal clinics were cancelled and many organizations were closed for intake and consultation while organizations shifted to a remote work environment. Both the private bar and community-based organizations have had to adapt to ever changing restrictions on when and how they are able to meet with clients to provide services, which further limits their capacity to provide services. In addition, many respondents face technological barriers to access services that are no longer provided in person.

Making the situation even more dire, the government offices responsible for enforcing our immigration laws have been less accessible, with limited information provided directly to respondents about changes in their cases and where to obtain information. There has been a great deal of confusion to both respondents and their legal representatives regarding appointments and hearings that have been rescheduled multiple times, often with little or late notice.

It is therefore extremely problematic for the San Francisco Immigration Court to expend its limited resources to create a special docket that is highly likely to result in an *in absentia* order of removal during a time when respondents are more likely to experience housing instability, more likely to suffer from a deadly illness, less likely to have access to legal services, and less likely to be able to access the court or their ERO officer because of travel and other COVID related restrictions.

2. **The consideration given to each of the cases on the Returned Notice Docket is inconsistent.**

Since August 24, 2021, we have had volunteer advocates observe six of the Returned Notice Docket hearings in order to observe and better understand what, if any, safeguards

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have been put in place to avoid *in absentia* removal orders being given *en masse*. We have seen huge differences among immigration judges in how they are proceeding during these dockets. While some judges take great care in requesting address information from OPLA attorneys or calling clients directly during the hearing, others proceed with an *in absentia* removal order as long as there is a Form I-213 on file.

In the hearings we have observed, we have seen as many as 70% of respondents scheduled for the docket ordered removed *in absentia.* On average, we have observed fewer than three respondents appear in person at these dockets, where more than twenty individuals are scheduled to appear. In most cases, the only evidence the government is able to provide is a Form I-213 which solely contains uncorroborated allegations made by the government. We have observed several instances where the Notice to Appear that was filed with the court had a hearing date that was incorrect. We have also observed *in absentia* orders entered against individuals who were represented and had their cases terminated in 2018 and did not receive notice when the case was remanded to the immigration court. During one hearing, the Judge stated that she did not believe the Department of Homeland Security had met its burden regarding removability, and then proceeded with ordering the respondent removed *in absentia.* Another case involved a 19 year old who had entered the United States as a minor and it was clear that the guardian had not been served with the NTA. That case was continued to give the Department an opportunity to serve the respondent's aunt, however there was no discussion of the requirements of the Department to serve the Form I-770 or other protections specific to unaccompanied children. In many cases, these *in absentia* orders are entered against entire families, including against children who are completely reliant on their parents in notifying the court of address changes.

We acknowledge that during regular Master Calendar hearings, there may be one or two individuals that fail to appear and that the IJ may be justified in ordering removal if the government has met their burden of proof. In these cases, we often see that the respondents had received adequate notice in court and were aware of their future hearing date. Also, when only one or two individuals fail to appear, the IJ has adequate time to review each file individually and take into account any circumstances that may have prevented the respondent's appearance. We do not believe the same can be said for the Returned Notice Docket. In these hearings, every IJ is reviewing 15-25 cases at a time and some are ordering individuals removed in groups with little attention paid to each individual case besides a cursory review of the form I-213.

3. The Returned Notice Dockets violate a respondent's Fifth Amendment right to due process.

The practice of sending a notice to reschedule an existing hearing date, to an address known to be invalid, with the logically anticipated outcome of ordering a large number of individuals removed *in absentia* is fundamentally unfair and denies respondents the

AMERICAN OVERSIGHT

opportunity to reasonably present their case. This process clearly results in prejudice to the respondent who is unaware of the change in his hearing date and therefore is ordered removed by default. Furthermore, in the majority of these cases on the Returned Notice Docket, the respondent is *pro se*. "Because aliens appearing *pro se* often lack the legal knowledge to navigate their way successfully through the morass of immigration law, and because their failure to do so successfully might result in their expulsion from this country, it is critical that the IJ's scrupulously and conscientiously probe into, inquire of, and explore for all the relevant facts."

The creation of the Returned Notice Docket during an unprecedented public health crisis is likely to impede the Court's ability to meet its obligations to *pro se* respondents. Rescheduling hearings using an unworkable address where respondents are unlikely to receive notice not only denies the respondent of their right to have their cases heard, but it also denies the individual IJ's the opportunity to "scrupulously and conscientiously" explore the reasons that a respondent failed to appear. The IJ must rely entirely on evidence provided by the government in order to move forward, and because it is likely that the respondent has no knowledge that the hearing is taking place, there is nobody in these proceedings to speak on their behalf or protect their rights.

As attorneys, we understand that the respondent has the responsibility of informing the Court of an address change within five days of moving. However, the consequences to those who fail to meet this requirement in a timely manner is severe, and there are myriad reasons why this responsibility has become more difficult during the COVID-19 pandemic. Many respondents do not fully understand when and how to inform the court of an address change, the process is often confusing to those who are unfamiliar with our legal system, and those who are illiterate and have limited education and do not understand service requirements. It is especially difficult for many because the change of address form is only provided in English and not everyone has access to translation services. Access to free or low cost legal services where *pro se* respondents would often receive this information and advice has also been more limited during the pandemic.

Additionally, we often meet with individuals who have informed ERO of their new address and mistakenly believe that this information will be submitted to the Court. Many of these respondents are under the impression that they have complied with the Court's address requirements. There is no publicly-available information about what ERO officers do with these updated addresses, and whether this information is timely shared with OPLA attorneys, let alone the Court. While we often see OPLA attorneys in Court with updated contact information, we have also seen multiple instances where an individual with regular ERO check-ins has to repeatedly inform their deportation officer of their new address. Since the COVID-19 pandemic began, hundreds of community members have had difficulty contacting ERO and have reported to our organizations that they would often call or send emails and not receive any response. Their regular check-ins were cancelled with no information on how or when they could check in or update their address. In one instance, the Justice and Diversity Center helped a *pro se* community member update their address with ERO, in writing, via email. The respondent was later reprimanded by her deportation officer when she was eventually able to check

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in and accused of not informing the office of her address change. We are also concerned that this information may not make it to OPLA's files in a timely manner, or at all, especially when these hearings are re-scheduled to be heard in the next 1-2 months. Additionally, those that do not have a secure address often rely on the EOIR Automated Case Information system to obtain information about their hearing date and are not expecting a hearing they believe to be scheduled in 2022 or 2023 to suddenly advance to within a few weeks.

It would be a mistake to assume that all respondents who fail to appear at their hearings are deliberately evading our laws. Indeed, studies have shown that those respondents who receive notice of their hearings attend them at exceptionally high rates. For example, data released by the Department of Justice on this topic suggests that asylum applicants attend their hearings at very high rates. By advancing their hearing dates and sending notices to addresses that the Court knows have already failed to reach the respondent, the Court is creating additional barriers that make it difficult for immigrants to access the judicial system and have their cases heard. While they legally have the option to file a motion to reopen after the hearing, there are strict time and numerical limitations on these motions that are difficult to overcome without the assistance of an attorney. Even if the time limitations are tolled for lack of notice, it creates yet another logistical and financial barrier for *pro se* respondents to find an attorney to help them with such a motion. In these cases, it is doubtful that a *pro se* respondent would be able to prepare and file a timely motion to reopen when they have already struggled with preparing and filing a Form EOIR-33. Again, we believe the vast majority of these respondents are eager to have their cases heard and proceed with their hearings. Instead they are being set up for failure, by having their hearings advanced unexpectedly.

4. The Returned Notice Docket is a misuse of the Court's limited resources.

Again, we are greatly concerned about the timing of the Returned Notice Dockets: they were created during a public health crisis when the Court has very limited capacity to hear cases and many respondents who are seeking a decision on the merits of their case are having their hearings postponed to 2024 and 2025. Immigration Judge, legal assistant, and OPLA attorney time is being used to schedule and attend these hearings, when such time could go to countless other cases that are being cancelled and reset far into the future. In many of the cases on the Returned Notice Docket, the issue related to the returned notice could be easily resolved by a phone call from a clerk to the respondent, without setting the stage for what is inevitably the failure to appear by many of the respondents. We are now seeing judges spend their time at hearings making phone calls or reviewing documents in the A-file to try to find a correct address and order multiple notices sent out, when their time would be better spent adjudicating cases that are ready to move forward. We are also seeing these hearings continued where there are issues related to service and notice. If there is any question regarding adequate notice, this should be resolved by terminating the case completely, instead of keeping it on the docket indefinitely and scheduling multiple hearings where the respondent is unlikely to appear.

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As representatives of the non-profit legal community, there are several avenues for collaboration that would allow us to use our resources to help individuals with returned notices to update their addresses. The Justice & Diversity Center's volunteer-driven Attorney of the Day Program is able to assist by reaching out to individuals on the court's behalf and assist them with filing a Form EOIR-33. Additionally, a local non-profit is currently building an EOIR-funded program, the Immigration Court Help Desk, to provide orientations and clinics that would help respondents better understand the Court's address requirements and assist them in properly filing a change of address form.

In conclusion, we would like to offer the following recommendations to the Court:

1. Pause or discontinue the use of the Returned Notice Docket all together, or

2. If the docket continues, solicit further feedback from local stakeholders and consider greater collaboration with the local bar to prevent negative consequences arising out of the docket.

In either scenario, we hope the Court will collaborate with the local bar and non-profit community to ensure that *pro se* respondents are fully advised of their legal obligations and are getting adequate notice of their hearings before the Court. You may contact Milli Atkinson via phone or email at matkinson@sfbar.org, (415) 782-8926, if you wish to discuss this letter further.

We appreciate your time and consideration in addressing these concerns.

Sincerely,

ACLU of Northern California
AILA NorCal Advocacy Liaisons
Justice and Diversity Center of the Bar Association of San Francisco
National Lawyers Guild – San Francisco Bay Area Chapter

AMERICAN OVERSIGHT

From: Figueroa, Laura C. (EOIR)
Sent: Mon, 20 Dec 2021 19:47:27 +0000
To: Young, Elizabeth L. (EOIR)
Subject: FW: Returned Notice Special Master Dockets

Judge Young,

You asked for documents/emails for the FOIA request on returned notice hearings. I am sending you three emails I received about that docket and that I participated in. Thanks. It took me about 10 minutes to search.

LCF

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, June 15, 2021 4:02 PM
To: Figueroa, Laura C. (EOIR) <Laura.C.Figueroa@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Do you know if you will be travelling back and forth to Texas or will you be here full time starting in August? Do you have a day of the week preference for doing this?

From: Figueroa, Laura C. (EOIR) <Laura.C.Figueroa@usdoj.gov>
Sent: Tuesday, June 15, 2021 4:00 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Yes I would like to do one of those!

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, June 15, 2021 3:55 PM
To: Butler, Jeremy J. (EOIR) <(b)(6)>; Caborn, Andrew J. (EOIR) <(b)(6)>; Deiss, Ila C. (EOIR) <(b)(6)>; Figueroa, Laura C. (EOIR) <(b)(6)>; Gambill, Scott D. (EOIR) <(b)(6)>; George, Amber D. (EOIR) <(b)(6)>; Greene, Charles S. (EOIR) <(b)(6)>; Jackson, Jacqueline J. (EOIR) <(b)(6)>; Johnson, Jeremiah (EOIR) <(b)(6)>; Kim, Samuel Y. (EOIR) <(b)(6)>; Lake, Kelly B. (EOIR) <(b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)>; Marks, Dana (EOIR) <(b)(6)>; Masterson, Jason R. (EOIR) <(b)(6)>; McCleskey, Loi L. (EOIR) <(b)(6)>; Nelson, Julie L. (EOIR) <(b)(6)>; O'Brien, Patrick S. (EOIR) <(b)(6)>; Park, Joseph Y. (EOIR) <(b)(6)>; Phan, Susan (EOIR) <(b)(6)>; Picton, Cory M. (EOIR) <(b)(6)>; Price, Justin M (EOIR) <(b)(6)>; Savage, Patrick S. (EOIR) <(b)(6)>; Simmons, Gregory L. (EOIR) <(b)(6)>; Star, Shadee M. (EOIR) <(b)(6)>; Swink, Arwen A. (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) <(b)(6)>

AMERICAN OVERSIGHT

Cc: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2 more had to be reset due to address issues/DHS not having the file to provide the I-213. For the remaining cases he was able to do an in absentia removal order. If you are interested in conducting one or a few of these types of special masters in the August/September time frame, please let me know. (b)(5)

(b)(5)

Thanks.

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Mon, 23 Aug 2021 18:31:04 +0000
To: Caborn, Andrew J. (EOIR)
Subject: RE: Another Returned Notice Docket

DONE – THANKS SO MUCH.

From: Caborn, Andrew J. (EOIR (b)(6)
Sent: Monday, August 23, 2021 11:30 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Another Returned Notice Docket

Hi Scott,
Yes, that's no problem. How about Monday 10/18 at 830?
Thanks

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 23, 2021 11:15 AM
To: Caborn, Andrew J. (EOIR (b)(6)
Subject: Another Returned Notice Docket

Judge:
Would you be available to do another returned notice docket the week of 10/18? If so, please send me a date and time the works for you.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Tue, 10 Aug 2021 00:00:20 +0000
To: McDaniel, Scott (EOIR)
Cc: Clay, Michael (EOIR);Robison, Tanner (EOIR)
Subject: RE: Another Returned Notice Special Master

Sounds good, thank you.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 4:56 PM
To: Star, Shadee M. (EOIR) (b)(6)
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Perfect. I've initialized a second special master at 2pm on 9/22. Michael will start scheduling the cases to it.

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Monday, August 9, 2021 4:53 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Hi Scott,

Would it be possible to schedule the returned notice special master to Sept 22, 2021 at 2:00 p.m.?

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:51 PM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: Another Returned Notice Special Master

Judge:
Can I ask you for a second date for the returned notices for the third week of September (9/20-24). We're getting a lot to schedule! You're still good to go for 8/16.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800

AMERICAN OVERSIGHT

San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Mon, 16 Aug 2021 14:56:38 +0000
To: McDaniel, Scott (EOIR)
Cc: Clay, Michael (EOIR);Robison, Tanner (EOIR)
Subject: RE: Another Returned Notice Special Master

Thank you.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 16, 2021 7:56 AM
To: Star, Shadee M. (EOIR) (b)(6)
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Judge:
Michael is gathering everything together and will be up shortly.

Tanner:
(b)(5)

Thanks:
Scott

From: Star, Shadee M. (EOIR (b)(6)
Sent: Monday, August 16, 2021 7:54 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Good morning,

I am assuming there is a bucket of special master files somewhere for this morning. Please let me know where I can find it.

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 4:56 PM
To: Star, Shadee M. (EOIR) < (b)(6)
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR)

AMERICAN OVERSIGHT

<Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

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From: Star, Shadee M. (EOIR) <(b)(6)
Sent: Monday, August 9, 2021 4:53 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Hi Scott,

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Thanks,

Shadee

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Sent: Monday, August 9, 2021 12:51 PM
To: Star, Shadee M. (EOIR) <(b)(6)
Subject: Another Returned Notice Special Master

Judge:
Can I ask you for a second date for the returned notices for the third week of September (9/20-24). (b)(5) You're still good to go for 8/16.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Clay, Michael (EOIR)
Sent: Mon, 16 Aug 2021 14:57:21 +0000
To: McDaniel, Scott (EOIR);Star, Shadee M. (EOIR)
Cc: Robison, Tanner (EOIR)
Subject: RE: Another Returned Notice Special Master

It appears the 213s are in the files, I will be up soon

Michael Clay
Supervisory Legal Specialist
100 Montgomery Street, Suite 800
San Francisco, CA 94104
Work phone: 415-315-4626

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 16, 2021 7:56 AM
To: Star, Shadee M. (EOIR) (b)(6)
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Judge:
Michael is gathering everything together and will be up shortly.

Tanner:

(b)(5)

Thanks:
Scott

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Monday, August 16, 2021 7:54 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Good morning,

I am assuming there is a bucket of special master files somewhere for this morning. Please let me know where I can find it.

Thanks,

AMERICAN OVERSIGHT

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 4:56 PM
To: Star, Shadee M. (EOIR) <(b)(6)
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

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Sent: Monday, August 9, 2021 4:53 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Hi Scott,

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Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:51 PM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: Another Returned Notice Special Master

Judge:
Can I ask you for a second date for the returned notices for the third week of September (9/20-24). (b)(5) You're still good to go for 8/16.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Clay, Michael (EOIR)
Sent: Mon, 16 Aug 2021 14:58:12 +0000
To: Robison, Tanner (EOIR);McDaniel, Scott (EOIR);Star, Shadee M. (EOIR)
Subject: RE: Another Returned Notice Special Master

Thx tanner, was unable to prep like I usually do because of the court closure

Michael Clay
Supervisory Legal Specialist
100 Montgomery Street, Suite 800
San Francisco, CA 94104
Work phone: 415-315-4626

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Monday, August 16, 2021 7:57 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>; Star, Shadee M. (EOIR) <(b)(6)>
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Yes I received a stack of 213's from DHS, and I filed them into their respective ROP's last Friday.

I have one more on my desk that I was waiting to hand off when I saw Michael this morning.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 16, 2021 7:56 AM
To: Star, Shadee M. (EOIR) <(b)(6)>
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Judge:
Michael is gathering everything together and will be up shortly.

Tanner:

(b)(5)

AMERICAN OVERSIGHT

Thanks:
Scott

From: Star, Shadee M. (EOIR) [(b)(6)]
Sent: Monday, August 16, 2021 7:54 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Good morning,

I am assuming there is a bucket of special master files somewhere for this morning. Please let me know where I can find it.

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 4:56 PM
To: Star, Shadee M. (EOIR) [(b)(6)]
Cc: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Perfect. I've initialized a second special master at 2pm on 9/22. Michael will start scheduling the cases to it.

From: Star, Shadee M. (EOIR) [(b)(6)]
Sent: Monday, August 9, 2021 4:53 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Another Returned Notice Special Master

Hi Scott,

Would it be possible to schedule the returned notice special master to Sept 22, 2021 at 2:00 p.m.?

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:51 PM

AMERICAN OVERSIGHT

To: Star, Shadee M. (EOIR) < (b)(6)
Subject: Another Returned Notice Special Master

Judge:
Can I ask you for a second date for the returned notices for the third week of September (9/20-24). (b)(5) You're still good to go for 8/16.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Mon, 9 Aug 2021 19:59:42 +0000
To: McDaniel, Scott (EOIR)
Subject: RE: Another Returned Notice Special Master

Hi Scott,

Yes, I will look for a second date for a special master in September and will get back to you.

Thanks!

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:51 PM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: Another Returned Notice Special Master

Judge:
Can I ask you for a second date for the returned notices for the third week of September (9/20-24). (b)(5) You're still good to go for 8/16.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Wed, 27 Oct 2021 22:26:02 +0000
To: Young, Elizabeth L. (EOIR)
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

Is this all just FYI or do you need additional info. The docket [(b)(5)]
[(b)(5)]
[(b)(5)]

From: Young, Elizabeth L. (EOIR) <[(b)(6)]
Sent: Wednesday, October 27, 2021 3:21 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: FW: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

From: Young, Elizabeth L. (EOIR)
Sent: Wednesday, October 27, 2021 3:21 PM
To: Daugherty, Daniel J (EOIR) [(b)(6)]
Subject: RE: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)

This docket was created prior to my start as ACIJ, but I can give you what information I have.

Kathryn's assessment is on point – [(b)(5)]
[(b)(5)]

From my perspective [(b)(5)]
[(b)(5)]

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Wednesday, October 27, 2021 3:03 PM
To: Daugherty, Daniel J (EOIR) (b)(6) Young, Elizabeth L. (EOIR) (b)(6)
Cc: Lin, Austin (EOIR) <Austin.Lin@usdoj.gov>; Foster, Sean (EOIR) <Sean.Foster@usdoj.gov>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>
Subject: For OCIJ Review/Input: Media Inquiries on San Francisco Immigration Court's Specialized Masters (Returned Notices)
Importance: High

Hello Judge Doc and Jude Young,

As you both know, the San Francisco Chronicle and KQED, the NPR affiliate in SF, visited the San Francisco Immigration Court this week. Both outlets reached out to me regarding the "returned notice" specialized dockets that (b)(5) (b)(5) I've been in meetings and tied up so I've asked the SF Chronicle for more time and Ms. Kopan said tomorrow would work. The KQED reporter did not leave a deadline.

Please see below for the two inquiries (full emails attached if needed). I started a draft (b)(5) (b)(5) and if you can please get back to me by **noon** tomorrow, Oct. 28, or sooner, that would be great. (b)(5) (b)(5)

From SF Chronicle:
My colleague Deepa and I are working on a story about the San Francisco immigration court. We understand that the court set up a special docket for master calendar hearings for "returned notices" – people whose mail was returned to the court as undeliverable. According to AILA liaison minutes we reviewed, this was theoretically to allow judges to find valid addresses for respondents.

But in talking with attorneys and in our direct observations, some of these masters end up being a way to rapidly order dozens of immigrants removed in absentia. We plan to report on this.

A few questions for you:
-Was headquarters aware of and supportive of this pilot? Is it exclusive to SF?
-How many returned notice hearings have happened in the SF court? When was the docket first created?
-How many people have been ordered removed in absentia through this docket?
-Does EOIR believe this is a docket worth continuing, given due process concerns of advocates about targeting a group likely to result in mass absentia removal orders?
End.

Draft:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

End.

From KQED Inquiry:
Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Draft:

(b)(5)

End.

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Thu, 5 Aug 2021 00:08:47 +0000
To: Clay, Michael (EOIR)
Cc: McDaniel, Scott (EOIR)
Subject: RE: here are the results of today's Special M/C

Thanks. Next time, all I need is the total number of cases, and total number of completed cases. For today's docket, we completed 68% of the cases!

Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	92		0%
Nelson	7A Status Docket Adult	8/13/2021	111		0%
Nelson	7A Status Docket Adult	8/20/2021	106		0%
Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%
Nelson	7A Status Docket Adult	9/24/2021	82		0%

AMERICAN OVERSIGHT

George	7A Status Docket Juvenile	9/27/2021	33		0%

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
maria.jauregui@usdoj.gov

From: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Sent: Wednesday, August 4, 2021 5:02 PM
To: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: here are the results of today's Special M/C

Maria and Scott,

The trainees observed today the masters today. I will have the other two from last week's training observe with me on Monday. The following week I will repeat the process with the two being trained this week and then the ensuing weeks I will assign the masters to one of them to clerk and I will observe them and then finally they will go it alone. As long as we have special masters for them to clerk.

I am about half way to the creation of another M/C for the 4th floor and just under that for the 8th floor. I have not received any files from the 9th, but I haven't had the chance to check my box yet today.

MC ☺

Michael Clay
Supervisory Legal Specialist
100 Montgomery Street, Suite 800
San Francisco, CA 94104
Work phone: 415-315-4626

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Tue, 24 Aug 2021 22:01:38 +0000
To: Jackie Flores
Subject: RE: Inquiry Regarding UC Mistakenly placed on Returned Notice Docket

Jackie:
I can easily tell you what the clerk would tell you: at this stage a motion to reopen would need to be filed by the respondent, or by an attorney representing him with an E-28 on file. (b)(5)

(b)(5)

Thanks:
Scott

From: Jackie Flores <jackie@icwclaw.org>
Sent: Tuesday, August 24, 2021 2:42 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Marco Tueros <marco@icwclaw.org>; Danielle Fritz <danielle@icwclaw.org>
Subject: Inquiry Regarding UC Mistakenly placed on Returned Notice Docket

Good Afternoon Mr. McDaniel,

I hope this email finds you well.

I am Jackie Flores, the Legal Orientation Program coordinator with the Immigration Center for Women and Children in San Francisco. I am reaching out regarding a recent referral we received for a sponsor whose minor was recently given a removal order on August 4, 2021 in San Francisco Immigration Court . We believe it is possible this UC was mistakenly placed on the 8/4 Returned Notice Docket, as the minor was recently released from the shelter about 2-3 months ago, and we were unable to locate the UC on the docket for 8/4. Please find the minor's information below:

Minor: (b)(6)
DOB: (b)(6)
A#: (b)(6)
Nationality: GT
Next Court Date: Removal Order issued August 4, 2021 in 100 MONTGOMERY ST., SUITE 800 SAN FRANCISCO, CA 94104

We were wondering if it were possible you could tell us which IJ issued this in-absentia order, so we may be able to get in communication with the IJ's clerk and see what can be done to assist the sponsor and his UC. The sponsor is very worried about his minor's removal order, so any additional information we could obtain on his case would be much appreciated.

Thank you so much and we look forward to speaking with you soon.

