**AILA-EOIR LIAISON AGENDA QUESTIONS AND ANSWERS**
**For March 22, 2006**

**Unanswered/Unopposed Motions Before the Board, Immigration Court**

1. *EOIR's regulations clearly state that an unanswered motion before the Board may be deemed unopposed after 13 days (see, e.g., 8 C.F.R. 1003.2(g)(2)(3)); while there does not appear to be a corresponding regulation governing practice at the immigration court level, many jurisdictions follow this rule, simply as a matter of practice or pursuant to local rules.*

a. *At the Board level, does the Clerk's office identify unanswered/unopposed motions and is there any special handling (timing, adjudication or review) of such motions?*

**RESPONSE:**

Motions to reopen or reconsider which are filed with the Board of Immigration Appeals ("Board") are generally processed through the Clerk's Office on a faster track than case appeals. As there is no transcript to be prepared and no briefing schedule to be set, motions move to the panels for adjudication within three weeks after receipt of the record of proceedings from the immigration court. Where the Clerk's Office receives a response to a motion from either party, which either joins the motion or affirmatively states that the responding party is not opposed to the motion, the record of proceedings is pulled from processing and sent to a panel for immediate adjudication. If no response is received from either of the parties, the Board generally treats the motion as unopposed.

b. *Does OCIJ provide any guidance to courts or immigration judges regarding treatment of unopposed/unanswered motions?*

**RESPONSE:**

8 C.F.R. § 1003.23(a) states that pre-decision motions shall be deemed unopposed unless timely response is made. 8 C.F.R. § 1003.23(b)(1)(iv) similarly states that the immigration judge may set and extend time limits for replies to motions to reopen or reconsider and that such motions shall be deemed unopposed unless timely response is made. Thus, the regulations leave the setting of time limits for filing responses to motions to the discretion of the immigration judge. The Office of the Chief Immigration Judge ("OCIJ") has not issued guidance to immigration judges regarding the setting of time for responding to motions. While we agree that timely responses promote efficiency, OCIJ believes that immigration judges must be vested with the discretion to adjudicate motions, including the setting of time for responses, on a case-by-case basis. As noted above, some immigration courts have adopted local rules setting time limits for responding to particular motions. However, those rules do not diminish the immigration judge's discretion to order a different deadline or to waive a deadline in a particular case. Before local rules are adopted by the immigration court, AILA can comment on these rules. If the immigration judge is not complying with the local rules, or there are extraordinary delays, or many pending motions, and attempts to resolve the issue locally have not met with success, these

issues can be raised with the Assistant Chief Immigration Judge ("ACIJ").

If an attorney does not agree with a ruling by an immigration judge on a motion, the attorney must make that objection part of the record.

c. *At the immigration court level, members note that immigration judges routinely allow DHS attorneys to merely respond in court, or even continue the case, even where motions were submitted well in advance the hearing (and given the presumption of being unopposed, could have been dispensed with without the need for further delay). Understanding that there are exceptions and a judge must have discretion to waive this rule, AILA believes that respondents are unduly prejudiced when judges do not hold that a motion with no articulated opposition is unopposed. Will OCIJ consider issuing any guidance on this issue?*

**RESPONSE:**

As noted above, the regulations leave the setting of time for responding to motions to the discretion of the immigration judge. OCIJ does not believe it is appropriate or necessary to restrict the immigration judge's discretion in addressing responses to motions. If a party believes that an immigration judge abused his or her discretion in adjudicating a motion, or considering a late-filed response to the motion, the party may file an appeal with the Board.

d. *Further, AILA attorneys report that in at least one court DHS is "responding" to motions (both at the Board and before the immigration court) by simply submitting a one-sentence statement that they oppose the motion, without articulating any legal or factual basis. We believe that this type of response does not fulfill the intention of the regulation because it fails to articulate any argument and it also prejudices the respondent. Will OCIJ consider issuing any guidance on this practice? How does the Board treat such insufficient responses to motions?*

**RESPONSE**:

OCIJ does not believe it is appropriate or necessary to issue guidance stating that a one-sentence opposition by a party is an insufficient response and should not be considered. The sufficiency of pleadings is a matter for the immigration judge to determine. If a party believes that an immigration judge abused his or her discretion in adjudicating a motion, the party may file an appeal with the Board.

The Board considers the merits of each motion on a case by case basis taking into account all arguments made in support of the motion and all arguments made in response to the motion. Parties should keep in mind that while the Board considers the response to every motion, it is the sufficiency of the motion itself which is most important.

**"800" Phone Information System**

2. *Both attorneys and pro se respondents rely on the computerized "800" phone information system to determine the status of their case, next scheduled hearing or indeed, the possibility that a matter was referred to proceedings without notice and an absentia order has issued. This information is critical as the majority of Notices to Appear fail to include the time and place of the hearing (noting that the hearing will be subsequently scheduled, the NTA refers the respondent to the phone system to find out their next scheduled hearing). Inability to utilize this system can result in an absentia order being entered against a respondent.*

a. *Members are reporting that the system appears to have been "down" for maintenance with increasing frequency, and that at other times access is difficult or impossible. Is EOIR aware of this issue and/or is the system undergoing any overhaul or maintenance currently which would explain these difficulties?*

**RESPONSE:**

Yes, the Executive Office for Immigration Review ("EOIR") is aware of the issue. EOIR performs maintenance on the 1-800 system as well as other systems approximately monthly. Within the last year, EOIR has adopted a policy of an established set of pre-scheduled Maintenance Weekends in which all system operations and/or upgrades are performed. During this time, it is necessary for the 1-800 application to be down to avoid a conflict in the activities being performed, or worse, a data inaccuracy and/or corruption due to part of the system being down while the 1-800 application is not down. EOIR includes a notification within the 1-800 application to alert users to the upcoming activities in preparation for the outage.

b. *Members also have reported