Best,

AMERICAN OVERSIGHT

Jackie Flores
LOPC Coordinator
Immigration Center for Women and Children
3543 18th Street, #32
San Francisco, CA 94110
Tel: 415-861-1449 ext. 2302
Fax: 415-861-1681
jackie@icwclaw.org
www.icwclaw.org

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-
-

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Wed, 27 Oct 2021 14:59:13 +0000
To: Milli Atkinson
Cc: Malvina De La Canal
Subject: RE: November calendar for EOIR

Milli:

Yes, there are many changes in November. We are not resumin (b)(5) (b)(5) Starting in November we will have 5 IJs hearing DD: Walker, Halperin, Seminerio, Kirchner, and Phan. The schedule below shows the DD cases in red, the status docket/atty represented special masters in green, and the single returned notice docket in black. (b)(5) (b)(5) Also, Walker and Halperin will move to courtroom 17 on the 9th floor starting Nov 1. Seminerio will be in courtroom 26, Kirchner in 25 and Phan remains in 20. Thanks: Scott

Monday	Tuesday	Wednesday	Thursday	Friday
1-Nov	2-Nov	3-Nov	4-Nov	5-Nov
8:30 NBW 8:30 SPN	8:30 NBW	8:30 RRH 8:30 SPN 8:30 ICD	8:30 RRH 8:30 SPN 8:30 EL	8:30 RRH

AMERICAN OVERSIGHT

1:00 SPN	1:00 NBW 2:00 SPN	9:00 AJC 1:00 RRH 1:00 SPN		Y 1:00 RRH 1:00 SPN 1:00 ELY 1:30 JYB	1:00 RRH
8-Nov	**9-Nov**	**10-Nov**		**11-Nov**	**12-Nov**
8:30	8:30	8:30 RRH			

AMERICAN OVERSIGHT

NBW 8:30SPN	NBW 8:30FAS 8:30SMK 8:30JYB	8:30 FAS 8:30 SMK 8:30 SPN 8:30 ICD		HOLIDAY	
1:00NBW 1:00	1:00NBW 1:00	1:00 SMK 1:00 SPN			

AMERICAN OVERSIGHT

SPN	FAS 1:00SMK 1:00SPN			
15-Nov	**16-Nov**	**17-Nov**	**18-Nov**	**19-Nov**
8:30NBW 8:30FAS 8:30S	8:30NBW 8:30FAS 8:30S	8:30 RRH 8:30 FAS 8:30 SMK	8:30RRH 8:30FAS 8:30S	8:30RRH 8:30FAS 8:30S

AMERICAN OVERSIGHT

MK	MK			MK	MK
8:30SPN	8:30JYB	8:30 SPN 8:30 ICD		8:30SPN	
1:00NBW	1:00NBW	1:00 SMK		1:00RRH	1:00RRH
1:00FAS 1:00SMK 1:00S	1:00FAS 1:00SMK	1:00 SPN		1:00FAS 1:00SMK 1:00S	1:00FAS

AMERICAN OVERSIGHT

PN			PN 1:00 JYB	
22-Nov	**23-Nov**	**24-Nov**	**25-Nov**	**26-Nov**
8:30 FAS 8:30 SMK 1:00 F	8:30 FAS 8:30 SMK 8:30 JYB 1:00 F	8:30 RRH 8:30 FAS	HOLIDAY	

AMERICAN OVERSIGHT

AS 1:00SMK	AS 1:00SMK			
29-Nov	**30-Nov**			
8:30NBW 8:30FAS 8:30SMK 8:30SPN	8:30NBW 8:30FAS 8:30SMK			

AMERICAN OVERSIGHT

1:00NBW 1:00FAS 1:00SMK	1:00NBW 1:00FAS 1:00SMK				
1:00SPN					

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, October 26, 2021 5:14 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Malvina De La Canal <mdelacanal@sfbar.org>
Subject: [EXTERNAL] November calendar for EOIR

Hi Scott, I just wanted to check in to see if there are any expected changes to the MCH schedule for IJs Halperin and Walker in November.

AMERICAN OVERSIGHT

Will there be any other MCH's added to the calendar in November?
Will there be any more returned notice dockets scheduled?

Thanks in advance.

Best,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

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AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 25 Oct 2021 23:39:03 +0000
To: McDaniel, Scott (EOIR);Young, Elizabeth L. (EOIR)
Cc: Daugherty, Daniel J (EOIR);Cheng, Mary (EOIR);Margolin, Daren K. (EOIR);Fooshe, Alexis (EOIR);St Jean, Amanda (EOIR);Nance, Kelly (EOIR)
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Good to know. Thanks so very much! – Kathryn

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, October 25, 2021 7:36 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>; Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)> Cheng, Mary (EOIR) <(b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>; Nance, Kelly (EOIR) <Kelly.Nance@usdoj.gov>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Kathryn:
These are specialized masters we created months ago to address all of the returned, undeliverable mail to pro se respondents. (b)(5)

(b)(5)

Thanks:
Scott

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Monday, October 25, 2021 4:31 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)>; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)> Cheng, Mary (EOIR) <(b)(6)> argolin, Daren K. (EOIR) <(b)(6)>; Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>; Nance, Kelly (EOIR) <Kelly.Nance@usdoj.gov>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Judge Young, and all – (b)(5)

(b)(5)

For my knowledge, (b)(5) Thanks – Kathryn

From: Mattingly, Kathryn (EOIR)
Sent: Monday, October 25, 2021 5:24 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)> McDaniel, Scott (EOIR)

AMERICAN OVERSIGHT

<Scott.McDaniel@usdoj.gov>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)> Margolin, Daren K. (EOIR) <(b)(6)> Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>; Nance, Kelly (EOIR) <Kelly.Nance@usdoj.gov>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Hello Judge Young – Thanks so much for the quick response! (b)(5) (b)(5) but I will remind her again when I get back to her tonight. I also want to point out that (b)(5) (b)(5) (b)(5) Just my guess, so thanks (b)(5) – Kathryn

From: Young, Elizabeth L. (EOIR) <(b)(6)>
Sent: Monday, October 25, 2021 5:09 PM
To: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)> argolin, Daren K. (EOIR) <(b)(6)> Fooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>; Nance, Kelly (EOIR) <Kelly.Nance@usdoj.gov>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

From my perspective: In terms of capacity, we are okay because certain courtrooms aren't being used this week. (b)(5) (b)(5) I will make sure we (b)(5) on the 4th floor so they know.

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov>
Sent: Monday, October 25, 2021 2:02 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)> Cheng, Mary (EOIR) <(b)(6)> Young, Elizabeth L. (EOIR) <(b)(6)> Margolin, Daren K. (EOIR) <(b)(6)> ooshe, Alexis (EOIR) <Alexis.Fooshe@usdoj.gov>; St Jean, Amanda (EOIR) <Amanda.StJean@usdoj.gov>; Nance, Kelly (EOIR) <Kelly.Nance@usdoj.gov>
Subject: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26
Importance: High

AMERICAN OVERSIGHT

Hi Scott,

KQED reporter Tyche Hendricks just notified us that she's going to the San Francisco Immigration Court tomorrow to observe DD cases (she must be working with an advocacy group or an attorney since she knows the schedule). To the best of my knowledge, the San Francisco Chronicle reporter, Deepa Fernandes, will be visiting tomorrow as well. I know we have limited attendance practices in place, but do you have a sense of whether we can accommodate two reporters tomorrow?

Also, (b)(5)

(b)(5)

It's unclear (b)(5) I think it should be okay since this is not a detained area, but please let me know.

Thanks,
Kathryn

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Wed, 3 Nov 2021 18:58:34 +0000
To: Young, Elizabeth L. (EOIR)
Subject: RE: Returned Notice Docket

(b)(5)

From: Young, Elizabeth L. (EOIR) <(b)(5)
Sent: Wednesday, November 3, 2021 11:56 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: FW: Returned Notice Docket

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, November 2, 2021 4:09 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

AMERICAN OVERSIGHT

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

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AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Tue, 15 Jun 2021 22:43:44 +0000
To: McDaniel, Scott (EOIR)
Cc: Margolin, Daren K. (EOIR)
Subject: Re: Returned Notice Docket

That's great. Feel free to create some additional dates and I'll add cases while you are away so that valuable time doesn't get wasted.

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164 office
(b)(6) cell
Maria.Jauregui@usdoj.gov

On Jun 15, 2021, at 3:04 PM, McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov> wrote:

Judge/Maria:
This afternoon Judge Caborn did our first returned notice in absentia docket. (b)(5) (b)(5) I scheduled 21 cases to it. Only 2 people appeared and were renoticed. One had to be reset because DHS had a different address for the respondent. One had to be reset because DHS didn't get the file in time and didn't have the I-213. The remaining 17 cases got removal orders. (b)(5)
(b)(5)
I can't start building more once I return from r (b)(6)
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Tue, 15 Jun 2021 22:44:55 +0000
To: Margolin, Daren K. (EOIR)
Cc: Jauregui, Maria (EOIR)
Subject: RE: Returned Notice Docket

I'm on (b)(6)

From: Margolin, Daren K. (EOIR) <(b)(6)>
Sent: Tuesday, June 15, 2021 3:41 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Subject: Re: Returned Notice Docket

Great, good job Scott.

Yes, I think we should (b)(5). I will talk to our DCIJ later in the week about creating a specialized docket (b)(5) So that May be coming as well.

When are your leave dates again? I will be up there late afternoon tomorrow but don't know what time I'll get to the office, it might even be in the evening. I'd ask that someone just double check that the RoP is in my office for the case Thursday morning.

Thanks again Scott, good job on this. dkm

On Jun 15, 2021, at 3:04 PM, McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov> wrote:

Judge/Maria:
This afternoon Judge Caborn did our first returned notice in absentia docket. (b)(5) (b)(5) I scheduled 21 cases to it. Only 2 people appeared and were renoticed. One had to be reset because DHS had a different address for the respondent. One had to be reset because DHS didn't get the file in time and didn't have the I-213. The remaining 17 cases got removal orders. (b)(5) (b)(5)
I can't start building more once I return from r (b)(6)
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Mon, 9 Aug 2021 19:47:32 +0000
To: Deiss, Ila C. (EOIR)
Subject: RE: Returned Notice Master

Let's advance the short matters to 8:30 once I can move the regular masters and do the returned notice docket at 10:30. It shouldn't take more than an hour.

From: Deiss, Ila C. (EOIR) [(b)(6)]
Sent: Monday, August 9, 2021 12:46 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice Master

Whatever is easiest for you. That will bump against these short matters, but totally fine if you want me to move things around.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:43 PM
To: Deiss, Ila C. (EOIR) [(b)(6)]
Subject: RE: Returned Notice Master

So, I can't set to 8:30 right now because the regular master is blocking the spot and I can't move it until next week and once it has been CFMd. I can set it at 10:30. Would that work?

From: Deiss, Ila C. (EOIR) [(b)(6)]
Sent: Monday, August 9, 2021 12:19 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice Master

Yes. Starting at 8:30 if that's ok. Most of the things I have scheduled there are very short matters or status conferences.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 12:17 PM
To: Deiss, Ila C. (EOIR) [(b)(6)]
Subject: RE: Returned Notice Master

Looks like you've already booked merits on the Wednesday mornings. [(b)(5)]
[(b)(5)]

From: Deiss, Ila C. (EOIR) [(b)(6)]
Sent: Monday, August 9, 2021 12:05 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice Master

AMERICAN OVERSIGHT

Sure. If I could do them Wednesday mornings, that would be amazing.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 9, 2021 10:22 AM
To: Deiss, Ila C. (EOIR) (b)(6)
Subject: Returned Notice Master

Judge:
You had volunteered to do a returned hearing notice special master a few weeks ago. I would like to schedule a special master for you the 2nd or 3rd week of September. Please let me know a date and time that works for you. It can be on one of your telework days if you are willing to come into the office instead of telework on that day. Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Margolin, Daren K. (EOIR)
Sent: Wed, 27 Oct 2021 23:31:13 +0000
To: McDaniel, Scott (EOIR)
Subject: RE: Returned Notice of Hearing Dockets

Absolutely. Look - (b)(5) (b)(5) (b)(5) So I wanted it to be clear to them that I approved this.

Anyway, hope you are well Scott. I'm coming up there with (b)(6) (b)(6) Daren

---

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Wednesday, October 27, 2021 4:23 PM
To: Margolin, Daren K. (EOIR) < (b)(6)
Subject: RE: Returned Notice of Hearing Dockets

Thanks for that. (b)(5) (b)(5) (b)(5)

From: Margolin, Daren K. (EOIR) (b)(6)
Sent: Wednesday, October 27, 2021 3:53 PM
To: Daugherty, Daniel J (EOIR) (b)(6)
Cc: Roberts, Valerie (EOIR) < (b)(6) >; Young, Elizabeth L. (EOIR) (b)(6) >; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Returned Notice of Hearing Dockets

RDCIJ Daugherty, n/a for ADL.

Re: SFR, I did see the email traffic on this yesterday. For the record (b)(5) (b)(5) (b)(5) Thanks. V/r, dkm

---

From: Daugherty, Daniel J (EOIR) < (b)(6) >
Sent: Wednesday, October 27, 2021 3:48 PM
To: Feldman, Irene (EOIR) < (b)(6) >; Glaser-Allen, Colleen (EOIR) < (b)(6) (b)(6) >; Hitesman, Jonathan W. (EOIR) (b)(6) >; Kaufman, Matthew W. (EOIR) < (b)(6) >; Laurent, Scott (EOIR) < (b)(6) >; Margolin, Daren K. (EOIR) < [redacted] >; Naselow-Nahas, Tara (EOIR) < (b)(6) >; Perry, Anne (EOIR) (b)(6) >; Rooyani, Rodin (EOIR) (b)(6) >; cala, Theresa M. (EOIR (b)(6)

AMERICAN OVERSIGHT

Young, Elizabeth L. (EOIR) (b)(6)
Subject: Returned Notice of Hearing Dockets

ACIJs

(b)(5)

Thanks

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (Western Region)

Office (b)(6)
Cell: (b)(6)

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Wed, 16 Jun 2021 18:07:42 +0000
To: McDaniel, Scott (EOIR)
Cc: Robison, Tanner (EOIR)
Subject: RE: Returned Notice Special Master Dockets

Thank you for the clarification. I have openings on certain Friday afternoons to handle a special master docket.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Wednesday, June 16, 2021 7:52 AM
To: Star, Shadee M. (EOIR) [(b)(6)]
Cc: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Judge:
[(b)(5)] We just pull them from the [(b)(5)]
Thanks:
Scott

From: Star, Shadee M. (EOIR) [(b)(6)]
Sent: Tuesday, June 15, 2021 4:06 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Scott,

I am interested in conducting this type of "special master" – [(b)(5)] [(b)(5)]

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, June 15, 2021 3:55 PM
To: Butler, Jeremy J. (EOIR) [(b)(6)] Caborn, Andrew J. (EOIR) [(b)(6)]; Deiss, Ila C. (EOIR) [(b)(6)] Figueroa, Laura C. (EOIR) [(b)(6)]; Gambill, Scott D. (EOIR) [(b)(6)] George, Amber D. (EOIR [(b)(6)]; Greene, Charles S. (EOIR) [(b)(6)] Jackson, Jacqueline J. (EOIR) [(b)(6)] Johnson, Jeremiah (EOIR) [(b)(6)] Kim, Samuel Y. (EOIR) [(b)(6)] Lake, Kelly B. (EOIR [(b)(6)]; Margolin, Daren K. (EOIR) [(b)(6)]; Marks, Dana (EOIR) [(b)(6)] Masterson, Jason R. (EOIR) [(b)(6)]

AMERICAN OVERSIGHT

McCleskey, Loi L. (EOIR) (b)(6) ; Nelson, Julie L. (EOIR) (b)(6) ; O'Brien, Patrick S. (EOIR) < (b)(6) Park, Joseph Y. (EOIR) (b)(6) Phan, Susan (EOIR) (b)(6) Picton, Cory M. (EOIR) (b)(6) >; Price, Justin M (EOIR) (b)(6) >; Savage, Patrick S. (EOIR) < (b)(6) Simmons, Gregory L. (EOIR) < (b)(6) Star, Shadee M. (EOIR) < (b)(6) Swink, Arwen A. (EOIR) (b)(6) Young, Elizabeth L. (EOIR (b)(6)

Cc: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>

Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2 more had to be reset due to address issues/DHS not having the file to provide the I-213. For the remaining cases he was able to do an in absentia removal order. If you are interested in conducting one or a few of these types of special masters in the August/September time frame, please let me know. (b)(5)

(b)(5)

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Robison, Tanner (EOIR)
Sent: Wed, 16 Jun 2021 15:03:46 +0000
To: McDaniel, Scott (EOIR);Star, Shadee M. (EOIR)
Subject: RE: Returned Notice Special Master Dockets

In the event respondent files a motion to reopen, does the case return to the original IJ's docket, or does it remain with the Judge who issues the in absentia?

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Wednesday, June 16, 2021 7:52 AM
To: Star, Shadee M. (EOIR) (b)(6)
Cc: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Judge:
(b)(6) We just pull them from the
(b)(5)
Thanks:
Scott

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Tuesday, June 15, 2021 4:06 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: Returned Notice Special Master Dockets

Scott,

I am interested in conducting this type of "special master" (b)(5)
(b)(5)

Thanks,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, June 15, 2021 3:55 PM
To: Butler, Jeremy J. (EOIR) (b)(6) ; Caborn, Andrew J. (EOIR)
(b)(6) Deiss, Ila C. (EOIR) (b)(6) Figueroa, Laura C. (EOIR)

AMERICAN OVERSIGHT

(b)(6) >; Gambill, Scott D. (EOIR) (b)(6) George, Amber D. (EOIR) <(b)(6); Greene, Charles S. (EOIR) (b)(6) Jackson, Jacqueline J. (EOIR) (b)(6) Johnson, Jeremiah (EOIR) (b)(6) >; Kim, Samuel Y. (EOIR) <(b)(6); Lake, Kelly B. (EOIR) <(b)(6); Margolin, Daren K. (EOIR) <(b)(6); Marks, Dana (EOIR) <(b)(6) Masterson, Jason R. (EOIR) (b)(6) McCleskey, Loi L. (EOIR) <(b)(6) >; Nelson, Julie L. (EOIR) <(b)(6) O'Brien, Patrick S. (EOIR) <(b)(6) Park, Joseph Y. (EOIR) (b)(6); Phan, Susan (EOIR) (b)(6) >; Picton, Cory M. (EOIR) <(b)(6) Price, Justin M (EOIR) <(b)(6) >; Savage, Patrick S. (EOIR) <(b)(6); Simmons, Gregory L. (EOIR) (b)(6) Star, Shadee M. (EOIR) <(b)(6) Swink, Arwen A. (EOIR) <(b)(6) >; Young, Elizabeth L. (EOIR) <(b)(6)

Cc: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>

Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2 more had to be reset due to address issues/DHS not having the file to provide the I-213. For the remaining cases he was able to do an in absentia removal order. If you are interested in conducting one or a few of these types of special masters in the August/September time frame, please let me know. (b)(5)

(b)(5)

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Phan, Susan (EOIR)
Sent: Tue, 15 Jun 2021 23:07:20 +0000
To: McDaniel, Scott (EOIR)
Subject: RE: Returned Notice Special Master Dockets

Hi Scott,

Please let me know how I can help – (b)(5)

As an aside, (b)(6)

Susan

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, June 15, 2021 3:55 PM
To: Butler, Jeremy J. (EOIR) <(b)(6); Caborn, Andrew J. (EOIR) (b)(6); Deiss, Ila C. (EOIR) (b)(6); Figueroa, Laura C. (EOIR) (b)(6); Gambill, Scott D. (EOIR) (b)(6); George, Amber D. (EOIR) (b)(6); Greene, Charles S. (EOIR) (b)(6); Jackson, Jacqueline J. (EOIR (b)(6); Johnson, Jeremiah (EOIR) (b)(6); Kim, Samuel Y. (EOIR) (b)(6)>; Lake, Kelly B. (EOIR) <(b)(6); Margolin, Daren K. (EOIR) (b)(6); Marks, Dana (EOIR) (b)(6); Masterson, Jason R. (EOIR) (b)(6); McCleskey, Loi L. (EOIR) (b)(6); Nelson, Julie L. (EOIR) (b)(6); O'Brien, Patrick S. (EOIR) (b)(6); Park, Joseph Y. (EOIR) (b)(6); Phan, Susan (EOIR) (b)(6); Picton, Cory M. (EOIR) (b)(6); Price, Justin M (EOIR) <(b)(6); Savage, Patrick S. (EOIR) (b)(6); Simmons, Gregory L. (EOIR) (b)(6); Star, Shadee M. (EOIR) <(b)(6); Swink, Arwen A. (EOIR) (b)(6); Young, Elizabeth L. (EOIR) <(b)(6)
Cc: Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Subject: Returned Notice Special Master Dockets

Judges:

(b)(5)

(b)(5) DHS was notified and provided the court with I-213 packets ahead of time. Of the 21 cases scheduled, only 2 appeared and 2 more had to be reset due to address issues/DHS not having the file to provide the I-213. For the remaining cases he was able to do an in absentia removal order. If you are interested in conducting one or a few of these types of special masters in the August/September time frame, please let me know. (b)(5)

(b)(5)

Thanks:

AMERICAN OVERSIGHT

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Tue, 21 Sep 2021 15:42:04 +0000
To: Clay, Michael (EOIR)
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Thank you, this info helps ☺

From: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Sent: Tuesday, September 21, 2021 8:07 AM
To: Star, Shadee M. (EOIR) <(b)(6)
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Good Morning,

9 families/cases, 23 respondents total in total.

MC ☺

Michael Clay
Supervisor - In Court Legal Specialists
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415-315-4626

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Tuesday, September 21, 2021 7:36 AM
To: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Michael – I am o(b)(6) I want to have an idea of how many cases are scheduled for the special master. Do you know the number? Thanks.

From: Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Sent: Monday, September 20, 2021 11:14 AM
To: Star, Shadee M. (EOIR) (b)(6); McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Will do, Amandy will be clerking them and I will be observing/assisting. I will have her get them up to you.

MC

Michael Clay

AMERICAN OVERSIGHT

Supervisor - In Court Legal Specialists
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415-315-4626

From: Star, Shadee M. (EOIR) <(b)(6)
Sent: Monday, September 20, 2021 10:53 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Good morning,

I am teleworking (b)(6) If the special master cases can be placed in my office for review on Wednesday morning, I would appreciate it.

Thank you,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 16, 2021 1:35 PM
To: Star, Shadee M. (EOIR) <(b)(6)>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>; Jauregui, Maria (EOIR) <(b)(6) oung, Elizabeth L. (EOIR) <(b)(6) ; Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Interpreter Request, San Francisco (EOIR) <SanFrancisco.InterpreterRequest@EOIR.USDOJ.GOV>
Subject: SMS: Special Master 9/22/2021 @ 2pm

Good Afternoon:
Judge Star has agreed to hear a special master for unrepresented respondents with multiple returned undeliverable hearing notices. The intention of this master is (b)(5) (b)(5) (b)(5) This master will be scheduled to occur on Wednesday, September 22, 2021 at 2:00pm. Michael will be scheduling the cases to the special master in the coming days and will hold the ROPs in his office. I will also be sending the docket to DHS and ask that they provide I-213s on each case should they wish to not appear in person under our standing telephonic appearance orders. By way of this email I request an interpreter be assigned to the docket.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104

AMERICAN OVERSIGHT

415.705.0144

AMERICAN OVERSIGHT

From: Robison, Tanner (EOIR)
Sent: Mon, 20 Sep 2021 18:26:41 +0000
To: Clay, Michael (EOIR)
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Yep.

I haven't received anything else specific to the masters, but if I do I'll throw them in the ROP's after Amandy brings them up.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Clay, Michael (EOIR) <(b)(6)
Sent: Monday, September 20, 2021 11:15 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Oh great, you found the files in the cabinet in my office?

Michael Clay
Supervisor - In Court Legal Specialists
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415-315-4626

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Monday, September 20, 2021 10:57 AM
To: Clay, Michael (EOIR) <(b)(6)
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Just a heads up; the 213's were filed last Friday in the afternoon.

I placed them in the ROP's Monday morning a little after 7:30am.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR) <(b)(6)
Sent: Monday, September 20, 2021 10:53 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>; Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>; Clay, Michael (EOIR) <(b)(6)
Subject: RE: SMS: Special Master 9/22/2021 @ 2pm

Good morning,

I am teleworking (b)(6) If the special master cases can be placed in my office for review on Wednesday morning, I would appreciate it.

Thank you,

Shadee

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Monday, August 16, 2021 1:35 PM
To: Star, Shadee M. (EOIR (b)(6) Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>; Jauregui, Maria (EOIR) (b)(6) Young, Elizabeth L. (EOIR) <(b)(6) Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Interpreter Request, San Francisco (EOIR) <SanFrancisco.InterpreterRequest@EOIR.USDOJ.GOV>
Subject: SMS: Special Master 9/22/2021 @ 2pm

Good Afternoon:

Judge Star has agreed to hear a special master for unrepresented respondents with multiple returned undeliverable hearing notices. The intention of this master (b)(5) (b)(5) (b)(5) This master will be scheduled to occur on Wednesday, September 22, 2021 at 2:00pm. Michael will be scheduling the cases to the special master in the coming days and will hold the ROPs in his office. I will also be sending the docket to DHS and ask that they provide I-213s on each case should they wish to not appear in person under our standing telephonic appearance orders. By way of this email I request an interpreter be assigned to the docket.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Margolin, Daren K. (EOIR)
Sent: Wed, 28 Jul 2021 15:46:55 +0000
To: Jauregui, Maria (EOIR)
Cc: Young, Elizabeth L. (EOIR);McDaniel, Scott (EOIR)
Subject: Re: Special Master Update

Thank you Maria.

Elizabeth, Mary Cheng wants to send to Naleshia every Monday. dkm

On Jul 28, 2021, at 8:44 AM, Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov> wrote:

Judge,

Here is the updated stats for the Specialized Docket which includes yesterday's completions. Thanks.

Specialized Docket Running Totals					
San Francisco Immigration Court					
7/28/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
maria.jauregui@usdoj.gov

From: Nelson, Julie L. (EOIR) <(b)(6)
Sent: Wednesday, July 28, 2021 8:09 AM
To: Margolin, Daren K. (EOIR) <(b)(6)
Cc: Young, Elizabeth L. (EOIR) <(b)(6); Jauregui, Maria (EOIR)

AMERICAN OVERSIGHT

<Maria.Jauregui@usdoj.gov>; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: RE: Special Master Update

Thanks, Daren! (b)(5)

(b)(5)

(b)(5)

(b)(5)

Those are my observations so far!

Julie

From: Margolin, Daren K. (EOIR) (b)(6)
Sent: Wednesday, July 28, 2021 6:51 AM
To: Nelson, Julie L. (EOIR) (b)(6)
Cc: Young, Elizabeth L. (EOIR) (b)(6) ov>; Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Subject: Re: Special Master Update

Judge Julie (b)(5) Thank you for taking this on, Julie.... (b)(5)

(b)(5)

(b)(5) Daren

Sent from my iPhone

On Jul 27, 2021, at 6:54 PM, Nelson, Julie L. (EOIR) (b)(6) wrote:

Hello all,

I held a double session of special master hearings today, and here are the stats after the a.m. and p.m. session:

Total Cases:	100
Dismissed by DHS:	65
Admin Closed with DHS non-opp:	14
Reset:	21

Let me know if you need any more information! My next session is this Friday afternoon.

Thanks,

AMERICAN OVERSIGHT

Julie L. Nelson
Immigration Judge
San Francisco Immigration Court
630 Sansome Street, Fourth Floor
San Francisco, California 94111

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Thu, 28 Oct 2021 16:58:16 +0000
To: Robison, Tanner (EOIR)
Subject: RE: special masters
Attachments: Special master order.docx

As of Monday when I did a quick review of the files, DHS had not filed docs. I was hoping the filings would have been submitted yesterday. If not yesterday, then hopefully they will file today. (b)(5)

(b)(5)

Also, please see attached a draft scheduling order I modified from a version IJ Young recently sent the judges. Please let me know if this works. Thanks.

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 9:53 AM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: RE: special masters

I didn't receive anything yesterday afternoon, and (b)(5)

(b)(5)

I'll have to check tomorrow, and see what's in there.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 9:45 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: special masters

Sounds great, thanks.

Also, for tomorrow's in absentia master, (b)(5)

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 9:43 AM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: RE: special masters

Sounds good Judge.

AMERICAN OVERSIGHT

I can call the parties for the November 5th Masters and give them the heads up.

Maybe we can (b)(5)
(b)(5)

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 9:33 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: special masters

Hi Tanner,

Other than the Dedicated Docket, we are not supposed to be conducting in-person masters. The parties for our special masters need to be notified that the hearings will be done telephonically. They will be done through Open Voice and may need the instructions to connect.

Shadee M. Star
Immigration Judge
San Francisco Immigration Court

AMERICAN OVERSIGHT

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
SAN FRANCISCO, CALIFORNIA

On Behalf of the Respondent:

On Behalf of the Department:
Assistant Chief Counsel
Office of the Chief Counsel
100 Montgomery Street, Suite 200
San Francisco, California 94104

In the matter of

Respondent

File Number: A

ORDER OF THE IMMIGRATION JUDGE

A **telephonic SPECIAL MASTER** calendar hearing has been scheduled in this case on **_____, at _____.**

IT IS ORDERED that the parties confer in advance of the hearing to determine the status of the case and whether dismissal of the proceedings is appropriate either in the exercise of prosecutorial discretion, or for Respondent to seek relief before USCIS; whether Respondent has requested administrative closure and DHS' position on administratively close the matter; or whether the parties wish to move forward with an application in Court. Counsel for the parties are strongly encouraged to file a joint motion or unopposed motion in advance of the scheduled hearing if the parties reach an agreement regarding the status of the case.

Respondent's presence is waived for this telephonic special master calendar only. *See* 8 C.F.R. § 1003.25(a). At the time of the hearing, counsels for the parties shall call in to the Court's Open Voice conference call line with the following information:

Call-in #: 1-888-585-9008
Conference Room #: _____

SO ORDERED.

_____
Shadee M. Star
Immigration Judge

DATE: _____

THIS DOCUMENT WAS SERVICED BY: MAIL (**X**) PERSONAL SERVICE (__)

TO: [ ] RESP. [ ] RESP. c/o Custodial Officer [**X**] RESP'S ATT/REP [**X**] DHS

DATE: _____ BY: COURT STAFF _____

AMERICAN OVERSIGHT

From: Star, Shadee M. (EOIR)
Sent: Thu, 28 Oct 2021 17:54:20 +0000
To: Robison, Tanner (EOIR)
Subject: RE: special masters

Thanks – I am guessing that there won't be a whole lot of traffic in court since it's an in absentia master bu (b)(5)

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 10:50 AM
To: Star, Shadee M. (EOIR) < (b)(6)
Subject: RE: special masters

Okay, I'll leave them on docket. Think it was only two cases anyways.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 10:38 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: special masters

(b)(5)

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 10:31 AM
To: Star, Shadee M. (EOIR (b)(6)
Subject: RE: special masters

We'll get through the Master (b)(5) ooks like some Attorneys have filed E-28's so I'm trying to confirm I can pull the cases off docket.

Order looks good Judge. I can fill out the blank parts, and use your signature stamp to send those orders out tomorrow for your November 5th Masters.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800

AMERICAN OVERSIGHT

San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 9:58 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: special masters

As of Monday when I did a quick review of the files, (b)(5)
(b)(5)
(b)(5)

Also, please see attached a draft scheduling order I modified from a version IJ Young recently sent the judges. Please let me know if this works. Thanks.

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 9:53 AM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: RE: special masters

I didn't receive anything yesterday afternoon, and (b)(5)

(b)(5)

I'll have to check tomorrow, and see what's in there.

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 9:45 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: RE: special masters

Sounds great, thanks.

Also, for tomorrow's in absentia master, (b)(5)

From: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Sent: Thursday, October 28, 2021 9:43 AM
To: Star, Shadee M. (EOIR) (b)(6)
Subject: RE: special masters

AMERICAN OVERSIGHT

Sounds good Judge.

I can call the parties for the November 5th Masters and give them the heads up.

Maybe we can (b)(5)
(b)(5)

Tanner Robison
Legal Assistant
Executive Office for Immigration Review
100 Montgomery Street, Suite 800
San Francisco, CA 94104
(415) 315-4661

From: Star, Shadee M. (EOIR) (b)(6)
Sent: Thursday, October 28, 2021 9:33 AM
To: Robison, Tanner (EOIR) <Tanner.Robison@usdoj.gov>
Subject: special masters

Hi Tanner,

Other than the Dedicated Docket, we are not supposed to be conducting in-person masters. The parties for our special masters need to be notified that the hearings will be done telephonically. They will be done through Open Voice and may need the instructions to connect.

Shadee M. Star
Immigration Judge
San Francisco Immigration Court

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Tue, 27 Jul 2021 16:52:41 +0000
To: Margolin, Daren K. (EOIR)
Cc: Young, Elizabeth L. (EOIR);McDaniel, Scott (EOIR)
Subject: RE: Specialized dockets
Attachments: SFR specialized docket log.xlsx

Here you go. I added in the June returned notice results as well. Thanks

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
Maria.Jauregui@usdoj.gov

From: Margolin, Daren K. (EOIR) <(b)(6)
Sent: Tuesday, July 27, 2021 8:58 AM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>; Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Cc: Young, Elizabeth L. (EOIR) (b)(6)
Subject: FW: Specialized dockets

Scott/Maria – Can you please complete the below report and send to me for the docket that IJ Nelson completed last week. I believe that RDCIJ Cheng wants (b)(5) Thank you, dkm

---

From: Cheng, Mary (EOIR) (b)(6)>
Sent: Friday, June 11, 2021 6:27 AM
To: Owens, Alfredia (EOIR) (b)(6) Lampley-Fortson, Joy (EOIR) (b)(6) (b)(6) ones, David M. (EOIR) (b)(6) Holmes-Simmons, Theresa H. (EOIR) (b)(6) McNulty, Sheila (EOIR) <S (b)(6) Kaufman, Matthew W. (EOIR) (b)(6) >; Seppanen, Christopher R.. (EOIR) (b)(6) erry, Anne (EOIR) (b)(6) Daugherty, Daniel J (EOIR) (b)(6) Rooyani, Rodin (EOIR) (b)(6) Miller, Jeffrey S. (EOIR) (b)(6) Laurent, Scott (EO ; Sukkar, Elisa (EOI (b)(6) Dillow, Eric (EOIR) (b)(6) ; Hoogasian, Amy C (EOIR) (b)(6) Glaser-Allen, Colleen (EOIR) (b)(6) ; Hitesman, Jonathan W. (EOIR) (b)(6) >; Scala, Theresa M. (EOIR) (b)(6) ; Feldman, Irene (EOIR) (b)(6) ; Sanchez, Jose A. (EOIR) <(b)(6) >: McCarthy III, James F. (EOIR) (b)(6) >; Crooks, Grady (EOIR) (b)(6) ; Cheng, David (EOIR) (b)(6) ; Mart, H. Kevin (EOIR) (b)(6)
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>; McNulty, Sheila (EOIR) (b)(6)

AMERICAN OVERSIGHT

Subject: RE: Specialized dockets
Importance: High

Judges,

Good morning. As the specialized dockets have all started at your courts, I will you need to track the dockets (b)(5) (b)(5) Below is ACIJ Rooyani's reporting format, I would like to duplicate it for all the courts. (Thank you Rodin for sharing!) You can provide the information to Naleshia for compilation (b)(5) (b)(5). Attached is the specialized docket plan reflecting the start date for each court.
Please send the data for all the dockets if your court has already started the hearings.

Going forward, the first reporting date will be Monday. June 14th. If you have any questions, please reach out to your RDCIJ. Thanks,

Specialized Docket Running Totals
Los Angeles Court
updated June 9, 2021

Judge	Type of Speciaized Docket	Hearing Date	# Cases Scheduled	# Cases Completed	Percentage
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/4/2021	18	16	89%
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/6/2021	14	12	86%
Park	AOS/245/42B	5/3/2021 - 5/7/2021	6	6	100%
Everett	Aged Cases	5/10/2021 - 5/14/2021	9	5	56%
Vahid	7A Adult (Special Master)	5/14/2021	15	8	53%
Park	AOS/245/42B	5/17/2021 - 5/21/2021	12	4	33%
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/18/2021	20	20	100%
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	5/19/2021	21	20	95%
Vahid	7A Adult (Special Master)	5/24/2021	20	7	35%
Park	AOS/245/42B	6/1 - 6/5	12	9	75%
Ruane	7A Juvenile (TVPRA/I-360 SIJS) Special Master	6/3/2021	23	20	87%
W. Lee	7A Adult (Special Master)	6/3/2021	22	10	45%
Chon	7A Adult (Special Master)	6/8/2021	26	19	73%
			218	156	72%
			Running Total		est. percentage

AMERICAN OVERSIGHT

Mary Cheng
Regional Deputy Chief Immigration Judge

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From: Cheng, Mary (EOIR)
Sent: Tuesday, March 23, 2021 11:15 AM
To: Owens, Alfredia (EOIR) <(b)(6)>; Lampley-Fortson, Joy (EOIR) <(b)(6)>; Jones, David M. (EOIR) <(b)(6)>; Holmes-Simmons, Theresa H. (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>; Kaufman, Matthew W. (EOIR) <(b)(6)>; Seppanen, Christopher R.. (EOIR) <(b)(6)>; Bartolomei, Jr. Rico (EOIR) <(b)(6)>; Anne (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>; Rooyani, Rodin (EOIR) <(b)(6)>; Miller, Jeffrey S. (EOIR) <(b)(6)>; Laurent, Scott (EOIR) <(b)(6)>; Sukkar, Elisa (EOIR) <(b)(6)>; illow, Eric (EOIR) <(b)(6)>; Hoogasian, Amy C (EOIR) <(b)(6)>; Hitesman, Jonathan W. (EOIR) <(b)(6)>; Scala, Theresa M. (EOIR) <(b)(6)>; Feldman, Irene (EOIR) <(b)(6)>; Sanchez, Jose A. (EOIR) <(b)(6)>; McCarthy III, James F. (EOIR) <(b)(6)>; Crooks, Grady (EOIR) <(b)(6)>; Cheng, David (EOIR) <(b)(6)>; Mart, H. Kevin (EOIR) <(b)(6)>
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>
Subject: RE: Specialized dockets

Judges,

I inadvertently left off the specialized docket chart from March 2020. Thanks,

Mary Cheng
Deputy Chief Immigration Judge

This communication, along with any attachments, is covered by Federal and State law governing electronic communications, and may contain sensitive or legally privileged information. If the reader is not the intended recipient, you are hereby notified that any dissemination, distribution, use or copying of this message is strictly prohibited. If you have received this in error, please notify the sender immediately and delete or destroy this message.

AMERICAN OVERSIGHT

From: Cheng, Mary (EOIR)
Sent: Monday, March 22, 2021 2:57 PM
To: Owens, Alfredia (EOIR) (b)(6); Lampley-Fortson, Joy (EOIR) (b)(6); (b)(6) ones, David M. (EOIR) (b)(6); Holmes-Simmons, Theresa H. (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6); Kaufman, Matthew W. (EOIR) (b)(6); Seppanen, Christopher R.. (EOIR) (b)(6); Bartolomei, Jr. Rico (EOIR) (b)(6); Perry, Anne (EOIR) (b)(6); Daugherty, Daniel J (EOIR) (b)(6); Rooyani, Rodin (EOIR) (b)(6); Miller, Jeffrey S. (EOIR) (b)(6); Laurent, Scott (EOIR) (b)(6); Sukkar, Elisa (EOIR) (b)(6) llow, Eric (EOIR) (b)(6); Hoogasian, Amy C (EOIR) (b)(6); Hitesman, Jonathan W. (EOIR) (b)(6); Scala, Theresa M. (EOIR) (b)(6); Feldman, Irene (EOIR) (b)(6); Sanchez, Jose A. (EOIR) (b)(6); McCarthy III, James F. (EOIR) (b)(6); Crooks, Grady (EOIR) (b)(6); Cheng, David (EOIR) (b)(6); Mart, H. Kevin (EOIR) (b)(6)
Cc: Spencer, Naleshia T. (EOIR) (CTR) <Naleshia.T.Spencer@usdoj.gov>; Johnson, Hunter (EOIR) <Hunter.Johnson@usdoj.gov>
Subject: Specialized dockets
Importance: High

Judges,

Good afternoon. Please see the attached chart from March 2020 on specialized dockets. In the past, we identified AOS, VD, 42bs, aged cases and FGM asylum cases without a one year bar for these specialized dockets. I would like you to start reviewing how you can begin to create specialized dockets to hear these cases. (b)(5) (b)(5). The list I provided as to the types of cases to be placed on a specialized docket is not exhaustive, but (b)(5) (b)(5)

Many of your courts have Web-Ex capabilities, therefore, please consider creating these dockets to be heard virtually. Attached is a list of pending 42b and AOS/245 cases pending at your courts. Please let me know the number of judges to be assigned to these dockets, the number of cases scheduled, and the number of days needed to implement these changes. The range cannot exceed 45 days.

Naleshia is copied on this email. Please send all responses to her by Wednesday (3/24), 12pm EST.

Mary Cheng
Deputy Chief Immigration Judge

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AMERICAN OVERSIGHT

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AMERICAN OVERSIGHT

Specialized Docket Running Totals					
San Francisco Immigration Court					
Updated 7/27/21					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%

AMERICAN OVERSIGHT

From: Phan, Susan (EOIR)
Sent: Tue, 17 Aug 2021 18:29:53 +0000
To: McDaniel, Scott (EOIR)
Subject: RE: SPN: Special Master 9/28/21 @ 9am

Thanks Scott!

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, August 17, 2021 8:42 AM
To: Phan, Susan (EOIR) <(b)(6); Tran, Anna (EOIR) <Anna.Tran@usdoj.gov>; Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>; Young, Elizabeth L. (EOIR) <(b)(6)
Clay, Michael (EOIR) <Michael.Clay2@usdoj.gov>; Interpreter Request, San Francisco (EOIR) <SanFrancisco.InterpreterRequest@EOIR.USDOJ.GOV>
Subject: SPN: Special Master 9/28/21 @ 9am

Good Morning:

Judge Phan has agreed to hear a special master for unrepresented respondents with multiple returned undeliverable hearing notices. The intention of this master is (b)(5)
(b)(5)
(b)(5) This master will be scheduled to occur on Tuesday, September 28, 2021 at 9:00am. Michael will be scheduling the cases to the special master in the coming days and will hold the ROPs in his office. I will also be sending the docket to DHS and ask that they provide I-213s on each case should they wish to not appear in person under our standing telephonic appearance orders. By way of this email I request an interpreter be assigned to the docket.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Thu, 17 Jun 2021 23:08:24 +0000
To: Swink, Arwen A. (EOIR);Figueroa, Laura C. (EOIR);Star, Shadee M. (EOIR);Greene, Charles S. (EOIR);Phan, Susan (EOIR);Savage, Patrick S. (EOIR);Marks, Dana (EOIR);Deiss, Ila C. (EOIR);Young, Elizabeth L. (EOIR);Johnson, Jeremiah (EOIR)
Cc: Jauregui, Maria (EOIR);Margolin, Daren K. (EOIR);Clay, Michael (EOIR)
Subject: Returned Notice Special Master **UPDATE**

Good Afternoon:
In the short time I had remaining before I go (b)(6) was only able to create two of these specialized masters: Judge Swink on 8/4 @ 2pm and Judge Figueroa on 8/9 @ 1pm. When I return from (b)(6) I will set up additional dockets with those remaining IJs that asked to participate.
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
To: Caborn, Andrew J. (EOIR)
Cc: Margolin, Daren K. (EOIR); Jauregui, Maria (EOIR)
Subject: RE: In Absentia Masters
Date: Tuesday, May 4, 2021 3:51:09 PM

I'll set it up for 6/15 at 1pm. Thanks so much. We'll try one, see how it goes, and go from there.

From: Caborn, Andrew J. (EOIR) <(b)(6)
Sent: Tuesday, May 4, 2021 3:50 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Margolin, Daren K. (EOIR) <(b)(6); Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Subject: RE: In Absentia Masters

Yes either is good for me. Also happy to do both if you like.

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, May 4, 2021 3:44 PM
To: Caborn, Andrew J. (EOIR) (b)(6)
Cc: Margolin, Daren K. (EOIR) ; Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Subject: RE: In Absentia Masters

Would you be willing to come in on 6/14 or 6/15 for a half a day to try this out?

From: Caborn, Andrew J. (EOIR) <(b)(6)
Sent: Tuesday, May 4, 2021 3:39 PM
To: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Cc: Margolin, Daren K. (EOIR) (b)(6) Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Subject: RE: In Absentia Masters

Hi Scott,
Yes, I'm happy to do special masters. I can't think of any issues other than (b)(5)

(b)(5)

prepared beforehand we should be good.
Thanks,
Andrew

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Tuesday, May 4, 2021 3:14 PM

AMERICAN OVERSIGHT

To: Caborn, Andrew J. (EOIR) <Andrew.J.Caborn@usdoj.gov>
Cc: Margolin, Daren K. (EOIR) <(b)(6)> Jauregui, Maria (EOIR) <Maria.Jauregui@usdoj.gov>
Subject: In Absentia Masters

Judge:
Judge Margolin has given me the green light to (b)(5)

(b)(5)

(b)(5) What are your thoughts on this?
Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Velasco-Escobar, Magaly (EOIR) (CTR)
To: Young, Elizabeth L. (EOIR)
Cc: Caborn, Andrew J. (EOIR)
Subject: RE: Returned Docket Notice
Date: Thursday, November 4, 2021 11:46:01 AM

Hi Judge,

6 continued
1 COV
16 removed in absencia

Magaly Velasco-Escobar
Management Analyst, CGI Federal
Executive Office for Immigration Review
San Francisco Immigration Court
415.705.0139

From: Young, Elizabeth L. (EOIR) <(b)(6)
Sent: Thursday, November 4, 2021 11:27 AM
To: Caborn, Andrew J. (EOIR) <Andrew.J.Caborn@usdoj.gov>
Cc: Velasco-Escobar, Magaly (EOIR) (CTR) <Magaly.Velasco-Escobar@usdoj.gov>
Subject: Returned Docket Notice

Judge Caborn and Magaly:
I need to track numbers for the masters we are holding in terms of how many cases are resolved and how many cases are continued to another day – do you have the numbers from yesterday's masters?

ELY

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Thu, 23 Sep 2021 22:08:35 +0000
To: All of San Francisco (EOIR)
Cc: Samusi, Daniela (EOIR) (INT);Roberts, Valerie (EOIR);Halperin, Ravit R. (EOIR);Walker, Nathaniel B. (EOIR);Bouwhuis, Brittany (EOIR) (CTR)
Subject: SFR Master Calendar Clerking Schedule **OCTOBER 2021**
Attachments: SFR MC Clerking Assignments 2021.xlsx

Good Afternoon:

With our larger reopening plan that became effective this month we were advised by OCIJ that w (b)(5) For the month of September we are conducting the following specialized masters:

- **Prosecutorial Discretion Masters:** These are being heard by Judges Young, Nelson and George and are largely being addressed via motions. (b)(5) (b)(5) (b)(5) These masters appear in the spreadsheet **bolded in green.**
- **Special Masters (CFM):** A few judges have started to schedule special masters to deal with legal issues that have arisen as a result of the CFM orders sent on the cases. (b)(5) (b)(5) These masters appear in unbolded black on the calendar.
- **Returned Hearing Notice Masters:** These are being heard by a group of volunteer IJs. The cases are *pro se* respondents with multiple returned hearing notices. (b)(5) (b)(5) The assignments for October are listed on the attachment **bolded in black**.
- **Dedicated Docket** (b)(5) (b)(5) (b)(5) The two immigration judges assisting us with this project are: Judge Ravit Halperin (RRH) and Judge Nathaniel Walker (NBW). These masters appear in the spreadsheet **bolded in red.** Some additional points regarding the Dedicated Docket:
  - (b)(5)

AMERICAN OVERSIGHT

(b)(5)

- **Interpreting the spreadsheet:** The first listed name assigned to a master calendar is the person that will clerk the calendar. If there is a "/" followed by a second or third name that is an indication of who is observing and being trained by either Michael or myself.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

OCTOBER 2021 Master Calendar Schedule

Monday		Tuesday		Wednesday		Thursday		Friday	
									1-Oct
								8:30 RRH	SYMKOWICK
								1:00 RRH	BEEL
								1:00 JYB	LIANG
4-Oct		5-Oct		6-Oct		7-Oct		8-Oct	
8:30 NBW	TRAN	8:30 NBW	DANG	8:30 RRH	GADAR	8:30 RRH	HUI	8:30 RRH	VELASCO
						8:30 ELY	MURPHY		
1:00 NBW	WILLIAMS, D.	1:00 NBW	MOORE	1:00 JYB	LIANG	**9:30 PSS**	MARGOLIS	1:00 RRH	BEEL
						1:00 RRH	SYMKOWICK	1:00 SMS	ARCEO
						1:00 ELY	MURPHY		
11-Oct		12-Oct		13-Oct		14-Oct		15-Oct	
		8:30 NBW	DANG	8:30 RRH	ROBISON	8:30 RRH	TRAN	8:30 RRH	SYMKOWICK
				10:00 ICD	GADAR	8:30 ELY	MURPHY	8:30 ADG	LIANG
		1:00 NBW	HUI			1:00 RRH	LONG	8:30 SYK	ROBISON
								1:00 RRH	BEEL
								1:00 JJJ	VELASCO
18-Oct		19-Oct		20-Oct		21-Oct		22-Oct	
8:30 NBW	TRAN	8:30 NBW	DANG	8:30 RRH	GADAR	8:30 RRH	MARGOLIS	8:30 RRH	VELASCO
8:30 AJC	LONG								
1:00 NBW	WILLIAMS, D.	1:00 NBW	MOORE			1:00 RRH	CLAY/WILLIAMS, J.	1:00 RRH	BEEL
		1:00 ELY	MURPHY						
25-Oct		26-Oct		27-Oct		28-Oct		29-Oct	
8:30 NBW	MARGOLIS	8:30 NBW	VELASCO	8:30 RRH	MARGOLIS	8:30 RRH	LONG	8:30 RRH	VELASCO
				10:00 ICD	MOORE			8:30 SYK	LIANG
1:00 NBW	TRAN	1:00 NBW	HUI			1:00 RRH	CLAY/WILLIAMS, J.	1:00 RRH	ARCEO
		2:00 SPN	SYMKOWICK					**2:00 SMS**	ROBISON

LAS	LEAVE	TELEWORK
ARCEO	(b)(6)	(b)(6)
BEEL		
DANG		
GADAR		
HUI		
LIANG		
LONG		
MARGOLIS		
MOORE		
MURPHY		
ROBISON		
SYMKOWICK		
TRAN		
VELASCO		
WILLIAMS, D.		
WILLIMAS, J.		

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Fri, 20 Aug 2021 16:30:12 +0000
To: All of San Francisco (EOIR)
Cc: Halperin, Ravit R. (EOIR);Walker, Nathaniel B. (EOIR);Roberts, Valerie (EOIR);Bouwhuis, Brittany (EOIR) (CTR)
Subject: SFR Master Calendar Clerking Schedule **SEPTEMBER 2021**
Attachments: SFR MC Clerking Assignments 2021.xlsx

Good Afternoon:

With our larger reopening plan that became effective this month we were advised by OCIJ that we must start conducting specialized master calendars. For the month of September we are conducting the following specialized masters:

- **Prosecutorial Discretion Masters:** These are being heard by Judges Young, Nelson and George and are largely being addressed via motions. (b)(5) (b)(5) (b)(5) These masters appear in the spreadsheet **bolded in green.**
- **Returned Hearing Notice Masters:** These are being heard by a group of volunteer IJs. The cases are *pro se* respondents with multiple returned hearing notices. (b)(5) (b)(5) The assignments for September are listed on the attachment **bolded in black**.
- **Dedicated Docket:** (b)(5) (b)(5) (b)(5) The two immigration judges assisting us with this project are: Judge Ravit Halperin (RRH) and Judge Nathaniel Walker (NBW). Judge Halperin's cases will continue through September. Judge Walker will begin on September 13th. These masters appear in the spreadsheet **bolded in red.** Some additional points regarding the Dedicated Docket:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

- **Interpreting the spreadsheet:** The first listed name assigned to a master calendar is the person that will clerk the calendar. If there is a "/" followed by a second or third name that is an indication of who is observing and being trained by either Michael or myself.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

SEPTEMBER 2021 Master Calendar Schedule

Monday		Tuesday		Wednesday		Thursday		Friday	
				1-Sep		2-Sep		3-Sep	
				8:30 RRH	HUI	8:30 RRH	LONG	8:30 RRH	MCDANIEL/VELASCO
							MARGOLIS/CLAY/		
						8:30 PSS	WILLIAMS J		
				2:00 AAS	DANG/CLAY	1:00 RRH	MOORE	1:00 RRH	MCDANIEL/LIANG
6-Sep		7-Sep		8-Sep		9-Sep		10-Sep	
	HOLIDAY			8:30 RRH	CLAY/DANG	8:30 RRH	CLAY/MARGOLIS	8:30 RRH	AQUINO
						1:00 RRH	WILLIAMS D	1:00 RRH	SYMKOWICK
						1:00 ELY	MURPHY/CLAY		
13-Sep		14-Sep		15-Sep		16-Sep		17-Sep	
8:30 NBW	MURPHY	8:30 NBW	LONG	8:30 RRH	TRAN	8:30 RRH	CLAY/WILLIAMS J	8:30 RRH	LIANG
				10:30 ICD	GADAR/CLAY				
1:00 NBW	CLAY	1:00 NBW	HUI			1:00 RRH	MARGOLIS	1:00 RRH	VELASCO
20-Sep		21-Sep		22-Sep		23-Sep		24-Sep	
8:30 NBW	MCDANIEL/ARCEO	8:30 NBW	WILLIAMS D	8:30 RRH	CLAY/GADAR	8:30 RRH	MOORE	8:30 RRH	WILLIAMS J
1:00 NBW	CLAY/BEEL	1:00 NBW	SYMKOWICK	2:00 SMS	LIANG/CLAY	1:00 RRH	TRAN	1:00 RRH	SYMKOWICK
27-Sep		28-Sep		29-Sep		30-Sep			
8:30 NBW	ARCEO	8:30 NBW	MOORE	8:30 RRH	HUI	8:30 RRH	DANG		
		9:00 SPN	BEEL/CLAY	8:30 AJC	VELASCO/CLAY				
1:00 NBW	TRAN	1:00 NBW	LONG			1:00 RRH	GADAR		
1:00 ADG	MURPHY								

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Thu, 2 Sep 2021 15:08:29 +0000
To: All of San Francisco (EOIR)
Cc: Halperin, Ravit R. (EOIR);Bouwhuis, Brittany (EOIR) (CTR);Roberts, Valerie (EOIR)
Subject: SFR Master Calendar Clerking Schedule **SEPTEMBER 2021** - updated 9/2/21
Attachments: SFR MC Clerking Assignments 2021.xlsx

Good Morning:

Judge Halperin's masters for September 16th have been cancelled and reset for the afternoons of September 22nd and September 29th. As a result, and given in court vs. telework schedules, a few changes in assignments have been made. Please refer to the attached master calendar clerking schedule and discard all previous versions.

Thanks:

Scott

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Friday, August 20, 2021 9:30 AM
To: All of San Francisco (EOIR) <All_of_SanFrancisco@EOIR.USDOJ.GOV>
Cc: Halperin, Ravit R. (EOIR) <(b)(6)>; Walker, Nathaniel B. (EOIR) <Nathaniel.B.Walker@usdoj.gov>; Roberts, Valerie (EOIR) <Valerie.Roberts@usdoj.gov>; Bouwhuis, Brittany (EOIR) (CTR) <Brittany.Bouwhuis@usdoj.gov>
Subject: SFR Master Calendar Clerking Schedule **SEPTEMBER 2021**

Good Afternoon:

With our larger reopening plan that became effective this month we were advised by OCIJ that we must start conducting specialized master calendars. For the month of September we are conducting the following specialized masters:

- **Prosecutorial Discretion Masters:** These are being heard by Judges Young, Nelson and George and are largely being addressed via motions. (b)(5)
  (b)(5)
  (b)(5) These masters appear in the spreadsheet **bolded in green.**
- **Returned Hearing Notice Masters:** These are being heard by a group of volunteer IJs. The cases are *pro se* respondents with multiple returned hearing notices. (b)(5)
  (b)(5) The assignments for September are listed on the attachment **bolded in black**.
- **Dedicated Docket:** (b)(5)
  courts, including San
  (b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5) The two immigration judges assisting us with this project are: Judge Ravit Halperin (RRH) and Judge Nathaniel Walker (NBW). Judge Halperin's cases will continue through September. Judge Walker will begin on September 13th. These masters appear in the spreadsheet **bolded in red.** Some additional points regarding the Dedicated Docket:

(b)(5)

- **Interpreting the spreadsheet:** The first listed name assigned to a master calendar is the person that will clerk the calendar. If there is a "/" followed by a second or third name that is an indication of who is observing and being trained by either Michael or myself.

AMERICAN OVERSIGHT

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

SEPTEMBER 2021 Master Calendar Schedule

Monday		Tuesday		Wednesday		Thursday		Friday	
				1-Sep		2-Sep		3-Sep	
				8:30 RRH	HUI	8:30 RRH	LONG	8:30 RRH	MCDANIEL/VELASCO
							MARGOLIS/CLAY/		
						8:30 PSS	WILLIAMS J		
				2:00 AAS	DANG/CLAY	1:00 RRH	SYMKOWICK	1:00 RRH	MCDANIEL/LIANG
6-Sep		7-Sep		8-Sep		9-Sep		10-Sep	
	HOLIDAY			8:30 RRH	CLAY/DANG	8:30 RRH	CLAY/MARGOLIS	8:30 RRH	AQUINO
						1:00 RRH	WILLIAMS D	1:00 RRH	SYMKOWICK
						1:00 ELY	MURPHY/CLAY		
13-Sep		14-Sep		15-Sep		16-Sep		17-Sep	
8:30 NBW	MURPHY	8:30 NBW	LONG	8:30 RRH	TRAN			8:30 RRH	SYMKOWICK
				10:30 ICD	GADAR/CLAY				
1:00 NBW	CLAY	1:00 NBW	HUI					1:00 RRH	VELASCO
20-Sep		21-Sep		22-Sep		23-Sep		24-Sep	
8:30 NBW	MCDANIEL/ARCEO	8:30 NBW	WILLIAMS D	8:30 RRH	CLAY/GADAR	8:30 RRH	MOORE	8:30 RRH	AQUINO
1:00 NBW	CLAY/BEEL	1:00 NBW	MOORE	1:00 RRH	MARGOLIS	1:00 RRH	TRAN	1:00 RRH	LIANG
				2:00 SMS	LIANG/CLAY				
27-Sep		28-Sep		29-Sep		30-Sep			
8:30 NBW	ARCEO	8:30 NBW	MOORE	8:30 RRH	HUI	8:30 RRH	DANG		
		9:00 SPN	BEEL/CLAY	8:30 AJC	VELASCO/CLAY				
1:00 NBW	TRAN	1:00 NBW	LONG	1:00 RRH	GADAR	1:00 RRH	CLAY/WILLIAMS J		
1:00 ADG	MURPHY								

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Mon, 23 Aug 2021 15:43:37 +0000
To: All of San Francisco (EOIR)
Cc: Halperin, Ravit R. (EOIR);Walker, Nathaniel B. (EOIR);Roberts, Valerie (EOIR);Bouwhuis, Brittany (EOIR) (CTR)
Subject: SFR Master Calendar Clerking Schedule **SEPTEMBER 2021**
Attachments: SFR MC Clerking Assignments 2021.xlsx

UPDATE:

(b)(5)

From: McDaniel, Scott (EOIR) <Scott.McDaniel@usdoj.gov>
Sent: Friday, August 20, 2021 9:30 AM
To: All of San Francisco (EOIR) <All_of_SanFrancisco@EOIR.USDOJ.GOV>
Cc: Halperin, Ravit R. (EOIR) (b)(6) Walker, Nathaniel B. (EOIR) <Nathaniel.B.Walker@usdoj.gov>; Roberts, Valerie (EOIR) <Valerie.Roberts@usdoj.gov>; Bouwhuis, Brittany (EOIR) (CTR) <Brittany.Bouwhuis@usdoj.gov>
Subject: SFR Master Calendar Clerking Schedule **SEPTEMBER 2021**

Good Afternoon:

With our larger reopening plan that became effective this month we were advised by OCIJ that we must start conducting specialized master calendars. For the month of September we are conducting the following specialized masters:

- **Prosecutorial Discretion Masters:** These are being heard by Judges Young, Nelson and George and are largely being addressed via motions. (b)(5)

  (b)(5)

  (b)(5) These masters appear in the spreadsheet **bolded in green.**
- **Returned Hearing Notice Masters:** These are being heard by a group of volunteer IJs. The cases are *pro se* respondents with multiple returned hearing notices. (b)(5)

  (b)(5) The assignments for September are listed on the attachment **bolded in black**.
- **Dedicated Docket** (b)(5)

  (b)(5)

  (b)(5) The

AMERICAN OVERSIGHT

two immigration judges assisting us with this project are: Judge Ravit Halperin (RRH) and Judge Nathaniel Walker (NBW). Judge Halperin's cases will continue through September. Judge Walker will begin on September 13th. These masters appear in the spreadsheet **bolded in red.** Some additional points regarding the Dedicated Docket:

(b)(5)

- **Interpreting the spreadsheet:** The first listed name assigned to a master calendar is the person that will clerk the calendar. If there is a "/" followed by a second or third name that is an indication of who is observing and being trained by either Michael or myself.

Thanks:

AMERICAN OVERSIGHT

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

SEPTEMBER 2021 Master Calendar Schedule

Monday		Tuesday		Wednesday		Thursday		Friday	
				1-Sep		2-Sep		3-Sep	
				8:30 RRH	HUI	8:30 RRH	LONG	8:30 RRH	MCDANIEL/VELASCO
							MARGOLIS/CLAY/		
						8:30 PSS	WILLIAMS J		
				2:00 AAS	DANG/CLAY	1:00 RRH	SYMKOWICK	1:00 RRH	MCDANIEL/LIANG
6-Sep		7-Sep		8-Sep		9-Sep		10-Sep	
	HOLIDAY			8:30 RRH	CLAY/DANG	8:30 RRH	CLAY/MARGOLIS	8:30 RRH	AQUINO
						1:00 RRH	WILLIAMS D	1:00 RRH	SYMKOWICK
						1:00 ELY	MURPHY/CLAY		
13-Sep		14-Sep		15-Sep		16-Sep		17-Sep	
8:30 NBW	MURPHY	8:30 NBW	LONG	8:30 RRH	TRAN	8:30 RRH	CLAY/WILLIAMS J	8:30 RRH	SYMKOWICK
				10:30 ICD	GADAR/CLAY				
1:00 NBW	CLAY	1:00 NBW	HUI			1:00 RRH	MARGOLIS	1:00 RRH	VELASCO
20-Sep		21-Sep		22-Sep		23-Sep		24-Sep	
8:30 NBW	MCDANIEL/ARCEO	8:30 NBW	WILLIAMS D	8:30 RRH	CLAY/GADAR	8:30 RRH	MOORE	8:30 RRH	WILLIAMS J
1:00 NBW	CLAY/BEEL	1:00 NBW	MOORE	2:00 SMS	LIANG/CLAY	1:00 RRH	TRAN	1:00 RRH	LIANG
27-Sep		28-Sep		29-Sep		30-Sep			
8:30 NBW	ARCEO	8:30 NBW	MOORE	8:30 RRH	HUI	8:30 RRH	DANG		
		9:00 SPN	BEEL/CLAY	8:30 AJC	VELASCO/CLAY				
1:00 NBW	TRAN	1:00 NBW	LONG			1:00 RRH	GADAR		
1:00 ADG	MURPHY								

AMERICAN OVERSIGHT

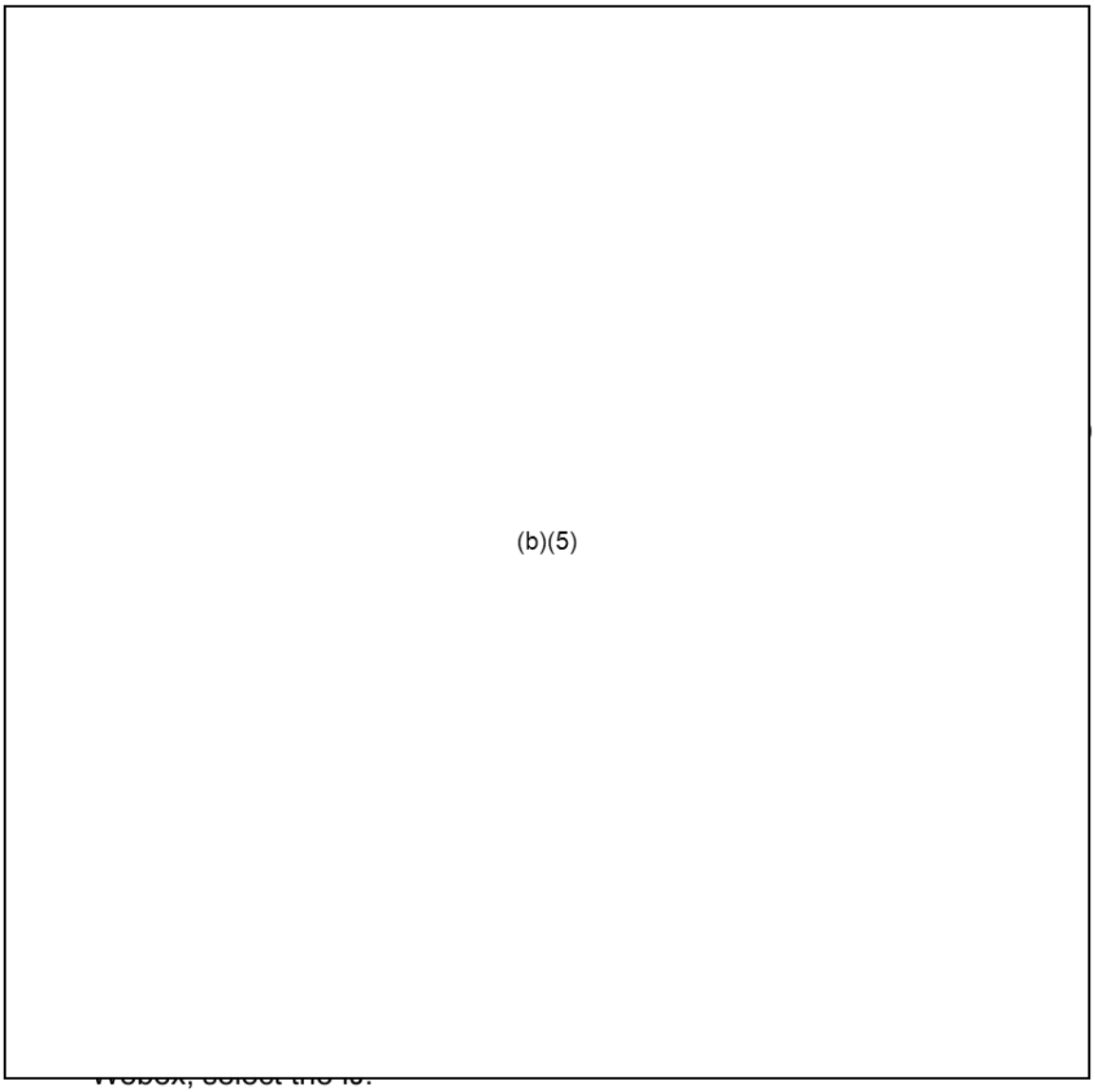
From: McDaniel, Scott (EOIR)
Sent: Thu, 21 Oct 2021 00:12:08 +0000
To: All of San Francisco (EOIR)
Subject: SFR master Calendar Clerking Schedule **NOVEMBER 2021**
Attachments: SFR MC Clerking Assignments 2021.xlsx

Good Afternoon:
PLEASE READ THIS EMAIL IN ITS ENTIRETY. THERE ARE A NUMBER OF CHANGES AFFECTING THE DD DOCKET. For the month of November we are conducting the following specialized masters:

- **Prosecutorial Discretion Masters:** These are being heard by Judges Young, Butler, Phan and Deiss and are largely being addressed via motions. (b)(6) (b)(6) (b)(6) These masters appear in the spreadsheet **bolded in green.**
- **Special Masters (CFM):** We are no longer providing in court legal specialist assistance for these masters. Judges should provide their assigned legal assistant/legal specialist instruction on next steps for the cases after the hearing.
- **Returned Hearing Notice Masters:** There is only one of these dockets in November (Judge Caborn). The cases are *pro se* respondents with multiple returned hearing notices. . The assignments for November is listed on the attachment **bolded in black**.
- **Dedicated Docket:** (b)(5) (b)(5) (b)(5) The two immigration judges assisting us with this project are: Judge Ravit Halperin (RRH) and Judge Nathaniel Walker (NBW). **We have had to expand the Dedicated Docket to 3 additional judges starting in November given the volume of matters scheduled to SFR. Judges Phan, Kirchner and Seminerio will begin daily DD dockets in November.** These masters appear in the spreadsheet **bolded in red.** Some additional points regarding the Dedicated Docket:

(b)(5)

AMERICAN OVERSIGHT



- **Interpreting the spreadsheet:** The first listed name assigned to a master calendar is the person that will clerk the calendar. If there is a "/" followed by a second or third name that is an indication of who is observing and being trained by either Michael or myself.

Thanks:
Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

NOVEMBER 2021 Master Calendar Schedule

Monday		Tuesday		Wednesday		Thursday		Friday	
1-Nov		**2-Nov**		**3-Nov**		**4-Nov**		**5-Nov**	
8:30 NBW	BEEL	8:30 NBW	DANG	8:30 RRH	HUI	8:30 RRH	ROSAL	8:30 RRH	GADAR
8:30 SPN	TRAN			8:30 SPN	TRAN	8:30 SPN	LONG		
				8:30 ICD	LONG	8:30 ELY	MURPHY		
				9:00 AJC	VELASCO				
1:00 SPN	LONG	1:00 NBW	MOORE	1:00 RRH	MANSFIELD	1:00 RRH	ARCEO	1:00 RRH	MARGOLIS
		2:00 SPN	ROBISON	1:00 SPN	SYMKOWICK	1:00 SPN	HUI		
						1:00 ELY	MURPHY		
						1:30 JYB	LIANG		
8-Nov		**9-Nov**		**10-Nov**		**11-Nov**		**12-Nov**	
8:30 NBW	BEEL	8:30 NBW	DANG	8:30 RRH	MANSFIELD				
8:30 SPN	HUI	8:30 FAS	ROBISON	8:30 FAS	WILLIAMS / CLAY		HOLIDAY		
		8:30 SMK	GADAR	8:30 SMK	HUI				
		8:30 JYB	LIANG	8:30 SPN	MURPHY				
				8:30 ICD	LONG				
1:00 NBW	MANSFIELD	1:00 NBW	ARCEO	1:00 SMK	VELASCO				
1:00 SPN	MOORE	1:00 FAS	SYMKOWICK	1:00 SPN	MOORE				
		1:00 SMK	MARGOLIS						
		1:00 SPN	VELASCO						
15-Nov		**16-Nov**		**17-Nov**		**18-Nov**		**19-Nov**	
8:30 NBW	MOORE	8:30 NBW	DANG	8:30 RRH	MANSFIELD	8:30 RRH	BEEL	8:30 RRH	SYMKOWICK
8:30 FAS	ROBISON	8:30 FAS	TRAN	8:30 FAS	WILLIAMS / CLAY	8:30 FAS	DANG	8:30 FAS	MURPHY
8:30 SMK	GADAR	8:30 SMK	HUI	8:30 SMK	ROBISON	8:30 SMK	HUI	8:30 SMK	GADAR
8:30 SPN	BEEL	8:30 JYB	LIANG	8:30 SPN	MURPHY	8:30 SPN	SYMKOWICK		
				8:30 ICD	VELASCO				
1:00 NBW	MANSFIELD	1:00 NBW	ARCEO	1:00 SMK	ROSAL	1:00 RRH	ARCEO	1:00 RRH	MARGOLIS
1:00 FAS	VELASCO	1:00 FAS	SYMKOWICK	1:00 SPN	TRAN	1:00 FAS	VELASCO	1:00 FAS	WILLIAMS
1:00 SMK	ROSAL	1:00 SMK	MARGOLIS			1:00 SMK	ROBISON		
1:00 SPN	TRAN					1:00 SPN	MOORE		
						1:00 JYB	LIANG		
22-Nov		**23-Nov**		**24-Nov**		**25-Nov**		**26-Nov**	
8:30 FAS	BEEL	8:30 FAS	DANG	8:30 RRH	ARCEO				
8:30 SMK	ROBISON	8:30 SMK	MARGOLIS	8:30 FAS	WILLIAMS		HOLIDAY		
		8:30 JYB	LIANG						
1:00 FAS	MOORE	1:00 FAS	CLAY / FIGUEROA						
1:00 SMK	GADAR	1:00 SMK	LONG						
29-Nov		**30-Nov**							
8:30 NBW	BEEL	8:30 NBW	DANG						
8:30 FAS	CLAY / FIGUEROA	8:30 FAS	WILLIAMS						
8:30 SMK	ROBISON	8:30 SMK	ROSAL						
8:30 SPN	MURPHY								
1:00 NBW	MANSFIELD	1:00 NBW	ARCEO						
1:00 FAS	VELASCO	1:00 FAS	CLAY / FIGUEROA						
1:00 SMK	MARGOLIS	1:00 SMK	GADAR						
1:00 SPN	LIANG								

LGL AD SPEC	LEAVE/CWS
AQUINO	(b)(6)
ARCEO	
BEEL	
CLAY	
DANG	
FIGUEROA	
GADAR	
HUI	
LIANG	
LONG	
LUK	
MANSFIELD	
MARGOLIS	
MOORE	
MURPHY	
ROBISON	
ROSAL	
SYMKOWICK	
TRAN	
VELASCO	
WILLIAMS	

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Tue, 17 Aug 2021 16:32:24 +0000
To: McDaniel, Scott (EOIR);Clay, Michael (EOIR)
Cc: Young, Elizabeth L. (EOIR)
Subject: Specialized Completion Log

All,

The master tracking sheet for the specialized completion log can be found on the G drive, under SFR specialized completion log. I've add in the dates of the specialized masters I am aware of, but as more dockets get added you'll want to add in those dates to the list on the (b)(5); (b)(7)(E) Also, in order to get the percentages, you'll want to enter the # of scheduled cases on the docket as soon as you create it. Once the completed cases are entered the spreadsheet automatically gives you the percentage completed. The last 3 dockets have an error because there are no numbers entered. I'm waiting for Scott to create the dockets. I understand this list (b)(5) (b)(5) Thanks.

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/17/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Start	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Nelson	7A Status Docket Adult	8/20/2021	106		0%

AMERICAN OVERSIGHT

Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%
Swink	Returned Notice Docket	9/1/2021	21		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Deiss	Returned Notice Docket	9/15/2021	38		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%
Star	Returned Notice Docket	9/22/2021	27		0%
Nelson	7A Status Docket Adult	9/24/2021	82		0%
George	7A Status Docket Juvenile	9/27/2021	33		0%
Phan	Returned Notice Docket	9/28/2021			#DIV/0!
Caborn	Returned Notice Docket	9/29/2021			#DIV/0!
Savage	Returned Notice Docket	10/7/2021			#DIV/0!

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
Maria.Jauregui@usdoj.gov

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Tue, 10 Aug 2021 01:02:29 +0000
To: Young, Elizabeth L. (EOIR)
Cc: McDaniel, Scott (EOIR)
Subject: Specialized Docket Completions

Updated with the 8/9 results. Thanks

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/9/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111		0%
Nelson	7A Status Docket Adult	8/20/2021	106		0%
Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%

AMERICAN OVERSIGHT

Nelson	7A Status Docket Adult	9/24/2021	82		0%
George	7A Status Docket Juvenile	9/27/2021	33		0%

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
Maria.Jauregui@usdoj.gov

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR)
Sent: Fri, 13 Aug 2021 22:59:13 +0000
To: Young, Elizabeth L. (EOIR);McDaniel, Scott (EOIR)
Subject: Specialized Docket Log

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/13/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%

Maria Jauregui
Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, CA 94104
415.705.0164
maria.jauregui@usdoj.gov

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Wed, 15 Sep 2021 23:41:07 +0000
To: Michael Alster
Subject: Specialized Masters October-November 2021

Savage	Returned Notice Docket	10/7/2021
Deiss	Returned Notice Docket	10/13/2021
Caborn	Returned Notice Docket	10/18/2021
Phan	Returned Notice Docket	10/26/2021
Star	Returned Notice Docket	10/29/2021
Deiss	7A Status Docket Adult	10/27/2021
Phan	7A Status Docket Adult	11/2/2021
Caborn	Returned Notice Docket	11/3/2021
Deiss	7A Status Docket Adult	11/3/2021
Phan	7A Status Docket Adult	11/4/2021
Butler	7A Status Docket Adult	11/4/2021
Phan	7A Status Docket Adult	11/9/2021
Butler	7A Status Docket Adult	11/9/2021
Deiss	7A Status Docket Adult	11/10/2021
Butler	7A Status Docket Adult	11/16/2021
Deiss	7A Status Docket Adult	11/17/2021
Butler	7A Status Docket Adult	11/18/2021
Butler	7A Status Docket Adult	11/23/2021

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: McDaniel, Scott (EOIR)
Sent: Thu, 15 Jul 2021 21:02:56 +0000
To: Phan, Susan (EOIR);Tran, Anna (EOIR);Clay, Michael (EOIR)
Cc: Margolin, Daren K. (EOIR);Jauregui, Maria (EOIR);Interpreter Request, San Francisco (EOIR)
Subject: SPN: Special Master 8-24-2021 @ 9am

Good Afternoon:

Judge Phan has agreed to hear a special master for unrepresented respondents with multiple returned undeliverable hearing notices. The intention of this master (b)(6) (b)(6) (b)(6) This master will be scheduled to occur on Tuesday, August 24th at 9am. I will be scheduling the cases to the special master this afternoon and will hold the ROPs in my office. I will also be sending the docket to DHS and ask that they provide I-213s on each case should they wish to not appear in person under our standing telephonic appearance orders.

Thanks:

Scott McDaniel
Deputy Court Administrator
San Francisco Immigration Court
100 Montgomery Street, Suite 800
San Francisco, California 94104
415.705.0144

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Fri, 21 Jan 2022 01:08:53 +0000
To: Alder Reid, Lauren (EOIR)
Cc: Foster, Sean (EOIR); Fooshe, Alexis (EOIR)
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Tal sent me a copy of her article. It's subscription only. (b)(5)

(b)(5)

Immigration court officials cheered results of fast-tracked deportation orders, emails reveal

WASHINGTON — Last June, the San Francisco Immigration Court quietly tested a new idea: Fast-track the cases of immigrants whose mail wasn't reaching them. In the trial run, 80% of the immigrants scheduled were ordered deported for not showing up.

Top officials were effusive with praise over the results, emails obtained by The Chronicle show, and rushed to set up more hearings: "Very positive!" emailed one of the top supervising immigration judges overseeing the nation's hundreds of courts.

The newly uncovered emails reveal that the fast-track docket for immigrants with returned mail, which was first reported by The San Francisco Chronicle last fall, was cheered at the highest levels of the courts and pursued with full awareness that scores of immigrants would likely be ordered deported as a result. Advocates and attorneys for immigrants raised concerns about the practice as a sort of deportation conveyor belt last year, as many of the lawyer-less immigrants may have no idea they missed a court hearing, much less that they were ordered deported during it, because they didn't know how to update their address with the court or thought that Immigration and Customs Enforcement would do so on their behalf. The immigration courts are run by the Justice Department, with judges hired and ultimately overseen by the attorney general.

The emails were obtained through a Freedom of Information Act request by a nonprofit watchdog group, American Oversight, prompted by The Chronicle's reporting. The group shared the records with The Chronicle.

The Department of Justice declined to comment specifically on the emails, noting that removal orders for failing to appear in court are legally valid and that issuing notices with new hearing dates gives unreachable immigrants an opportunity to appear in court and avoid a deportation order.

Chronicle analysis of available data last year found that the practice significantly increased the number of immigrants who were ordered deported for not being present in court, called an "in absentia" removal order. As many as 173 people were given deportation orders because of such proceedings in August and September — a nearly ninefold increase from the 20 similar orders given the previous seven months combined.

The results do not make clear how those numbers grew by the end of the year, but show a strong appetite for scheduling such hearings.

The pilot for the "returned notice" docket for immigrants whose mail was being returned as undeliverable was conceived by a deputy court administrator in San Francisco, who in May proposed the idea to one of the judges. The two set up a June 15 test run. Though much of the emails are redacted, it's clear the idea was green-lit by the supervising immigration judge for the San Francisco court.

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That day, the deputy administrator emailed his superiors with the results of the 21 cases scheduled: Only two immigrants showed up, two cases had to be continued because of procedural issues and "the remaining 17 cases got removal orders."

"That's great," wrote his boss, the court administrator. "Great, good job," wrote the supervising immigration judge at the time, Daren Margolin. He closed his email repeating the praise: "Thanks again ... good job on this."

The court administrator then emailed all the judges at the San Francisco court informing them of the results and inviting them to volunteer to hold similar hearings in August and September. A handful of judges quickly responded with eagerness.

Margolin forwarded that email to his boss, Regional Deputy Chief Immigration Judge Sheila McNulty, who oversees courts from the Justice Department's courts headquarters in Northern Virgnia, with a remark: "On a positive note."

McNulty responded quickly: "Very positive!"

The emails also revealed a larger picture of a Justice Department closely tracking how it can quickly close immigration cases as the backlog of the courts continues to skyrocket. A new analysis this week by the Syracuse University project TRAC, which monitors immigration court data, found the backlog is almost 1.6 million cases and grew at its fastest rate ever the last quarter of 2021. San Francisco's backlog is nearly 80,000 cases, with consistent year-to-year growth unlike the recent precipitous increase nationwide.

In emails, court managers were asked to send in reports frequently about how effective special dockets were at closing cases, and to keep close track of the numbers.

But the tactics weren't all about deportations. The San Francisco court, for example, also set up a docket to fast-track deportation cases that could be dismissed through prosecutorial discretion by ICE, freeing the immigrants involved of the threat of deportation.

From: Alder Reid, Lauren (EOIR) <(b)(6)
Sent: Thursday, January 20, 2022 3:49 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Foster, Sean (EOIR) (b)(6) Fooshe, Alexis (EOIR) <(b)(6)>
Subject: Re: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Approved (b)(5) !

BACKGROUND, not for attribution:

(b)(5)

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(b)(5)

On Jan 20, 2022, at 2:34 PM, Mattingly, Kathryn (EOIR) <(b)(6) wrote:

Yes. FOIA was able to track it down. Please see the 249 page pdf attached. Since this FOIA was not

(b)(5)

Please let me know if you need anything else. Thanks.

From: Alder Reid, Lauren (EOIR) <(b)(6)
Sent: Thursday, January 20, 2022 1:31 PM
To: Mattingly, Kathryn (EOIR) (b)(6) oster, Sean (EOIR)
(b)(6)
Cc: Fooshe, Alexis (EOIR) <(b)(6)
Subject: RE: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices

Do we have the full FOIA copy from Joe? If not, can we please get it?

Best,
Lauren

From: Mattingly, Kathryn (EOIR) <(b)(6) <mailto (b)(6)
Sent: Thursday, January 20, 2022 10:04 AM
To: Alder Reid, Lauren (EOIR) (b)(6) <mailto (b)(6) ;
Foster, Sean (EOIR) <(b)(6) <mailto: (b)(6)
Cc: Fooshe, Alexis (EOIR) <(b)(6) mailto:A (b)(6)
Subject: HOT MEDIA ON DEADLINE FOR TODAY Jan. 20: San Francisco Chronicle (Tal Kopan) Comment on FOIA on returned notices
Importance: High

Lauren/Sean – Please see inquiry below and the attached files. I pulled the language I p (b)(5)

(b)(5)

Inquiry:
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.

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I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.

Deadline: Today, Jan. 20

Draft:

(b)(5)

ON THE RECORD:

(b)(5)

End.

From: Kopan, Tal <tal.kopan@sfchronicle.com<mailto:tal.kopan@sfchronicle.com>>
Sent: Wednesday, January 19, 2022 8:53 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>>
Subject: [EXTERNAL] Comment on FOIA on returned notices

Hi Kathryn,
A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.
Thanks!

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Tal

Tal Kopan
Washington Correspondent | San Francisco Chronicle
Cell/Signal: (b)(6)
tal.kopan@sfchronicle.com<mailto:tal.kopan@sfchronicle.com>
Twitter: @TalKopan
SFChronicle.com/Subscribe<http://sfchronicle.com/Subscribe>
[Chron logo]

<Previously released.pdf>

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 27 Jan 2022 22:19:38 +0000
To: Martin, John (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: RE: Media Inquiry from Daniel Parra - City Limits (NYC)
Attachments: RE: [EXT] Reporter questions
Importance: High

Hi John – Alexis has been tied up but I think she may be online now. What about this approach? I used the first sentence, and it was OPFO cleared. I don't think we need to add the other details on background. Hope this helps and let me know.

Draft:

(b)(5)

From: Mattingly, Kathryn (EOIR)
Sent: Wednesday, January 26, 2022 11:44 AM
To: Martin, John (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6)
Subject: RE: Media Inquiry from Daniel Parra - City Limits (NYC)

I'm (b)(5)

(b)(5)

This will have to be an (b)(5)

(b)(5) welcome Alexis's input too. I can help later this afternoon.

From: Martin, John (EOIR) (b)(6)
Sent: Wednesday, January 26, 2022 11:39 AM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6)
Subject: RE: Media Inquiry from Daniel Parra - City Limits (NYC)

(b)(5)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Wednesday, January 26, 2022 11:35 AM
To: Martin, John (EOIR) (b)(6)

AMERICAN OVERSIGHT

Cc: Fooshe, Alexis (EOIR) (b)(6)
Subject: RE: Media Inquiry from Daniel Parra - City Limits (NYC)

Hi John - I do not think we should (b)(5)
(b)(5) Do you know the status of the response to letter?

From: Martin, John (EOIR) (b)(6)
Sent: Wednesday, January 26, 2022 11:17 AM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Fooshe, Alexis (EOIR) (b)(6)
Subject: Media Inquiry from Daniel Parra - City Limits (NYC)

Hi Kathryn,

Please let me know if you have any questions or need any more information.

Thanks!
John

Inquiry:
I'm writing about procedural problems immigration attorneys are facing at immigration court hearings and would like to confirm this information:

Q1. On December 27, 2021, Legal Aid Society and seven more consigning organizations sent a letter detailing procedural problems they experienced with NYC Executive Office for Immigration Review (EOIR) Immigration Court hearings, and in particular with Master Calendar Hearings, and would like to know if the division has issued a response?
Q2. The letter highlights problems with Master Calendar Hearings, so have those problems been resolved/tackled? If so, how?
Q3. The letter highlights problems with motion practice and proper notice to attorneys of record, so have those problems been resolved/tackled? If so, how?
Q4. The letter highlights technical problems with OpenVoice, so have those problems been resolved/tackled? If so, how?
Q5. Any additional comment on these processing issues?

Deadline:
Thursday, Jan. 27.

Draft Response:

(b)(5)

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(b)(5)

John Martin

Regional Public Information Officer for the Northeast
Communications and Legislative Affairs Division
Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
(b)(6)
(b)(6)
www.justice.gov/eoir

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 15 Nov 2021 21:12:50 +0000
To: Tyche Hendricks
Subject: RE: [EXT] Reporter questions

Hello Tyche,

We cannot accommodate your interview request. As I indicated last month, EOIR's Communications and Legislative Affairs Division handles all questions related to EOIR. The agency responds to official correspondence through appropriate channels. See copied below EOIR's response, which includes information I provided to you on Nov. 1.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

As indicated in EOIR's PM 21-23 *Dedicated Docket*, Dedicated Docket cases focus on the adjudication of family cases as designated by the Department of Homeland Security (DHS). DHS has indicated that it will be placing on the Dedicated Docket families who crossed the Southern border and whom DHS has placed on alternatives to detention.

The Dedicated Dockets established in 11 cities throughout the country have been created to assist newly-arriving families in receiving access to information services to help them understand the immigration system, and to refer them to pro bono legal service providers for possible representation.

Immigration judges will work to issue a decision generally within 300 days of the initial master calendar hearing, subject to the unique circumstances of each case, including allowing time for families to seek representation where needed. While the goal of this process is to decide cases expeditiously, fairness will not be compromised. As necessary, EOIR will continue its longstanding practice of shifting resources to manage its case priorities while processing each case in an efficient manner consistent with due process.

Best,
Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org>
Sent: Monday, November 15, 2021 1:45 PM

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To: Mattingly, Kathryn (EOIR) <(b)(6)>
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Good morning Kathryn,

I'm following up on my request from last Wednesday for an interview. I don't believe I've heard back from you about that. I'm happy to get on the phone today to discuss further.

Thank you,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
Pronounciation: TIE-key HEN-dricks
415.553.2826 T
(b)(6) M

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On Nov 10, 2021, at 2:50 PM, Tyche Hendricks <thendricks@kqed.org<mailto:thendricks@kqed.org>> wrote:

Hi Kathryn,

Thank you for this. I have made three FOIA requests and am hoping for expedited processing.

I also have some questions about the dedicated docket and the San Francisco returned notice docket, especially in regard to this letter<https://protect2.fireeye.com/v1/url?k=288da377-77169b87-

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288a8792-ac1f6b0176b0-4e5537e51d9b0331&q=1&e=702ee650-44f9-458d-8a59-2ed97f28738e&u=https%3A%2F%2Fdocs.google.com%2Fdocument%2Fd%2F1jptcY0XDWvX0fN-s045Uu52c1YcLiZRzcgX-gP2nMxo%2Fedit> that was sent last week by the San Francisco Bar Association and other advocates to Assistant Chief Immigration Judge Elizabeth Young.

I would like to request an interview for next week, in person or over Zoom or telephone, that I would record for radio broadcast. I request to speak with ACIJ Young or with an EOIR official who can address EOIR's response to the letter, as well as answer questions about the dedicated docket -- in particular the pace with which cases are moving and the difficulty respondents are encountering to find legal representation.

Thank you,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
Pronounciation: TIE-key HEN-dricks
415.553.2826 T
(b)(6) M

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On Nov 1, 2021, at 7:21 AM, Mattingly, Kathryn (EOIR) <(b)(6)> wrote:

EXTERNAL

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Good morning Tyche,

Please see EOIR's FOIA webpage<https://www.justice.gov/eoir/freedom-information-act-foia> for instructions on how to request EOIR records.

BACKGROUND:
Courts routinely create dockets for cases with returned hearing notices for efficiency and docket management. Immigration courts throughout the country have employed the longstanding practice of collecting such notices, sending new notices for each case, and then docketing those cases in groups. Like every case before the court, those cases may end in continuance, administrative closure, termination, or an order of removal.

ON THE RECORD:
Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload, and creates efficiencies through grouping like cases. Further, immigration judges make decisions based on the specific and unique factors of each court in accordance with applicable law.

Best,
Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org>>
Sent: Wednesday, October 27, 2021 3:40 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>>
Subject: [EXTERNAL] Re: [EXT] Reporter questions

Hi Kathryn,

Thanks for your help thus far! The EOIR security guys at 100 Sansome St. had gotten your heads up that I'd be carrying recording equipment in my bag and so everything went smoothly.

A couple of questions:

* What is the simplest and swiftest way for me to obtain audio recordings of immigration court proceedings?
* Does EOIR have a description somewhere of the objective of the "returned notice" docket, which I gather is a relatively recent innovation?

Thanks much,

Tyche

Tyche Hendricks
Senior Editor, Immigration
Pronouns: she/her
415.553.2826 T
(b)(6) M

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On Oct 25, 2021, at 4:41 PM, Mattingly, Kathryn (EOIR) <Kathryn.Mattingly@usdoj.gov<mailto:Kathryn.Mattingly@usdoj.gov<mailto:Kathryn.Mattingly@usdoj.gov%3cmailto:Kathryn.Mattingly@usdoj.gov>>> wrote:

EXTERNAL

Hi again Tyche - Thanks also for letting me know your plans to attend IJ Phan's specialized master calendar docket tomorrow afternoon as well. - Kathryn

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 7:06 PM
To: Mattingly, Kathryn (EOIR)
(b)(6) <mailto (b)(6) <mailto (b)(6)
(b)(6) >>>
Cc: EOIR, PAO (EOIR) <PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov%3cmailto:PAO.EOIR@usdoj.gov>>>
Subject: [EXTERNAL] Re: [EXT] RE: Reporter questions

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Thanks Kathryn, for getting back to me. Very helpful!

I also plan to attend the specialized "returned notice" docket in the afternoon, with, I believe, IJ Phan, FYI.

I know my team at KQED has worked with you in the past and I look forward to being in touch.

Best, Tyche

Sent from my iPhone

On Oct 25, 2021, at 3:51 PM, Mattingly, Kathryn (EOIR) (b)(6) <mailto (b)(6) y<mailto: (b)(6) (b)(6) >>> wrote:

EXTERNAL

Hello Tyche,

Thank you for letting us know your plans. To confirm, the San Francisco Immigration Court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court<https://www.justice.gov/eoir/san-francisco-immigration-court%3chttps:/www.justice.gov/eoir/san-francisco-immigration-court>>> is scheduled to conduct Dedicated Docket cases tomorrow, Oct. 26, at 8:30 a.m. and at 1 p.m. on the 4th Floor, Courtroom 26.

As indicated in our Public Health Notice<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download<https://www.justice.gov/file/1398881/download%3chttps:/www.justice.gov/file/1398881/download>>> and FAQs on Practices to Help to Protect all People Working in and Visiting EOIR Spaces<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download<https://www.justice.gov/eoir-operational-status/page/file/1419176/download%3chttps:/www.justice.gov/eoir-operational-status/page/file/1419176/download>>>, limited attendance practices are in place. Also, to confirm, usage of cameras or recording devices in courtrooms or other EOIR space is prohibited. See our fact sheet, Observing Immigration Court Hearings<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download<https://www.justice.gov/eoir/page/file/1079306/download%3chttps:/www.justice.gov/eoir/page/file/1079306/download>>>, and our security directive, PM 19-10 <https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-

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manual/OOD1910/download<https://www.justice.gov/eoir/eoir-policy-manual/OOD1910/download%3chttps:/www.justice.gov/eoir/eoir-policy-manual/OOD1910/download>>> Policy for Public Use of Electronic Devices in EOIR Space. I have notified my colleagues in San Francisco that you will be carrying your recording devices in your bag and that you are aware of our policies.

Our office, EOIR's Communications and Legislative Affairs Division, handles all questions related to EOIR, as such, I would be happy to answer your written questions. Also, it would be most helpful if you can email me directly going forward, especially for last minute inquiries like this one. Feel free to also include our general mailbox on your inquiries.

Best,

Kathryn

Kathryn Mattingly

Assistant Press Secretary
Communications and Legislative Affairs Division Executive Office for Immigration Review U.S. Department of Justice 703-305-0289, Main
www.justice.gov/eoir<http://www.justice.gov/eoir><http://www.justice.gov/eoir<http://www.justice.gov/eoir<http://www.justice.gov/eoir%3chttp:/www.justice.gov/eoir%3e%3chttp:/www.justice.gov/eoir%3chttp:/www.justice.gov/eoir>>>

-----Original Message-----
From: Tyche Hendricks <thendricks@KQED.org<mailto:thendricks@KQED.org<mailto:thendricks@KQED.org%3cmailto:thendricks@KQED.org>>>
Sent: Monday, October 25, 2021 3:44 PM
To: EOIR, PAO (EOIR) <PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov<mailto:PAO.EOIR@usdoj.gov%3cmailto:PAO.EOIR@usdoj.gov>>>
Subject: [EXTERNAL] Reporter questions

Good afternoon,

AMERICAN OVERSIGHT

I am a longtime immigration reporter and editor and I'm beginning to do some reporting on immigration courts in general and the San Francisco court in particular. And I have a couple of things I wanted to check with you.

First, I plan to attend a "dedicated docket" hearing at San Francisco's non-detained court location at 100 Sansome St. tomorrow, Oct. 26. I understand that your rules prevent me from recording or photographing in "EOIR space" and I will not do so. I will be carrying my radio recording equipment in my bag, however, and I would like to confirm that I won't encounter a problem with keeping it with me. I would not take it out or use it while at court.

Second, as I pursue my reporting, I expect to have questions for EOIR about court processes. I wanted to let you know that I will be wanting to arrange an interview with an EOIR representative.

Thank you,

Tyche

Tyche Hendricks

Senior Editor, Immigration

Pronouns: she/her

415.553.2826 T

(b)(6) M

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https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F><https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D><https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D<https://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3chttps://protect2.fireeye.com/v1/url?k=afd8574c-f0436fbc-afdf73a9-ac1f6b01744c-0f1e3eab2c94b3e7&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=http%3A%2F%2Fwww.kqed.org%2F%3e%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-dXwLGHu0XrDPFA%26m%3D8Ul_-nftSZt5XJoS-EV24Aynw0Vai0cmO4wZCp6dTQc%26s%3DCP92B4Z4cy1XxB-Sg_vgwOBKH3PyNCSYypcd5rTQRjw%26e%3D%3chttps://protect2.fireeye.com/v1/url?k=aeed7a83-f1764273-aeea5e66-ac1f6b01744c-ef740bcef25a35eb&q=1&e=f2772b73-dc63-40d7-9e4b-4564ace9b24e&u=https%3A%2F%2Furldefense.proofpoint.com%2Fv2%2Furl%3Fu%3Dhttp-3A__www.kqed.org%26d%3DDwMF-g%26c%3DE2nBno7hEddFhl23N5nD1Q%26r%3D7ERcy5z-

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AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 1 Nov 2021 18:52:15 +0000
To: Safi, Zakia (EOIR) (CTR); Lampman, Zachary (EOIR) (CTR)
Subject: RE: News Clips - Nov. 1, 2021
Attachments: SFArticle_SpecializedDockets_Oct312021.docx

Thanks for the tip too! See attached ☺.

I have two more (b)(5) to get back to now.

From: Safi, Zakia (EOIR) (CTR) (b)(6)
Sent: Monday, November 1, 2021 2:50 PM
To: Mattingly, Kathryn (EOIR) (b)(6); Lampman, Zachary (EOIR) (CTR) (b)(6)
Subject: RE: News Clips - Nov. 1, 2021

Hi,

Open the link on edge browser I have also copied it down below

S.F. Immigration Court fast-tracking cases in what critics say call a deportation conveyor belt – Law For Addicsion

Open it on edge browser

A San Francisco immigration judge took less than an hour on Tuesday to order 23 people deported. But none of the immigrants was present and it's unclear whether they knew about the hearing — even as they were deported for missing it.

The proceedings are part of a recently enacted effort the San Francisco Immigration Court says it's undertaking to find immigrants it loses track of. Instead, advocates say the court has set up a deportation conveyor belt, one that fast-tracks removal orders before immigrants can make their case to stay in the country.

The practice appears to have started this summer, when immigration attorneys became aware of a subset of hearings being scheduled for immigrants whose mail was being returned as undeliverable. The court was notifying immigrants of the hearings by sending mail to the same incorrect addresses, practically ensuring few would show up.

In immigration law, not showing up at a hearing is enough to be ordered deported on the spot, in what's known as an "in absentia" order of removal.

According to court data reviewed by The Chronicle, as many as 173 people were given deportation orders because of such proceedings in August and September — a nearly ninefold increase from the 20 similar orders given the previous seven months combined.

AMERICAN OVERSIGHT

ACLU of Northern California attorney Sean Riordan, who has been tracking the issue, compared the situation to a criminal proceeding where, if a defendant didn't show up for a routine step, the judge declared them guilty with limited ability to challenge the verdict. What's more, he said, the court scheduled the proceeding expecting the defendant not to show.

"Our society would not tolerate that, it's just grossly unfair, and we shouldn't tolerate something similar happening in the immigration courts," Riordan said. "It's especially problematic that the San Francisco Immigration Court is spending significant time and resources to obtain so many removal orders through a special docket in cases where they know people will not be able to appear for their hearings."

At this time, the effort appears limited to the San Francisco court, one of 70 such venues nationwide that hear immigrants' cases. But advocates fear other courts may see how many cases the San Francisco bench has closed through in-absentia orders and follow suit, saddling scores of immigrants with unknown deportation orders. The immigration court system is run entirely by the Department of Justice, which also employs the judges.

The Justice Department defended the practice as lawful and suggested it was more widespread than advocates realized, saying immigration courts have long created such dockets for returned mail in the name of efficiency.

"Immigration courts throughout the country create dockets in ways most appropriate for each court's caseload," spokesperson Kathryn Mattingly said in a statement to The Chronicle.

Data provided by the Justice Department showed a stark jump in in-absentia orders at group proceedings at the San Francisco court starting in August. From January to May of this year, there were only one or two such orders per month, up to 14 in June. In August there were 63, and in September there were 110. October's numbers are probably comparable, as attorneys tracking the docket counted a similar number of scheduled hearings as September, like the one The Chronicle observed on Tuesday.

H.C. holds an envelope with his change of address forms in San Mateo. The form is weeks late because the instructions were in English, a language he doesn't speak.

Constanza Hevia H./Special to The Chronicle

In courtroom number 20, immigration Judge Susan Phan first considered the seven people who appeared before her despite having wrong addresses on file. Each one clarified their correct address and was given a new court date. Then the judge moved on to a stack of blue case files for which no one presented in court.

Grouping the cases by country, Phan opened and closed each file, in the end ordering 23 people from Mexico, Guatemala, Honduras and El Salvador to be deported in what she called "group removal proceedings." The process took less than an hour.

On Sept. 15, in the courtroom of immigration Judge Ila Deiss, a different scene played out. Before the judge sat several immigrants whose notices were returned as undeliverable. Judge Deiss profusely thanked each for attending.

"If you didn't show up today you could have been ordered removed," Deiss told one teenager.

When Deiss moved on to the rest of the docket, cases in which no one was in court to answer, she scoured each application for phone numbers — which she then called from the bench. In one case, the man who was supposed to be in court told her that he was told his next appointment wasn't until 2022. "Phew!" Deiss exclaimed, rescheduling him for January.

When phone numbers didn't pan out, Deiss searched the internet. "I like to google addresses to see if it was something in the way it was written," she explained. But in the few cases in which

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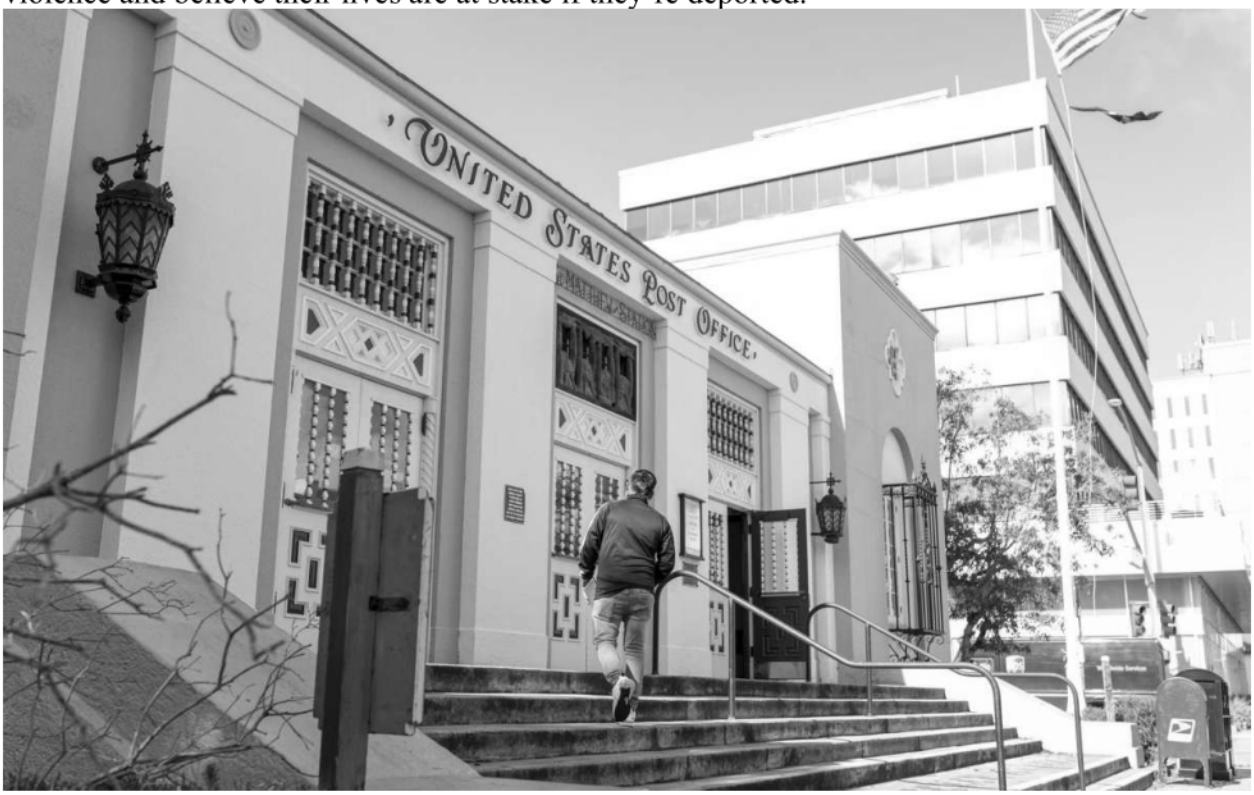
she could not find a working number, nor clarify the address, she entered an order of removal, in absentia.

The use of the "returned notice" hearings have alarmed advocates because the Biden administration has continued to emphasize a desire to cut down on an immigration court backlog that is nearing 1.5 million cases, according to a tracking database housed by Syracuse University. Though Biden says he wants a fair and humane immigration system, he has also embraced tactics used by the Trump administration to expedite deportations of new migrants and to turn away tens of thousands of people at the border.

Attorneys who have been tracking the hearings say they know of clients who are regularly going to their check-ins with Immigration and Customs Enforcement, and likely have their correct addresses on file. But ICE, a division of the Department of Homeland Security, does not update addresses automatically with the immigration courts, a division of the Justice Department, an arcane feature of a system where one government agency employs the prosecutors and a sibling department employs the judges.

Attorney Milli Atkinson, program director at Immigrant Legal Defense, said the address change requirements are especially onerous for non-English-speaking immigrants. "It's a huge bureaucracy and it's an outdated system," Atkinson said.

For those navigating the process, understanding exactly what is required of them to stake a claim to stay in the country can be confounding. Many are fleeing brutal gangs or gender-based violence and believe their lives are at stake if they're deported.



H.C. walks into a San Mateo post office to send his change of address forms to the Office of the Chief Counsel of San Francisco.

Constanza Hevia H./Special to The Chronicle

H.C. showed up to Judge Deiss' courtroom in mid-September despite his mail being returned for an invalid address. (In keeping with its policy on anonymous sources, The Chronicle is

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identifying H.C. only by his initials because he fears violence from the gangs he fled in Guatemala.)

He had moved to the next apartment and his neighbor had passed on the notice, H.C. told the judge. She thanked him for coming.

There was no interpreter available for H.C.'s primary language, the Indigenous Poqomchi, so he communicated in limited Spanish. He was handed a notice in English with his next court date and instructions to change his address with the court if he moved.

When The Chronicle reached him a month later, H.C. had had no luck finding an attorney and was just filing his change-of-address form, weeks late. He didn't know any English speakers to help him, he said. He wondered why the judge or a clerk couldn't have entered his new address into the system while he was in court.

Maria did not change her address with the San Francisco court and was ordered deported in absentia last month. The Chronicle is only identifying Maria by her first name because she now has a deportation order and fears imperiling her case further by speaking out.

In June, Maria arrived at the Bay Area home of a relative with her two small children. She said ICE officers installed an app on her phone and every eight days she receives a notification that prompts her to take a selfie and send it in — a virtual ICE check-in. She has fully complied, she said.

Yet Maria says she experienced abuse where she was staying, so she relocated with her children to a domestic violence shelter in the Bay Area. There, she reached an uncle in Connecticut who arranged for Maria and the children to join him.

Maria continued her selfie check-ins with ICE but didn't inform the San Francisco Immigration Court that she had moved. When she didn't show up to her Sept. 29 hearing, the judge ordered her deported.

Atkinson was in the courtroom that day and remembered Maria from an intake interview. In the hour it took Atkinson to reach Maria, the judge had already ordered her removed. Atkinson pleaded with the judge to do a telephonic hearing, but the judge had moved on. Now Maria has to fight to have her case reopened and contest her order of removal to pursue a claim for asylum. That procedure, called a motion to reopen, is the only hope for the unknown number of immigrants who have been ordered deported in absentia by the San Francisco court. It's hard without a lawyer, advocates say, which many of them lack.

Judge Deiss acknowledged as much last month, when she reluctantly ordered the removal of an absent person she was unable to reach from the bench.

"Hopefully there will be a motion to reopen," Deiss told the one attorney present in her court, Malvina De La Canal, when she objected to the removal. But De La Canal told The Chronicle she worries that most of those being ordered removed won't even know the option exists.

San Francisco Chronicle data visualization developer Nami Sumida contributed to this report.

Tal Kopan and Deepa Fernandes are San Francisco Chronicle staff writers.

Email: tal.kopan@sfchronicle.com, deepa.fernandes@sfchronicle.com Twitter: @deepafern, @talkopan

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From: Mattingly, Kathryn (EOIR) <(b)(6)>
Sent: Monday, November 1, 2021 2:46 PM
To: Lampman, Zachary (EOIR) (CTR) (b)(6)>; Safi, Zakia (EOIR) (CTR)

AMERICAN OVERSIGHT

<[redacted]>
Subject: RE: News Clips - Nov. 1, 2021

Thanks to you both. Zakia – The link you just sent enables me to quickly copy. One sec before it disappears!

From: Lampman, Zachary (EOIR) (CTR) <[redacted]>
Sent: Monday, November 1, 2021 2:42 PM
To: Mattingly, Kathryn (EOIR) <[redacted]>; Safi, Zakia (EOIR) (CTR) [redacted]
Subject: RE: News Clips - Nov. 1, 2021

In order to get this article as a PDF, I have to be a subscriber, which costs money, so I am unable to scrape it from the site and make it a PDF. If you have a subscription that allows you past their pay-wall, I am able to walk you through saving it as a PDF.

Alternatively, if you had said account, I could log in to it and do it, but I defer to whatever you want to do.

V/r,

Zachary Lampman

From: Mattingly, Kathryn (EOIR) [redacted]
Sent: Monday, November 1, 2021 2:36 PM
To: Safi, Zakia (EOIR) (CTR) [redacted]
Cc: Lampman, Zachary (EOIR) (CTR) [redacted]
Subject: RE: News Clips - Nov. 1, 2021

Hi Zakia – Can you please let me know if you can get a copy? I'm looping in Zachary too to see if he can retrieve. I need to send a note to OCIJ this afternoon so I would like to have the article handy in case they need it. Thanks!

From: Mattingly, Kathryn (EOIR)
Sent: Monday, November 1, 2021 9:35 AM
To: Safi, Zakia (EOIR) (CTR) <[redacted]>
Subject: RE: News Clips - Nov. 1, 2021

Hi Zakia - Hope you had a great weekend! Are you able to retrieve a full copy of the SF Chronicle article below and pdf it for me? I worked with the reporters, and I was able to read it yesterday [redacted], but I want a full copy to share if I can get it. Stacia said to

AMERICAN OVERSIGHT

check with you because you would know if the library has a subscription. Please let me know. Thanks – Kathryn

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From: Safi, Zakia (EOIR) (CTR) <(b)(6)
Sent: Monday, November 1, 2021 9:27 AM
To: All of CLAD (EOIR) <All_of_CLAD@EOIR.USDOJ.GOV>
Subject: News Clips - Nov. 1, 2021

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

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S.F. Immigration Court fast-tracking cases in what critics say call a deportation conveyor belt, (*San Francisco Chronicle,* Tal Kopan and Deepa Fernandes, Oct. 31, 2021)

A San Francisco immigration judge took less than an hour on Tuesday to order 23 people deported. But none of the immigrants was present and it's unclear whether they knew about the hearing — even as they were deported for missing it. [Continue reading]

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IMMMIGRATION POLICY

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Biden is pushing to end "Remain in Mexico." But he may still have to enforce it. (*Vox*, Ellen Loanes, Oct. 31, 2021)

On Friday, the Department of Homeland Security **issued a new memo** terminating the Migrant Protection Protocol, a Trump-era directive requiring migrants to wait in Mexico for US immigration court hearings [Continue reading]

Dozens of Afghan Children Traumatized in Chicago Shelter, (*Documented NY,* Deanna Garcia, Oct. 30, 2021)

Three employees and others familiar with the conditions at a Chicago shelter housing Afghan children described horrific events to ProPublica. There are some Afghan children who have harmed themselves or others, or even threatened staff. [Continue reading]

Dems race to renovate Biden's domestic-policy foundation, (*Politico*, Burgess Everett, Oct. 30, 2021)

The Democratic Party is desperately trying to figure out just how solid Joe Biden's $1.75 trillion social spending framework really is. [Continue reading]

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What's in — and out — of Biden's $1.75 trillion social spending and climate bill, (*Kansas Reflector*, Ariana Figueroa and Laura Olson, Oct. 29, 2021)

President Joe Biden's sprawling social spending and climate package has been slimmed down into a still-massive $1.75 trillion plan that he and top congressional Democrats are attempting to wrestle through after months of negotiations. [Continue reading]

The Supreme Court Case That Created the 'Dreamer' Narrative, (*Politico*, Jesus A. Rodriguez, Oct. 31, 2021)

Consider the backdrop against which Democrats in Congress are debating how to help the 11 million undocumented immigrants in this country, [Continue reading]

Biden Administration Tries Again to End Trump-Era Remain-in-Mexico Immigration Policy, (*Wall Street Journa*l, Michelle Hackman, Oct. 29, 2021)

The Biden administration is making a second attempt to end the Remain-in-Mexico program in the face of a court ruling ordering the government to restart the Trump-era border policy. [Continue reading]

Supreme Court to hear case on state efforts to revive a Trump immigration policy, (*NBC News*, Andrew Harrer, Oct. 29, 2021)

The Supreme Court agreed Friday to take up an effort by Republican officials to revive a Trump administration effort that denied green cards to immigrants considered likely to become overly dependent on government benefits. [Continue reading]

Democrats Call for Investigation into Texas Gov. Abbott's 'Catch And Jail' Immigration Policy, (*Forbes*, Anna Kaplan, Oct. 29, 2021)

Over two dozen Congressional Democrats called Friday for an investigation into Texas Gov. Greg Abbott's "catch and jail" policy, which allows state police to arrest migrants on criminal trespassing charges despite alleged constitutional due process violations. [Continue reading]

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DEPARTMENT OF HOMELAND SECURITY

Democratic reps call for investigation into Texas border policy, (*The Hill,* Lexi Lonas, Oct. 29, 2021)

Democratic representatives are calling on Department of Homeland Security (DHS) Secretary Alejandro Mayorkas and U.S. Attorney General Merrick Garland to investigate Texas's border policies. [Continue reading]

AMERICAN OVERSIGHT

DHS releases rules for opening land borders to foreign nationals next month, (*CNN*, Priscilla Alvarez, Oct. 29 2021)

The Department of Homeland Security on Friday issued new rules for reopening the nation's land borders on November 8. [Continue reading]

AMERICAN OVERSIGHT

S.F. Immigration Court fast-tracking cases in what critics say call a deportation conveyor belt

Oct. 31, 2021

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AMERICAN OVERSIGHT

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On Sept. 15, in the courtroom of immigration Judge Ila Deiss, a different scene played out. Before the judge sat several immigrants whose notices were returned as undeliverable. Judge Deiss profusely thanked each for attending.

“If you didn’t show up today you could have been ordered removed,” Deiss told one teenager.

When Deiss moved on to the rest of the docket, cases in which no one was in court to answer, she scoured each application for phone numbers — which she then called from the bench. In one case, the man who was supposed to be in court told her that he was told his next appointment wasn’t until 2022. “Phew!” Deiss exclaimed, rescheduling him for January.

When phone numbers didn’t pan out, Deiss searched the internet. “I like to google addresses to see if it was something in the way it was written,” she explained. But in the few cases in which she could not find a working number, nor clarify the address, she entered an order of removal, in absentia.

The use of the “returned notice” hearings have alarmed advocates because the Biden administration has continued to emphasize a desire to cut down on an immigration court backlog that is nearing 1.5 million cases, according to a tracking database housed by Syracuse University. Though Biden says he wants a fair and humane immigration system, he has also embraced tactics used by the Trump administration to expedite deportations of new migrants and to turn away tens of thousands of people at the border.

AMERICAN OVERSIGHT

Attorneys who have been tracking the hearings say they know of clients who are regularly going to their check-ins with Immigration and Customs Enforcement, and likely have their correct addresses on file. But ICE, a division of the Department of Homeland Security, does not update addresses automatically with the immigration courts, a division of the Justice Department, an arcane feature of a system where one government agency employs the prosecutors and a sibling department employs the judges.

Attorney Milli Atkinson, program director at Immigrant Legal Defense, said the address change requirements are especially onerous for non-English-speaking immigrants. “It’s a huge bureaucracy and it’s an outdated system,” Atkinson said.

For those navigating the process, understanding exactly what is required of them to stake a claim to stay in the country can be confounding. Many are fleeing brutal gangs or gender-based violence and believe their lives are at stake if they’re deported.

H.C. walks into a San Mateo post office to send his change of address forms to the Office of the Chief Counsel of San Francisco.

Constanza Hevia H./Special to The Chronicle

H.C. showed up to Judge Deiss’ courtroom in mid-September despite his mail being returned for an invalid address. (In keeping with its policy on anonymous sources, The Chronicle is identifying H.C. only by his initials because he fears violence from the gangs he fled in Guatemala.)

He had moved to the next apartment and his neighbor had passed on the notice, H.C. told the judge. She thanked him for coming.

AMERICAN OVERSIGHT

There was no interpreter available for H.C.'s primary language, the Indigenous Poqomchi, so he communicated in limited Spanish. He was handed a notice in English with his next court date and instructions to change his address with the court if he moved.

When The Chronicle reached him a month later, H.C. had had no luck finding an attorney and was just filing his change-of-address form, weeks late. He didn't know any English speakers to help him, he said. He wondered why the judge or a clerk couldn't have entered his new address into the system while he was in court.

Maria did not change her address with the San Francisco court and was ordered deported in absentia last month. The Chronicle is only identifying Maria by her first name because she now has a deportation order and fears imperiling her case further by speaking out.

In June, Maria arrived at the Bay Area home of a relative with her two small children. She said ICE officers installed an app on her phone and every eight days she receives a notification that prompts her to take a selfie and send it in — a virtual ICE check-in. She has fully complied, she said.

Yet Maria says she experienced abuse where she was staying, so she relocated with her children to a domestic violence shelter in the Bay Area. There, she reached an uncle in Connecticut who arranged for Maria and the children to join him.

Maria continued her selfie check-ins with ICE but didn't inform the San Francisco Immigration Court that she had moved. When she didn't show up to her Sept. 29 hearing, the judge ordered her deported.

Atkinson was in the courtroom that day and remembered Maria from an intake interview. In the hour it took Atkinson to reach Maria, the judge had already ordered her removed. Atkinson pleaded with the judge to do a telephonic hearing, but the judge had moved on. Now Maria has to fight to have her case reopened and contest her order of removal to pursue a claim for asylum.

That procedure, called a motion to reopen, is the only hope for the unknown number of immigrants who have been ordered deported in absentia by the San Francisco court. It's hard without a lawyer, advocates say, which many of them lack.

Judge Deiss acknowledged as much last month, when she reluctantly ordered the removal of an absent person she was unable to reach from the bench.

"Hopefully there will be a motion to reopen," Deiss told the one attorney present in her court, Malvina De La Canal, when she objected to the removal. But De La Canal told The Chronicle she worries that most of those being ordered removed won't even know the option exists.

San Francisco Chronicle data visualization developer Nami Sumida contributed to this report.

Tal Kopan and Deepa Fernandes are San Francisco Chronicle staff writers.
Email: tal.kopan@sfchronicle.com, deepa.fernandes@sfchronicle.com Twitter: @deepafern, @talkopan

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Mon, 25 Oct 2021 23:39:03 +0000
To: McDaniel, Scott (EOIR); Young, Elizabeth L. (EOIR)
Cc: Daugherty, Daniel J (EOIR); Cheng, Mary (EOIR); Margolin, Daren K. (EOIR); Fooshe, Alexis (EOIR); St Jean, Amanda (EOIR); Nance, Kelly (EOIR)
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Good to know. Thanks so very much! – Kathryn

From: McDaniel, Scott (EOIR) <(b)(6)>
Sent: Monday, October 25, 2021 7:36 PM
To: Mattingly, Kathryn (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)> Fooshe, Alexis (EOIR) <(b)(6)>; St Jean, Amanda (EOIR) <(b)(6)>; Nance, Kelly (EOIR) <(b)(6)>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Kathryn:
These are specialized masters we created months ago to address all of the returned, undeliverable mail to pro se respondents. (b)(5)

(b)(5)

Thanks:
Scott

From: Mattingly, Kathryn (EOIR) <(b)(6)>
Sent: Monday, October 25, 2021 4:31 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)>; McDaniel, Scott (EOIR) <(b)(6)>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)>; Cheng, Mary (EOIR) <(b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)> Fooshe, Alexis (EOIR) <(b)(6)>; St Jean, Amanda (EOIR) <(b)(6)>; Nance, Kelly (EOIR) <(b)(6)>
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Judge Young, and all – (b)(5)

(b)(5)

For my knowledge, (b)(5) Thanks – Kathryn

From: Mattingly, Kathryn (EOIR)
Sent: Monday, October 25, 2021 5:24 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)>; McDaniel, Scott (EOIR)

AMERICAN OVERSIGHT

(b)(6)

Cc: Daugherty, Daniel J (EOIR) [redacted]; Cheng, Mary (EOIR) (b)(6); Margolin, Daren K. (EOIR) <(b)(6); Fooshe, Alexis (EOIR) <(b)(6)>; St Jean, Amanda (EOIR) <(b)(6)>; Nance, Kelly (EOIR) (b)(6)

Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

Hello Judge Young – Thanks so much for the quick response (b)(5) (b)(5) but I will remind her again when I get back to her tonight. I also want to point out that (b)(5) (b)(5) (b)(5) Just my guess, so thanks (b)(5) – Kathryn

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From: Young, Elizabeth L. (EOIR) <(b)(6)>
Sent: Monday, October 25, 2021 5:09 PM
To: Mattingly, Kathryn (EOIR) <(b)(6); McDaniel, Scott (EOIR) (b)(6)
Cc: Daugherty, Daniel J (EOIR) (b)(6)>; Cheng, Mary (EOIR) (b)(6)>; Margolin, Daren K. (EOIR (b)(6); Fooshe, Alexis (EOIR) <(b)(6)>; St Jean, Amanda (EOIR) <(b)(6)>; Nance, Kelly (EOIR) <(b)(6)
Subject: RE: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26

From my perspective: In terms of capacity, we are okay because certain courtrooms aren't being used this week. (b)(5) (b)(5) I will make sure (b)(5) on the 4th floor so they know.

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Mattingly, Kathryn (EOIR) <(b)(6)
Sent: Monday, October 25, 2021 2:02 PM
To: McDaniel, Scott (EOIR) <(b)(6)
Cc: Daugherty, Daniel J (EOIR) <(b)(6); Cheng, Mary (EOIR) (b)(6)>; Young, Elizabeth L. (EOIR) (b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)>; Fooshe, Alexis (EOIR) <(b)(6)>; St Jean, Amanda (EOIR) (b)(6); Nance, Kelly (EOIR) (b)(6)>
Subject: NPR Affiliate in SF (KQED) to Observe Dedicated Docket Cases Tomorrow, Oct. 26
Importance: High

AMERICAN OVERSIGHT

Hi Scott,

KQED reporter Tyche Hendricks just notified us that she's going to the San Francisco Immigration Court tomorrow to observe DD cases (she must be working with an advocacy group or an attorney since she knows the schedule). To the best of my knowledge, the San Francisco Chronicle reporter, Deepa Fernandes, will be visiting tomorrow as well. I know we have limited attendance practices in place, but do you have a sense of whether we can accommodate two reporters tomorrow?

Also, (b)(5)

(b)(5)

It's unclear (b)(5) I think it should be okay since this is not a detained area, but please let me know.

Thanks,
Kathryn

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 25 Oct 2021 13:47:29 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Reminder: Specialized Docket Updates Due Today
Attachments: SFR specialized completion log.xlsx

Here you go, Naleshia - Have a great day!

-----Original Message-----
From: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Sent: Monday, October 25, 2021 3:14 AM
To: All of ACIJs (EOIR) <AllofACIJs@EOIR.USDOJ.GOV>
Cc: Cheng, Mary (EOIR) (b)(6); Daugherty, Daniel J (EOIR) (b)(6) McNulty, Sheila (EOIR) (b)(6)
Subject: Reminder: Specialized Docket Updates Due Today

Good Morning ACIJs,

This is just a friendly reminder to those that have a Specialized Docket that your updates are due today.

Thank you to all of you who have already turned in your updates.

Have a great day!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review Office of the Chief Clerk Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) office)

AMERICAN OVERSIGHT

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
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Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
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Nelson	7A Status Docket Adult	10/8/2021	14	12	86%
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AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 1 Nov 2021 15:10:25 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Reminder: Specialized Docket Updates Due Today
Attachments: SFR specialized completion log.xlsx

Here you go, Naleshia! Thanks and you have a great day, too!

From: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Sent: Monday, November 1, 2021 2:55 AM
To: All of ACIJs (EOIR) <AllofACIJs@EOIR.USDOJ.GOV>
Cc: Daugherty, Daniel J (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6)
Subject: Reminder: Specialized Docket Updates Due Today

Good Morning ACIJs,

This is just a friendly reminder to those that have a Specialized Docket that your updates are due today.

Thank you to all of you who have already turned in your updates.

Have a great day!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Immigration Judge
Office of the Chief Clerk
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) office)

AMERICAN OVERSIGHT

Specialized Docket Running Totals					
San Francisco Immigration Court					
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Phan	7A Status Docket Adult	11/9/2021	20		0%
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Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 8 Nov 2021 15:38:47 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Reminder: Specialized Docket Updates Due Today
Attachments: SFR specialized completion log.xlsx

Here's this week's docket update!

Have a great Monday!

From: Young, Elizabeth L. (EOIR)
Sent: Monday, November 1, 2021 8:10 AM
To: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Subject: RE: Reminder: Specialized Docket Updates Due Today

Here you go, Naleshia! Thanks and you have a great day, too!

From: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Sent: Monday, November 1, 2021 2:55 AM
To: All of ACIJs (EOIR) (b)(6)
Cc: Daugherty, Daniel J (EOIR) (b)(6); McNulty, Sheila (EOIR) (b)(6)
Subject: Reminder: Specialized Docket Updates Due Today

Good Morning ACIJs,

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Thank you to all of you who have already turned in your updates.

Have a great day!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Immigration Judge
Office of the Chief Clerk
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) (office)

AMERICAN OVERSIGHT

Specialized Docket Running Totals					
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Deiss	7A Status Docket Adult	11/3/2021	20	16	80%
Young	7A Status Docket Juvenile	11/4/2021	80	73	91%
Young	7A Status Docket Juvenile	11/4/2021	67	62	93%
Phan	7A Status Docket Adult	11/4/2021	20	18	90%
Butler	7A Status Docket Adult	11/4/2021	20	17	85%
Phan	7A Status Docket Adult	11/9/2021	20		0%
Butler	7A Status Docket Adult	11/9/2021	20		0%
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Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 22 Nov 2021 14:13:02 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Reminder: Specialized Docket Updates Due Today
Attachments: SFR specialized completion log.xlsx

Good morning, Naleshia!
Attached is the specialized docket log for SFR (no change from my late-submitted email from last week!).

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Sent: Monday, November 22, 2021 3:00 AM
To: All of ACIJs (EOIR) (b)(6)
Cc: Daugherty, Daniel J (EOIR) (b)(6) McNulty, Sheila (EOIR) (b)(6) Cheng, Mary (EOIR) (b)(6)
Subject: Reminder: Specialized Docket Updates Due Today

Good Morning ACIJs,

This is just a friendly reminder to those that have a Specialized Docket that your updates are due today.

Thank you to all of you who have already turned in your updates.

Have a wonderful Thanksgiving!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Immigration Judge
Office of the Chief Clerk
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) (office)

AMERICAN OVERSIGHT

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
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Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
Young	7A Status Docket Juvenile	10/7/2021	135	128	95%
Nelson	7A Status Docket Adult	10/8/2021	14	12	86%
Caborn	Returned Notice Docket	10/13/2021	21	17	81%
Young	7A Status Docket Juvenile	10/14/2021	10	10	100%
Caborn	Returned Notice Docket	10/18/2021	23	16	70%
Young	7A Status Docket Juvenile	10/19/2021	51	47	92%
Phan	Returned Notice Docket	10/26/2021	29	24	83%
Deiss	7A Status Docket Adult	10/27/2021	20	20	100%
Star	Returned Notice Docket	10/29/2021	28	20	71%
Phan	7A Status Docket Adult	11/2/2021	20	18	90%
Caborn	Returned Notice Docket	11/3/2021	34	27	79%
Deiss	7A Status Docket Adult	11/3/2021	20	16	80%
Young	7A Status Docket Juvenile	11/4/2021	80	73	91%
Young	7A Status Docket Juvenile	11/4/2021	67	62	93%
Phan	7A Status Docket Adult	11/4/2021	20	18	90%
Butler	7A Status Docket Adult	11/4/2021	20	17	85%
Phan	7A Status Docket Adult	11/9/2021	20	18	90%
Butler	7A Status Docket Adult	11/9/2021	20	16	80%
Deiss	7A Status Docket Adult	11/10/2021	20	19	95%
Butler	7A Status Docket Adult	11/16/2021	20	20	100%
Deiss	7A Status Docket Adult	11/17/2021	20	17	85%
Butler	7A Status Docket Adult	11/18/2021	20	18	90%
Butler	7A Status Docket Adult	11/23/2021	20		0%

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 18 Oct 2021 15:37:12 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: RE: Reminder: Specialized Docket Updates Due Today
Attachments: SFR specialized completion log.xlsx

Here you, go, Naleshia!

And a great day to you, too!

-----Original Message-----
From: Spencer, Naleshia T. (EOIR) (CTR) <(b)(6)
Sent: Monday, October 18, 2021 3:14 AM
To: All of ACIJs (EOIR) <(b)(6)
Cc: Cheng, Mary (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>
Subject: Reminder: Specialized Docket Updates Due Today

Good Morning ACIJs,

This is just a friendly reminder to those that have a Specialized Docket that your updates are due today. In case you may have missed last week, I have included the most up to date report.

Thank you to all of you who have already turned in your updates.

Have a great day and an amazing week!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review Office of the Chief Clerk Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) (office)

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Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
Young	7A Status Docket Juvenile	10/7/2021	135	128	95%
Nelson	7A Status Docket Adult	10/8/2021	14	12	86%
Caborn	Returned Notice Docket	10/13/2021	21	17	81%
Young	7A Status Docket Juvenile	10/14/2021	10	10	100%
Caborn	Returned Notice Docket	10/18/2021	23		0%
Young	7A Status Docket Juvenile	10/19/2021	51		0%
Phan	Returned Notice Docket	10/26/2021	29		0%
Deiss	7A Status Docket Adult	10/27/2021	20		0%
Star	Returned Notice Docket	10/29/2021	28		0%
Phan	7A Status Docket Adult	11/2/2021	20		0%
Caborn	Returned Notice Docket	11/3/2021	34		0%
Deiss	7A Status Docket Adult	11/3/2021	20		0%
Phan	7A Status Docket Adult	11/4/2021	20		0%
Butler	7A Status Docket Adult	11/4/2021	20		0%
Phan	7A Status Docket Adult	11/9/2021	20		0%
Butler	7A Status Docket Adult	11/9/2021	20		0%
Deiss	7A Status Docket Adult	11/10/2021	20		0%
Butler	7A Status Docket Adult	11/16/2021	20		0%
Deiss	7A Status Docket Adult	11/17/2021	20		0%
Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

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From: Mattingly, Kathryn (EOIR)
Sent: Mon, 1 Nov 2021 14:01:35 +0000
To: Lampman, Zachary (EOIR) (CTR)
Subject: RE: Requests for Weekly Media Submissions 10/25 - 10/29
Attachments: Weekly News Inquiries Report (Week of Oct. 25, 2021).docx

Hi Zachary! Happy Monday!

Thanks so much for starting the weekly last week. It is extremely helpful. See attached, and I think I got them all but I'm rechecking. It's saved too ☺.

From: Lampman, Zachary (EOIR) (CTR) (b)(6)
Sent: Monday, November 1, 2021 9:58 AM
To: Barnes, Rob (EOIR) (b)(6) Nance, Kelly (EOIR) (b)(6) Kaltenbacher, Teresa A. (EOIR) (b)(6) St Jean, Amanda (EOIR) (b)(6) Martin, John (EOIR) (b)(6) Montenegro, Gail (EOIR) (b)(6); Mattingly, Kathryn (EOIR) (b)(6); Sherman, Bradley (EOIR) (b)(6)
Subject: Requests for Weekly Media Submissions 10/25 - 10/29

Hi all,

Sending a friendly reminder to please send me your input for the weekly media report.

Please let me know if there are no submission to include in the report.

V/r,

Zachary Lampman | Contractor
Communications and Legislative Affairs Division
Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
(b)(6) Mobile
(b)(6) Office
(b)(6)

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Weekly News Inquiries
Nov. 1, 2021

****This report highlights news inquiries received during the previous week****

#	Reporter	Outlet	Topic
	Rebecca Beitsch	The Hill	Second follow-up on whether Director Neal can be interviewed for a profile piece.
	Phillip Marcelo	Associated Press, Boston	Policy regarding IJ media interviews and whether it is a national policy.
	Maria Sacchetti	Washington Post	Current IJ listing by IC and year of appointment.
	Brenna Ehrlich	Rolling Stones	To confirm that respondent Shéyaa Bin Abraham-Joseph's Nov. 1 hearing got postponed.
	Adolfo Flores	BuzzFeed	Statistics of providers who have been added to the Pro Bono Legal Service Providers List to handle MPP cases, and comment regarding complaints on MPP implementation.
	Alyssa Aquino	Law360	First Circuit's Oct. 25, 2021, decision remanding Andrea Joy James' case to the BIA.
	Grace Dixon	Law360	Third Circuit's Oct. 28, 2021, decision *Juliana Martirez Arreaga Bravo v. Attorney General United States.*
	Tyche Hendricks	NPR affiliate, San Francisco	San Francisco IC visit Oct. 29 to observe DD cases and Oct. 26 to observe "returned notice" docket, and how to obtain a copy of a DAR.
	Tal Kopan/Deepa Fernandes	San Francisco Chronicle	Whether HQ was aware of the San Francisco IC's specialized master calendar docket for "returned notices" and details, *in absentia* statistics, and response to advocates' due process concerns about targeting, *"...a group likely to result in mass absentia removal orders..."*

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From: Young, Elizabeth L. (EOIR)
Sent: Tue, 16 Nov 2021 18:36:49 +0000
To: Milli Atkinson
Subject: RE: Returned Notice Docket

Sounds good – I'll give you a call around 9:00 on Monday!

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, November 16, 2021 10:05 AM
To: Young, Elizabeth L. (EOIR) [(b)(6)]
Subject: [EXTERNAL] RE: Returned Notice Docket

How about Monday at 9:00 am? I will be working remotely, so the easiest way to reach me is on my cell phone 415.497.4839.

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

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OF THE BAR ASSOCIATION OF SAN FRANCISCO

The AOD Program is now offering remote consultations for the immigrant community! Call (408) 461-8795 for a free consultation with an immigration attorney. See here for more information.

From: Young, Elizabeth L. (EOIR) [mailto:(b)(6)]
Sent: Tuesday, November 16, 2021 10:02 AM
To: Milli Atkinson
Subject: RE: Returned Notice Docket

I'm actually doing a virtual conference all week this week, so don't have as much free time. Perhaps next week? I have Monday morning until 10 and after then after 3; and Tuesday until 10:00 and after 1:00.

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, November 16, 2021 9:36 AM
To: Young, Elizabeth L. (EOIR) [(b)(6)]
Subject: [EXTERNAL] RE: Returned Notice Docket

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Dear ACIJ Young,

Thank you so much for your response. I've shared it with my colleagues who co-authored the letter and we look forward to continuing the discussion on this issue.

On an unrelated note, I wanted to follow up with you regarding discussions we have had with Leslie Ungerman regarding pro se respondents requesting prosecutorial discretion. Do you have time for a call this week? My schedule is pretty open today and tomorrow, or we can talk next week if that is more convenient for you.

Best,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

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From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, November 16, 2021 6:26 AM
To: Milli Atkinson
Subject: RE: Returned Notice Docket

Ms. Atkinson:
My apologies for not responding earlier. I have received your letter and the organization is working on creating a response. I just wanted to let you know in the interim that this not an issue that is being ignored, rather that we would like to have a thoughtful response.

Thank you,

Elizabeth

Elizabeth L. Young
Assistant Chief Immigration Judge

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San Francisco Immigration Court
Govt. cel (b)(6)
Office –

From: Milli Atkinson <matkinson@sfbar.org>
Sent: Tuesday, November 2, 2021 4:09 PM
To: Young, Elizabeth L. (EOIR) < (b)(6)
Subject: [EXTERNAL] Returned Notice Docket

Dear ACIJ Young,

I hope you are well. I am writing on behalf of the Justice & Diversity Center, the ACLU of Northern California, AILA NorCal Advocacy Liaisons and the Nation Lawyers Guild – San Francisco Bay Area Chapter to express our concern over the Court's implementation of the Returned Notice Docket. I have mailed a copy of the attached letter via regular mail this afternoon, but wanted to provide a PDF copy via email as well.

We look forward to hearing from you soon to discuss the issues raised in the attached letter and hope that we can work together to resolve these issues.

Sincerely,

Milli Atkinson
She/her
Immigrant Legal Defense Program Director
San Francisco Immigrant Legal Defense Collaborative Legal Director
The Justice & Diversity Center of The Bar Association of San Francisco
201 Mission St., Suite 400 | San Francisco, CA 94105
Tel: (415) 782-8926 | Fax: (415) 688-4633
matkinson@sfbar.org | www.sfbar.org/sfildc

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OF THE BAR ASSOCIATION OF SAN FRANCISCO

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in error, please notify me immediately by reply email, delete this email, and do not disclose its contents to anyone.

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From: Young, Elizabeth L. (EOIR)
Sent: Mon, 3 Jan 2022 22:41:21 +0000
To: Lee-Sullivan, Marcia L. (EOIR)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Sounds good! I'll draft the response I had and wait to hear back.
Thank you SO MUCH for being the go-between on this. It's my (b)(5) (b)(5) I appreciate your expertise and helping out!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Sent: Monday, January 3, 2022 2:40 PM
To: Young, Elizabeth L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Judge Young,

I do not believe so – but just to be on the safe side, I sent the question to Jeniffer. I anticipate receiving a response tomorrow.

v/r
Marcia

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Monday, January 3, 2022 5:36 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Thank you – I was actually just in the process of gathering my emails. They were indeed largely duplicative of what had already been submitted. Should I go ahead and submit what I have gathered so far – I think it was in the order of about 50ish emails…

From: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Sent: Monday, January 3, 2022 2:34 PM

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To: Young, Elizabeth L. (EOIR) (b)(6)
Subject: FW: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Judge Young,

See response below form the FOIA Office.

v/r
Marcia

From: Perez Santiago, Jeniffer (EOIR) (b)(6)
Sent: Monday, January 3, 2022 3:03 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Hi Marcia,

We will (b)(5)
(b)(5)

Thank you,

Jeniffer Perez Santiago
Attorney Advisor (FOIA)

From: Perez Santiago, Jeniffer (EOIR)
Sent: Thursday, December 23, 2021 2:57 PM
To: Young, Elizabeth L. (EOIR) (b)(6); Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good afternoon Judge Young,

Thank you for your response, this is very helpful. If you can (b)(5)
(b)(5)

Happy Holidays!

Jeniffer Perez Santiago
Attorney Advisor (FOIA)

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Thursday, December 23, 2021 1:25 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Cc: Perez Santiago, Jeniffer (EOIR) (b)(6)
Subject: Re: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

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(b)(5)

On Dec 23, 2021, at 9:44 AM, Lee-Sullivan, Marcia L. (EOIR) <(b)(6) (b)(6) wrote:

Good Afternoon Judge Young,

The FOIA Office provided further guidance regarding this FOIA request. See email below from Jeniffer Perez Santiago (Attorney Advisor, FOIA).

Please note, after today I will be (b)(6) - **please respond to all to ensure Jeniffer receives your response.**

v/r
Marcia

From: Perez Santiago, Jeniffer (EOIR) <(b)(6)
Sent: Thursday, December 23, 2021 9:16 AM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good morning Marcia,

I'm (b)(5)

(b)(5)

Also (b)(5)

(b)(5)

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Let me know what she thinks.

Thank you again,

Jeniffer Perez Santiago
Attorney Advisor (FOIA)

From: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Sent: Thursday, December 23, 2021 8:13 AM
To: Perez Santiago, Jeniffer (EOIR) (b)(6)
Subject: FW: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good Morning Jeniffer,

See response below from Judge Young.

v/r
Marcia

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Wednesday, December 22, 2021 5:00 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

Marcia:

I am not (b)(5)

(b)(5)

Regarding documents from me – (b)(5)

(b)(5)

I think that responds to all (b)(5) but, again, just let me know!

Elizabeth

From: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Sent: Wednesday, December 22, 2021 6:28 AM
To: Young, Elizabeth L. (EOIR) (b)(6)
Subject: Seeking Additional Information : FOIA Request: 2022-12540 Search Request OCIJ-SFC

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Good Morning Judge Young,

The FOIA office is seeking additional information / clarification for Item (b)(5)

Read entire email traffic.

v/r
Marcia

From: Perez Santiago, Jeniffer (EOIR) (b)(6)
Sent: Wednesday, December 22, 2021 8:45 AM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good morning Marcia,

I apologize for not responding yesterday, but I (b)(5)

In a previous email, Judge Young expressed that for item (b)(5)

(b)(5)

I hope this helps. Let me know if you have any questions or would like to discuss.

Thank you,

Jeniffer
Jeniffer Perez Santiago
Attorney Advisor (FOIA)

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From: Lee-Sullivan, Marcia L. (EOIR) [(b)(6)]
Sent: Tuesday, December 21, 2021 4:12 PM
To: Perez Santiago, Jeniffer (EOIR) [(b)(6)]
Subject: FW: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Jeniffer,

There are only items [(b)(5)] listed in the original email below. Before I contact Judge Young [(b)(5)]?

Marcia

From: Lee-Sullivan, Marcia L. (EOIR)
Sent: Tuesday, December 21, 2021 4:03 PM
To: Perez Santiago, Jeniffer (EOIR) [(b)(6)]
Subject: RE: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Hi Jeniffer,

On December 10, Judge Young requested [(b)(5)]

[(b)(5)]

I will ask Judge Young to confirm if the records she sent is [(b)(5)]

v/r
Marcia

From: Perez Santiago, Jeniffer (EOIR) [(b)(6)]
Sent: Tuesday, December 21, 2021 3:10 PM
To: Lee-Sullivan, Marcia L. (EOIR) [(b)(6)]
Subject: RE: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good afternoon Marcia,

If Judge Young conducted a [(b)(5)]

[(b)(5)]

[(b)(5)] Can you please confirm.

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Let me know if you will like to discuss or if you have any other questions.

Best,

Jeniffer Perez Santiago
Attorney Advisor (FOIA)
Office of the General Counsel
Executive Office for Immigration Review
Department of Justice
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041
Cell (b)(6)

From: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Sent: Tuesday, December 21, 2021 8:35 AM
To: Perez Santiago, Jeniffer (EOIR) (b)(6)
Subject: FW: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Good Morning Jeniffer,

See response below and attachments. I responded to Judge Young regarding her question about (b)(5)

v/r
Marcia

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Monday, December 20, 2021 6:16 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: RE: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Marcia:
I sent out a request to all IJs/staff at SFR requesting any documents related to this FOIA request. In response, please find the attached documents. Reported search time was 22 increments of 15 minutes. I am still awaiting the (b)(5)
(b)(5)
I (b)(5) I will be (b)(6) but will have access to my computer and can work on whatever needs to be done as long as I have a general time frame (I will be (b)(6) and won't be checking email regularly). If I receive any last minute responses, I will forward them to you by COB 21st and COB 22nd.

Thank you,
Elizabeth

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Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Young, Elizabeth L. (EOIR)
Sent: Friday, December 10, 2021 12:03 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Subject: FW: FOIA Request: 2022-12540 Search Request OCIJ-SFC

Marcia –
Judge Daugherty indicated that I could request (b)(6) (b)(6) Is that a possibility? The only relevant documents would be in category (b)(6) (b)(6)

Thank you –

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Lee-Sullivan, Marcia L. (EOIR) <(b)(6)>
Sent: Friday, December 10, 2021 5:41 AM
To: McDaniel, Scott (EOIR) <(b)(6)>; Young, Elizabeth L. (EOIR) <(b)(6)>
Cc: Daugherty, Daniel J (EOIR) <(b)(6)>; Weiss, Daniel H (EOIR) <(b)(6)>
Subject: FOIA Request: 2022-12540 Search Request OCIJ-SFC
Importance: High

Good Morning,

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The Office of the Chief Immigration Judge received a FOIA request from (b)(6) of American Civil Liberties Union of Northern California seeking information regarding

1. All documents concerning the San Francisco Immigration Court's returned notice docket.

3. All documents the San Francisco Immigration Court shared through Case Access System for EOIR (CASE), or other similar databases, with ICE regarding in absentia removal orders during the time period of January 1st, 2021 until December 1st, 2021.

The original request is attached for more information.

Let me know if you have any responsive documents.

v/r
Marcia

From: eoir.foiarequests@usdoj.gov <eoir.foiarequests@usdoj.gov>
Sent: Thursday, December 9, 2021 3:19 PM
To: Lee-Sullivan, Marcia L. (EOIR) (b)(6)
Cc: Perez Santiago, Jeniffer (EOIR) (b)(6)
Subject: 2022-12540 Search Request OCIJ-SFC

Request for Documents for Request # '2022-12540'. Your response due date is: 12/23/2021 12:00:00 AM Message from SENDER:

Good Afternoon:

EOIR FOIA received a FOIA request from (b)(6) of American Civil Liberties Union of Northern California seeking information regarding

"1. All documents concerning the San Francisco Immigration Court's "returned notice docket.

3. All documents the San Francisco Immigration Court shared through Case Access System for EOIR (CASE), or other similar databases, with ICE regarding in absentia removal orders during the time period of January 1st, 2021 until December 1st, 2021."

(b)(6)

AMERICAN OVERSIGHT

(b)(6)

Please send all materials to me by the first business day following 10 calendar days of receipt of this e-mail, or by 12/23/2021, if possible. If you cannot meet the deadline, please notify me of an anticipated completion date.

Thank you for your cooperation.

Sincerely,

Jeniffer Perez Santiago
Attorney Advisor

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Mon, 23 Aug 2021 14:30:36 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Cc: Cheng, Mary (EOIR)
Subject: RE: Specialized Docket Log

Below find a complete list of both completed specialized dockets as well as future-scheduled dates.

Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106		0%
Phan	Returned Notice Docket	8/24/2021	18		0%
Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%

AMERICAN OVERSIGHT

Swink	Returned Notice Docket	9/1/2021	21		0%
Savage	Returned Notice Docket	9/2/2021	21		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Deiss	Returned Notice Docket	9/15/2021	20		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%
Star	Returned Notice Docket	9/22/2021	27		0%
Nelson	7A Status Docket Adult	9/24/2021	82		0%
George	7A Status Docket Juvenile	9/27/2021	33		0%
Phan	Returned Notice Docket	9/28/2021	28		0%
Caborn	Returned Notice Docket	9/29/2021	30		0%
Savage	Returned Notice Docket	10/7/2021	21		0%
Deiss	Returned Notice Docket	10/13/2021	21		0%
Deiss	7A Status Docket Adult	10/27/2021	20		0%
Phan	7A Status Docket Adult	11/2/2021	20		0%
Deiss	7A Status Docket Adult	11/3/2021	20		0%
Phan	7A Status Docket Adult	11/4/2021	20		0%

AMERICAN OVERSIGHT

Butler	7A Status Docket Adult	11/4/2021	20		0%
Phan	7A Status Docket Adult	11/9/2021	20		0%
Butler	7A Status Docket Adult	11/9/2021	20		0%
Deiss	7A Status Docket Adult	11/10/2021	20		0%
Butler	7A Status Docket Adult	11/16/2021	20		0%
Deiss	7A Status Docket Adult	11/17/2021	20		0%
Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

From: Young, Elizabeth L. (EOIR)
Sent: Monday, August 16, 2021 6:38 AM
To: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: FW: Specialized Docket Log

I have in my calendar that we should be sending updates on these dockets on Mondays – so here are our recent totals.
Let me know if you need anything else!
Elizabeth

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/13/2021					
Judge	**Type of Specialized Docket**	**Hearing Date**	**# of cases scheduled**	**# of cases completed**	**Percentage**
Cabor n	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%

AMERICAN OVERSIGHT

Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Tue, 5 Oct 2021 22:38:02 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Cc: Cheng, Mary (EOIR)
Subject: RE: Specialized Docket Log
Attachments: SFR specialized completion log.xlsx

Naleshia –
I got caught up yesterday and didn't send you this update. Apologies for being late!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

From: Young, Elizabeth L. (EOIR)
Sent: Tuesday, September 28, 2021 9:44 AM
To: Spencer, Naleshia T. (EOIR) (CTR) <(b)(6)>
Cc: Cheng, Mary (EOIR) <(b)(6)>
Subject: RE: Specialized Docket Log

Naleshia:
Are you still collecting these? It looks like (b)(5) Here is the update for this week, though.

Thank you,

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

AMERICAN OVERSIGHT

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21		0%
Young	7A Status Docket Juvenile	10/7/2021	135		0%
Nelson	7A Status Docket Adult	10/8/2021	14		0%
Caborn	Returned Notice Docket	10/13/2021	21		0%
Young	7A Status Docket Juvenile	10/14/2021	10		0%
Caborn	Returned Notice Docket	10/18/2021	23		0%
Young	7A Status Docket Juvenile	10/19/2021	51		0%
Phan	Returned Notice Docket	10/26/2021	29		0%
Deiss	7A Status Docket Adult	10/27/2021	20		0%
Star	Returned Notice Docket	10/29/2021	28		0%
Phan	7A Status Docket Adult	11/2/2021	20		0%
Caborn	Returned Notice Docket	11/3/2021	34		0%
Deiss	7A Status Docket Adult	11/3/2021	20		0%
Phan	7A Status Docket Adult	11/4/2021	20		0%
Butler	7A Status Docket Adult	11/4/2021	20		0%
Phan	7A Status Docket Adult	11/9/2021	20		0%
Butler	7A Status Docket Adult	11/9/2021	20		0%
Deiss	7A Status Docket Adult	11/10/2021	20		0%
Butler	7A Status Docket Adult	11/16/2021	20		0%
Deiss	7A Status Docket Adult	11/17/2021	20		0%
Butler	7A Status Docket Adult	11/18/2021	20		0%
Butler	7A Status Docket Adult	11/23/2021	20		0%

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Tue, 12 Oct 2021 21:30:17 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Cc: Cheng, Mary (EOIR)
Subject: RE: Specialized Docket Log

Naleshia:
This week's updates.

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Cabor n	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%

AMERICAN OVERSIGHT

Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Cabor n	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
Young	7A Status Docket Juvenile	10/7/2021	135	128	95%

From: Young, Elizabeth L. (EOIR)
Sent: Tuesday, September 28, 2021 9:44 AM
To: Spencer, Naleshia T. (EOIR) (CTR) (b)(6)
Cc: Cheng, Mary (EOIR) (b)(6)
Subject: RE: Specialized Docket Log

Naleshia:
Are you still collecting these? It looks like (b)(5) Here is the update for this week, though.

Thank you,

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)

AMERICAN OVERSIGHT

Office – (b)(6)

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Fri, 27 Aug 2021 21:09:50 +0000
To: Murphy, Rebecca V. (EOIR)
Subject: RE: Spreadsheet

Sure – I can do that – then I can keep track as I get motions…

From: Murphy, Rebecca V. (EOIR) <(b)(6)>
Sent: Friday, August 27, 2021 1:18 PM
To: Young, Elizabeth L. (EOIR) <(b)(6)>
Subject: RE: Spreadsheet

Did you want me to (b)(5)

From: Young, Elizabeth L. (EOIR) <(b)(6)>
Sent: Friday, August 27, 2021 1:15 PM
To: Murphy, Rebecca V. (EOIR) <(b)(6)>
Subject: Spreadsheet

Sorry about the craziness with the tracking bit. We'll have to do it for all the specialized dockets. This is what the final product looks like, so you'll know what's important.

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/17/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Cabor n	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Start	Returned Notice Docket	8/16/2021	26	18	69%

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Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Nelson	7A Status Docket Adult	8/20/2021	106		0%
Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%
Swink	Returned Notice Docket	9/1/2021	21		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Deiss	Returned Notice Docket	9/15/2021	38		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%
Star	Returned Notice Docket	9/22/2021	27		0%
Nelson	7A Status Docket Adult	9/24/2021	82		0%
George	7A Status Docket Juvenile	9/27/2021	33		0%
Phan	Returned Notice Docket	9/28/2021			#DIV/0!
Cabor n	Returned Notice Docket	9/29/2021			#DIV/0!
Savage	Returned Notice Docket	10/7/2021			#DIV/0!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

AMERICAN OVERSIGHT

From: Mattingly, Kathryn (EOIR)
Sent: Thu, 4 Nov 2021 20:14:14 +0000
To: Fooshe, Alexis (EOIR)
Cc: Barnes, Rob (EOIR); EOIR Regional PIOs (EOIR); Harrje, Stacia A. (EOIR)
Subject: RE: Time sensitive - call for accomplishments
Attachments: Weekly Media Report (Week of October 25, 2021)

That's easy. Zachary and I work up a media report each week. See the attached for the one sent out on Monday. We can provide a tally to you each month, and also add you back on that email distribution list if you want to receive the reports again. Just let us know. Last week we had nine, w (b)(5) n my opinion. (b)(5)

(b)(5)

Please also let me know if you want us to work up a tracking document and Zachary and I can come up with a template.

From: Fooshe, Alexis (EOIR) < (b)(6)
Sent: Thursday, November 4, 2021 3:59 PM
To: Mattingly, Kathryn (EOIR) (b)(6)
Cc: Barnes, Rob (EOIR) (b)(6) ; EOIR Regional PIOs (EOIR)
(b)(6) >; Harrje, Stacia A. (EOIR) (b)(6)
Subject: RE: Time sensitive - call for accomplishments

Yes, Media too for sure. I only looked at t (b)(5)

(b)(5)

From: Mattingly, Kathryn (EOIR) < (b)(6) >
Sent: Thursday, November 4, 2021 3:56 PM
To: Fooshe, Alexis (EOIR) < (b)(6)
Cc: Barnes, Rob (EOIR) < (b)(6) EOIR Regional PIOs (EOIR)
< (b)(6) Harrje, Stacia A. (EOIR) (b)(6)
Subject: Re: Time sensitive - call for accomplishments

Yes (b)(5)

On Nov 4, 2021, at 3:48 PM, Fooshe, Alexis (EOIR) (b)(6) > wrote:

If we are going to do this monthly I think we should track (b)(5)

(b)(5)

From: Barnes, Rob (EOIR) (b)(6) >
Sent: Thursday, November 4, 2021 3:39 PM
To: Fooshe, Alexis (EOIR) (b)(6)

AMERICAN OVERSIGHT

Cc: EOIR Regional PIOs (EOIR) (b)(6) Mattingly, Kathryn (EOIR) (b)(6)
Subject: RE: Time sensitive - call for accomplishments

Checked the (b)(5) most significant. I'm sure they'll mention the number of (b)(5) (b)(5)

From: Mattingly, Kathryn (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 2:14 PM
To: Fooshe, Alexis (EOIR) (b)(6); EOIR Regional PIOs (EOIR) (b)(6)
Subject: RE: Time sensitive - call for accomplishments

You could put the (b)(5)

From: Fooshe, Alexis (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 3:10 PM
To: EOIR Regional PIOs (EOIR) (b)(6); Mattingly, Kathryn (EOIR) (b)(6)
Subject: FW: Time sensitive - call for accomplishments
Importance: High

I'm going to include (b)(5) (b)(5)

From: Alder Reid, Lauren (EOIR) (b)(6)
Sent: Thursday, November 4, 2021 2:41 PM
To: Bauder, Melissa (EOIR) (b)(6); Fooshe, Alexis (EOIR) (b)(6); Adams Milam, Amanda J. (EOIR) (b)(6); Ramirez, Sergio J. (EOIR) (b)(6)
Cc: Foster, Sean (EOIR) (b)(6) linn, Sarah M. (EOIR) (b)(6) Alvarado, Rachel (EOIR) (b)(6) Zimmerman, Brandon J. (EOIR) (b)(6)
Subject: Time sensitive - call for accomplishments
Importance: High

Hi all –

Please send your division's accomplishments from the last 30 days. This is for reporting up to (b)(5) s (b)(5) I hope to have more time to request this next time around, but please reply to this email with the list you recommend by COB today.

Thanks!

Lauren Alder Reid
Assistant Director for Policy

AMERICAN OVERSIGHT

Executive Office for Immigration Review
Department of Justice

(b)(6)

(b)(6)

@DOJ_EOIR

AMERICAN OVERSIGHT

From: Lampman, Zachary (EOIR) (CTR)
Sent: Mon, 1 Nov 2021 18:29:00 +0000
To: Barnes, Rob (EOIR); Nance, Kelly (EOIR); Kaltenbacher, Teresa A. (EOIR); St Jean, Amanda (EOIR); Martin, John (EOIR); Montenegro, Gail (EOIR); Mattingly, Kathryn (EOIR); Sherman, Bradley (EOIR)
Cc: Pietruszka, Tyler (EOIR) (CTR)
Subject: Weekly Media Report (Week of October 25, 2021)
Attachments: Weekly News Inquiries Report (Week of Oct. 25, 2021).docx

Good afternoon team, please see attached and below for last week's media report.

Weekly News Inquiries
Nov. 1, 2021

****This report highlights news inquiries received during the previous week****

#	Reporter	Outlet	Topic
1	Rebecca Beitsch	The Hill	Second follow-up on whether Director Neal can be interviewed for a profile piece.
2	Phillip Marcelo	Associated Press, Boston	Policy regarding IJ media interviews and whether it is a national policy.
3	Maria Sacchetti	Washington Post	Current IJ listing by IC and year of appointment.
4	Brenna Ehrlich	Rolling Stones	To confirm that respondent Shéyaa Bin Abraham-Joseph's Nov. 1 hearing got postponed.
5	Adolfo Flores	BuzzFeed	Statistics of providers who have been added to the Pro Bono Legal Service Providers List to handle MPP cases, and comment regarding complaints on MPP implementation.
6	Alyssa Aquino	Law360	First Circuit's Oct. 25, 2021, decision remanding Andrea Joy James' case to the BIA.
7	Grace Dixon	Law360	Third Circuit's Oct. 28, 2021, decision *Juliana Martirez Arreaga Bravo v. Attorney General United States.*
8	Tyche Hendricks	NPR affiliate, San Francisco	San Francisco IC visit Oct. 29 to observe DD cases and Oct. 26 to observe "returned notice" docket, and how to obtain a copy of a DAR.
9	Tal Kopan/Deepa Fernandes	San Francisco Chronicle	Whether HQ was aware of the San Francisco IC's specialized master calendar docket for "returned notices" and details, *in absentia* statisitcs, and response to advocates' due process concerns about targeting, *"…a group likely to result in mass absentia removal orders…"*

V/r,

AMERICAN OVERSIGHT

Zachary Lampman | Contractor
Communications and Legislative Affairs Division
Office of Policy
Executive Office for Immigration Review
U.S. Department of Justice
(b)(6) Mobile
(b)(6) Office
(b)(6)

AMERICAN OVERSIGHT

Weekly News Inquiries
Nov. 1, 2021

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3	Maria Sacchetti	Washington Post	Current IJ listing by IC and year of appointment.
4	Brenna Ehrlich	Rolling Stones	To confirm that respondent Shéyaa Bin Abraham-Joseph's Nov. 1 hearing got postponed.
5	Adolfo Flores	BuzzFeed	Statistics of providers who have been added to the Pro Bono Legal Service Providers List to handle MPP cases, and comment regarding complaints on MPP implementation.
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9	Tal Kopan/Deepa Fernandes	San Francisco Chronicle	Whether HQ was aware of the San Francisco IC's specialized master calendar docket for "returned notices" and details, *in absentia* statisitcs, and response to advocates' due process concerns about targeting, *"...a group likely to result in mass absentia removal orders..."*

AMERICAN OVERSIGHT

From: Young, Elizabeth L. (EOIR)
Sent: Tue, 10 Aug 2021 21:17:19 +0000
To: Daugherty, Daniel J (EOIR)
Subject: RE: Weekly Specialized Docket Reporting

Thanks! It's about to (b)(5)
(b)(5)

From: Daugherty, Daniel J (EOIR) (b)(6)
Sent: Tuesday, August 10, 2021 2:11 PM
To: Young, Elizabeth L. (EOIR) (b)(6)
Subject: RE: Weekly Specialized Docket Reporting

(b)(5)

Daniel "Doc" Daugherty
Regional Deputy Chief Immigration Judge (West)

Office (b)(6)
Cell: (b)(6)

WarningAttorney/Client Privilege***Attorney Work Product***
This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this e-mail has been misdirected and immediately destroy all originals and copies. Furthermore, do not print, copy, re-transmit, disseminate, or otherwise use this information. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).

From: Young, Elizabeth L. (EOIR) (b)(6)
Sent: Tuesday, August 10, 2021 2:05 PM
To: Cheng, Mary (EOIR) (b)(6)
Cc: McNulty, Sheila (EOIR) (b)(6) Daugherty, Daniel J (EOIR) (b)(6)
Subject: RE: Weekly Specialized Docket Reporting

Here is the updated information from SFR. I'll add the weekly update to Naleshia to my calendar.

AMERICAN OVERSIGHT

From: Jauregui, Maria (EOIR) (b)(6)
Sent: Monday, August 9, 2021 6:02 PM
To: Young, Elizabeth L. (EOIR) (b)(6)
Cc: McDaniel, Scott (EOIR) (b)(6)
Subject: Specialized Docket Completions

Updated with the 8/9 results. Thanks

Specialized Docket Running Totals					
San Francisco Immigration Court					
8/9/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Cabor n	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111		0%
Nelson	7A Status Docket Adult	8/20/2021	106		0%
Nelson	7A Status Docket Adult	8/27/2021	118		0%
Young	7A Status Docket Juvenile	8/27/2021	50		0%
Nelson	7A Status Docket Adult	9/3/2021	93		0%
Young	7A Status Docket Juvenile	9/9/2021	73		0%
Nelson	7A Status Docket Adult	9/10/2021	105		0%
Nelson	7A Status Docket Adult	9/17/2021	94		0%
Nelson	7A Status Docket Adult	9/24/2021	82		0%

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Georg e	7A Status Docket Juvenile	9/27/20 21	33		0%

Maria Jauregui

From: Cheng, Mary (EOIR) (b)(6)
Sent: Tuesday, August 10, 2021 1:55 PM
To: Young, Elizabeth L. (EOIR) (b)(6) >; Naselow-Nahas, Tara (EOIR) < (b)(6) >; Jackler, Megan R. (EOIR) (b)(6)
Cc: McNulty, Sheila (EOIR) < (b)(6) ; Daugherty, Daniel J (EOIR) (b)(6) ; Margolin, Daren K. (EOIR) (b)(6)
Subject: FW: Weekly Specialized Docket Reporting
Importance: High

Daren,

Thank you!! I am sorry I left them off.

Mary Cheng
Regional Deputy Chief Immigration Judge

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From: Margolin, Daren K. (EOIR) < (b)(6)
Sent: Tuesday, August 10, 2021 4:53 PM
To: Cheng, Mary (EOIR) < (b)(6) ; Young, Elizabeth L. (EOIR) < (b)(6)
Cc: Daugherty, Daniel J (EOIR) (b)(6) ; McNulty, Sheila (EOIR) < (b)(6)
Subject: FW: Weekly Specialized Docket Reporting
Importance: High

Good afternoon Mary – Adding Elizabeth; perhaps you can add her to your distro list? (I don't see Naselow on here either.)

EY – (b)(5)
(b)(5) Daren

AMERICAN OVERSIGHT

From: Cheng, Mary (EOIR) <(b)(6)
Sent: Tuesday, August 10, 2021 1:43 PM
To: Barcus, E. Mark (EOIR) (b)(6); Brown, Jefferson (EOIR) <(b)(6)>; Cheng, David (EOIR) <(b)(6); Crooks, Grady (EOIR) (b)(6) Daugherty, Daniel J (EOIR) <(b)(6)>; Dillow, Eric (EOIR) <(b)(6)>; Doolittle, John (EOIR) <(b)(6)>; Feldman, Irene (EOIR) <(b)(6)>; Garcia, Melissa J. (EOIR) <(b)(6)>; Glaser-Allen, Colleen (EOIR) <(b)(6)>; Herndon, Megan (EOIR) <(b)(6)>; Hitesman, Jonathan W. (EOIR) <(b)(6)>; Holmes-Simmons, Theresa H. (EOIR) <(b)(6)>; Hoogasian, Amy C (EOIR) <(b)(6)>; Kaufman, Matthew W. (EOIR) <(b)(6)>; Kinnicutt, Daniel (EOIR) <(b)(6)>; Koutras, Charles (EOIR) <(b)(6)>; Lampley-Fortson, Joy (EOIR) <(b)(6)>; Laurent, Scott (EOIR) (b)(6); Little, Anna C. (EOIR) <(b)(6)>; Luis, Lisa (EOIR) <(b)(6)>; Margolin, Daren K. (EOIR) <(b)(6)>; Mart, H. Kevin (EOIR) <(b)(6)>; McCarthy III, James F. (EOIR) (b)(6); Miller, Jeffrey S. (EOIR) <(b)(6)>; Owens, Alfredia (EOIR) <(b)(6)>; Perry, Anne (EOIR) <(b)(6)>; Rooyani, Rodin (EOIR) <(b)(6)>; Scala, Theresa M. (EOIR) <(b)(6)>; Seppanen, Christopher R.. (EOIR) <(b)(6)>; Sukkar, Elisa (EOIR) <(b)(6)>; Taylor, Khalilah (EOIR) <(b)(6)>; ul-Haq, Ubaid (EOIR) <(b)(6)>; Wood, Ryan R. (EOIR) <(b)(6)
Cc: McNulty, Sheila (EOIR) <(b)(6)>; Spencer, Naleshia T. (EOIR) (CTR) <(b)(6)
Subject: FW: Weekly Specialized Docket Reporting
Importance: High

Judges,

Please see the attached. (b)(5)
(b)(5)

You must also report to Naleshia your progress on these dockets every Monday. Thanks,

Mary Cheng
Regional Deputy Chief Immigration Judge

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From: Spencer, Naleshia T. (EOIR) (CTR) <(b)(6)>
Sent: Monday, August 9, 2021 5:15 PM

AMERICAN OVERSIGHT

To: Cheng, Mary (EOIR) <(b)(6)>; McNulty, Sheila (EOIR) <(b)(6)>; Daugherty, Daniel J (EOIR) <(b)(6)>
Subject: Weekly Specialized Docket Reporting

Good Afternoon RDCIJs,

Attached you will find the weekly specialized docket report. If I receive additional responses, I will send an update tomorrow.

Have a great evening!

Naleshia Spencer
Program Manager, CGI Federal
Executive Office For Immigration Review
Office of the Chief Clerk
Office of the Chief Immigration Judge
5107 Leesburg Pike, Suite 2500
Falls Church, VA 22041
(b)(6) (office)

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From: Mattingly, Kathryn (EOIR)
Sent: Fri, 21 Jan 2022 15:58:08 +0000
To: Daugherty, Daniel J (EOIR); McNulty, Sheila (EOIR); Young, Elizabeth L. (EOIR)
Cc: Fooshe, Alexis (EOIR)
Subject: San Francisco Chronicle article: Immigration court officials cheered results of fast-tracked deportation orders, emails reveal

Good morning all – Sending the below article in case you missed it or cannot access. I also copied below the article our reply to the reporter for your awareness. Please let us know if you have any questions. Thanks – Kathryn

Immigration court officials cheered results of fast-tracked deportation orders, emails reveal

Jan. 20, 2022
WASHINGTON — Last June, the San Francisco Immigration Court quietly tested a new idea: Fast-track the cases of immigrants whose mail wasn't reaching them. In the trial run, 80% of the immigrants scheduled were ordered deported for not showing up.
Top officials were effusive with praise over the results, emails obtained by The Chronicle show, and rushed to set up more hearings: "Very positive!" emailed one of the top supervising immigration judges overseeing the nation's hundreds of courts.
The newly uncovered emails reveal that the fast-track docket for immigrants with returned mail, which was first reported by The San Francisco Chronicle last fall, was cheered at the highest levels of the courts and pursued with full awareness that scores of immigrants would likely be ordered deported as a result. Advocates and attorneys for immigrants raised concerns about the practice as a sort of deportation conveyor belt last year, as many of the lawyer-less immigrants may have no idea they missed a court hearing, much less that they were ordered deported during it, because they didn't know how to update their address with the court or thought that Immigration and Customs Enforcement would do so on their behalf. The immigration courts are run by the Justice Department, with judges hired and ultimately overseen by the attorney general.
The emails were obtained through a Freedom of Information Act request by a nonprofit watchdog group, American Oversight, prompted by The Chronicle's reporting. The group shared the records with The Chronicle.
The Department of Justice declined to comment specifically on the emails, noting that removal orders for failing to appear in court are legally valid and that issuing notices with new hearing dates gives unreachable immigrants an opportunity to appear in court and avoid a deportation order.
Chronicle analysis of available data last year found that the practice significantly increased the number of immigrants who were ordered deported for not being present in court, called an "in absentia" removal order. As many as 173 people were given deportation orders because of such proceedings in August and September — a nearly ninefold increase from the 20 similar orders given the previous seven months combined.
The results do not make clear how those numbers grew by the end of the year, but show a strong appetite for scheduling such hearings.
The pilot for the "returned notice" docket for immigrants whose mail was being returned as undeliverable was conceived by a deputy court administrator in San Francisco, who in May proposed the idea to one of the judges. The two set up a June 15 test run. Though much of the emails are redacted, it's clear the idea was green-lit by the supervising immigration judge for the San Francisco court.

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That day, the deputy administrator emailed his superiors with the results of the 21 cases scheduled: Only two immigrants showed up, two cases had to be continued because of procedural issues and "the remaining 17 cases got removal orders."
"That's great," wrote his boss, the court administrator. "Great, good job," wrote the supervising immigration judge at the time, Daren Margolin. He closed his email repeating the praise: "Thanks again ... good job on this."
The court administrator then emailed all the judges at the San Francisco court informing them of the results and inviting them to volunteer to hold similar hearings in August and September. A handful of judges quickly responded with eagerness.
Margolin forwarded that email to his boss, Regional Deputy Chief Immigration Judge Sheila McNulty, who oversees courts from the Justice Department's courts headquarters in Northern Virgnia, with a remark: "On a positive note."
McNulty responded quickly: "Very positive!"
The emails also revealed a larger picture of a Justice Department closely tracking how it can quickly close immigration cases as the backlog of the courts continues to skyrocket. A new analysis this week by the Syracuse University project TRAC, which monitors immigration court data, found the backlog is almost 1.6 million cases and grew at its fastest rate ever the last quarter of 2021. San Francisco's backlog is nearly 80,000 cases, with consistent year-to-year growth unlike the recent precipitous increase nationwide.
In emails, court managers were asked to send in reports frequently about how effective special dockets were at closing cases, and to keep close track of the numbers.
But the tactics weren't all about deportations. The San Francisco court, for example, also set up a docket to fast-track deportation cases that could be dismissed through prosecutorial discretion by ICE, freeing the immigrants involved of the threat of deportation.
End.
EOIR Response.
BACKGROUND, not for attribution:

As we do not have a copy of what you are reviewing, we suspect some context is missing.

For an immigration judge to order a noncitizen removed *in absentia*, the respondent must have failed to appear for an immigration court hearing, the Department of Homeland Security must have proven the individual is removable under immigration law, and the judge must have verified that notice of the hearing was sent to the individual's most recent address on file.

When possible, courts may arrange for certain unrepresented respondents—such as those whose notices were returned to the court as "undeliverable"—another opportunity to have their day in court through reissuance of a hearing notice for a new hearing date. If the respondents again fail to appear, the immigration judge will again evaluate the specific facts and may order the individuals removed. Of course, some respondents will have provided updated contact information, receive the second notice, and appear. The ultimate result is fewer removal orders issued *in absentia* than would be issued without these specialized master calendar hearings.

EOIR is unable to confirm the legitimacy of the documents you forwarded. The FOIA office is the source for legitimate agency records.

Inquiry:
Hi Kathryn,

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A response to a FOIA request for internal emails and documents regarding San Francisco's "returned notice docket" was shared with me, and I plan to file a story on it tomorrow.
I was wondering if you might have any comment on the contents, and also if you have any dispute the authenticity of the documents (I can't imagine why they'd be suspect, but my editor would like us to check). The responses even includes my email to you asking for comment initially and the chain of people you sent it to for input on the response (though much of that is redacted).
I've attached a few of the key pages for you to review.
My main question is if you all have any response to the excitement/positive response that greeted the number of removal orders at the initial test run of the docket. I'm curious if the agency can explain what was such a positive result of ordering people removed in absentia in large numbers?
Like I said, planning to file a story tomorrow if you can get me a response and/or any concerns about the emails themselves. I am trying to get my own copy of the FOIA from the FOIA office to make that a bit easier.
Thanks!
Tal

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From: Young, Elizabeth L. (EOIR)
Sent: Fri, 19 Nov 2021 14:23:57 +0000
To: Spencer, Naleshia T. (EOIR) (CTR)
Subject: Specialized Docket
Attachments: SFR specialized completion log.xlsx

I completely forgot to send this on Monday since we were in the conference – so thought I'd go ahead and send this update (although technically I could just wait until next Monday!).

Thank you and have a great day and weekend!

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

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Specialized Docket Running Totals					
San Francisco Immigration Court					
8/20/2021					
Judge	Type of Specialized Docket	Hearing Date	# of cases scheduled	# of cases completed	Percentage
Caborn	Returned Notice Docket	6/15/2021	21	17	81%
Nelson	7A Status Docket Adult	7/23/2021	55	44	80%
Nelson	7A Status Docket Adult	7/27/2021	100	79	79%
Nelson	7A Status Docket Adult	7/30/2021	58	55	95%
Swink	Returned Notice Docket	8/4/2021	22	15	68%
Nelson	7A Status Docket Adult	8/6/2021	95	87	92%
Figueroa	Returned Notice Docket	8/9/2021	17	14	82%
Nelson	7A Status Docket Adult	8/13/2021	111	103	93%
Star	Returned Notice Docket	8/16/2021	26	18	69%
Nelson	7A Status Docket Adult	8/20/2021	106	99	93%
Phan	Returned Notice Docket	8/24/2021	26	14	54%
Nelson	7A Status Docket Adult	8/27/2021	113	106	94%
Young	7A Status Docket Juvenile	8/27/2021	50	41	82%
Swink	Returned Notice Docket	9/1/2021	21	7	33%
Savage	Returned Notice Docket	9/2/2021	30	25	83%
Nelson	7A Status Docket Adult	9/3/2021	93	79	85%
Nelson	7A Status Docket Adult	9/10/2021	105	88	84%
Deiss	Returned Notice Docket	9/15/2021	20	4	20%
Nelson	7A Status Docket Adult	9/17/2021	94	83	88%
Star	Returned Notice Docket	9/22/2021	23	16	70%
Nelson	7A Status Docket Adult	9/24/2021	79	66	84%
George	7A Status Docket Juvenile	9/27/2021	33	30	91%
Phan	Returned Notice Docket	9/28/2021	24	22	92%
Caborn	Returned Notice Docket	9/29/2021	30	17	57%
Savage	Returned Notice Docket	10/7/2021	21	13	62%
Young	7A Status Docket Juvenile	10/7/2021	135	128	95%
Nelson	7A Status Docket Adult	10/8/2021	14	12	86%
Caborn	Returned Notice Docket	10/13/2021	21	17	81%
Young	7A Status Docket Juvenile	10/14/2021	10	10	100%
Caborn	Returned Notice Docket	10/18/2021	23	16	70%
Young	7A Status Docket Juvenile	10/19/2021	51	47	92%
Phan	Returned Notice Docket	10/26/2021	29	24	83%
Deiss	7A Status Docket Adult	10/27/2021	20	20	100%
Star	Returned Notice Docket	10/29/2021	28	20	71%
Phan	7A Status Docket Adult	11/2/2021	20	18	90%
Caborn	Returned Notice Docket	11/3/2021	34	27	79%
Deiss	7A Status Docket Adult	11/3/2021	20	16	80%
Young	7A Status Docket Juvenile	11/4/2021	80	73	91%
Young	7A Status Docket Juvenile	11/4/2021	67	62	93%
Phan	7A Status Docket Adult	11/4/2021	20	18	90%
Butler	7A Status Docket Adult	11/4/2021	20	17	85%
Phan	7A Status Docket Adult	11/9/2021	20	18	90%
Butler	7A Status Docket Adult	11/9/2021	20	16	80%
Deiss	7A Status Docket Adult	11/10/2021	20	19	95%
Butler	7A Status Docket Adult	11/16/2021	20	20	100%
Deiss	7A Status Docket Adult	11/17/2021	20	17	85%
Butler	7A Status Docket Adult	11/18/2021	20	18	90%
Butler	7A Status Docket Adult	11/23/2021	20		0%

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From: Young, Elizabeth L. (EOIR)
Sent: Wed, 16 Mar 2022 17:36:10 +0000
To: St Jean, Amanda (EOIR); Daugherty, Daniel J (EOIR)
Subject: Stakeholder Meeting Q&A
Attachments: Questions for 3212022 EOIR SF-AILA meeting.docx
Importance: High

Please find attached the questions for our stakeholder meeting on 3/21. Amanda – I realize I had to change the date and time because I was asked to teach a course for the new IJ training on the original 3/22 date and failed to inform you. As long as I have advanced input from you, I think it's fine if you are unable to make it to the meeting, but am happy to work with you to find another time if you want to be present. There's a few points in the doc that might need your input in terms of notification to the public.

Elizabeth L. Young
Assistant Chief Immigration Judge
San Francisco Immigration Court
Govt. cell – (b)(6)
Office – (b)(6)

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- Please provide any updates on the status of the dockets of judges that have recently left the bench, including IJ Marks and IJ Jackson.

(b)(5)

- Are there any other hiring or other staff updates?

(b)(5)

- Can the Court provide an updated list of which IJs are hearing cases exclusively via WebEx (as opposed to bring physically present in their courtrooms)?

(b)(5)

- Can you provide any updates on the resumption of non-detained masters for non-dedicated docket cases? Is the Court still operating at 50% staff capacity in the courthouse at any given time? Have most IJs resumed hearing 100% of their merits hearings, or are some hearings still being cancelled for pandemic-related reasons?

(b)(5)

- Relatedly, is there a criteria for why certain cases get postponed and not others?

(b)(5)

- Can you provide information about the judges' legal assistants' responsibilities? What are things that legal assistants should be able to tell counsel or help counsel with so that things run more smoothly?

(b)(5)

- Besides the dedicated docket, are any other special masters being heard at the moment?

(b)(5)

- Have 100% of cases been removed from the status docket?

(b)(5)

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- What is the status of the returned notice docket? Are there current plans to schedule any returned notice dockets in the future?

(b)(5)

- We receive many inquiries about motions to advance. It appears there are many respondents who are ready to proceed with their merits, but are unable to do so due to lack of docket space. Can you provide updated information about how motions to advance are being handled by the Court? Specifically, can you explain what the trial ready queue is and how it is used by the Court? How is a respondent notified that their case has been placed in the trial ready queue? How many cases are currently in the trial ready queue?

(b)(5)

- A member spoke with Leslie Ungerman in response to a PD request that was filed with OPLA in a strong 42B case. The member was seeking non-opposition from OPLA to a motion to adjudicate the case on the submissions. The member reports that Ms. Ungerman explained that her office will refuse to non-opp such requests when the qualifying relative isn't aging out, but would like to find a way to adjudicate such cases earlier, possibly at a short matter hearing. The member reports that Ms. Ungerman asked her to reach out to AILA liaisons to raise the issue with the Court, and that Ms. Ungerman indicated she would also be reaching out to the Court about the issue. Has the Court considered created these type of short matter dockets?

(b)(5)

- Minutes from the national AILA-EOIR meeting in February state that Wifi is available in all courtrooms now. Is that true in San Francisco? Will Wifi instructions be released to the immigration bar?

(b)(5)

- DHS recently announced a backlog reduction initiative. EOIR should know that DHS has explicitly said it will NOT contact respondents' counsel ahead of filing these motions to dismiss. Are IJs being instructed to wait the 10 days for counsel to respond? These motions to dismiss cannot be presumed to be uncontested. A member reports that an IJ

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granted DHS's motion 2 days after it was filed, not allowing the respondent a chance to oppose the motion.

(b)(5)

- In the case of a visa retrogression (like the March 2022 retrogression for EB4 SIJS case), can EOIR still adjudicate an AOS as long as it was filed when a visa was available, or will the matter have to be postponed until a visa becomes available again? Or is there some other system for locking in a priority date?

(b)(5)

- In the past, some attorneys reported that the Court would accept E-33s for respondents whose NTAs had not yet been filed and hold onto them in a folder until the cases were officially opened. Does the Court still accept such E-33s on an informal basis? If not, is there any other way to report a change in address to EOIR so that mail goes to the correct address once the NTA is filed? Unfortunately, ICE does not always update the address properly even when changes of address are reported at ICE check-ins.

(b)(5)

- What is the status of the 42B visa backlog? Have any of the visas released on 10/1/2021 been made available by the Court? If not, why? If so, are all accounted for at this time, or what is the status?

(b)(5)

- How does the court determine which IJ to consolidate two cases before? Is there one consistent rule? E.g. before the IJ/case with the oldest NTA, or with the earliest next hearing date?

(b)(5)

- Currently, USCIS is supposed to give Afghans priority adjudications on asylum cases. Does EOIR have the same policy? If so, how is it doing so?

(b)(5)

- E
ICPM. It appears records can be requested by parties and their reps to a designated email inbox. Has SF EOIR changed the email address to which they wish to receive this ROP Review requests (as the standard email in the updated ICPM differs from those SF EOIR has used for many years)? see https://www.justice.gov/eoir/eoir-policy-manual/ii/1/5

(b)(5)

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- Members report issued with USCIS scheduling biometrics appointments. What guidance, if any, have judges received about what to do when respondents have been unable to complete biometrics before the ICH? For example, continue the hearing, or hold the hearing and wait to issue their decision (if a grant) until confirmation from DHS that biometrics complete?

(b)(5)

- Members report receiving scheduling orders requesting pleadings in withholding-only proceedings, and also in cases where pleadings to the NTA have already been entered. Why is this? How does the Court determine when a scheduling order is appropriate?

(b)(5)

- Earlier this year all of the standing orders were removed from EOIR San Francisco's website. Why is that? Is the Court considering re-issuing or re-posting any standing orders?

(b)(5)

- Can you provide any updates on converting paper cases to ECAS?

(b)(5)

- East Bay Court

(b)(5)

- Many of the scheduling orders being sent out have standard language stating that the respondent "must" any applications for relief, prima facie evidence, legal briefs, and supporting documents within 60 days of the order, even when no hearing date is set and might not take place for several. The plain language interpretation of this order (which is worrying many attorneys) suggests that an entire merits hearing packet would be required

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within 60 days. As a result, attorneys are now starting to file motions to rescind that part of the scheduling order, or motions to follow the practice manual, which is creating unnecessary motions and taking up attorney and court time. Can the court clarify what it's expectations are with respect to the filing of legal briefs and supporting documents in particular? Is the court merely inviting attorneys to file all the documents that are available at that time, but they still have up until 15 days prior to the hearing (per the Immigration Court Practice Manual) to submit additional evidence and briefing?

(b)(5)

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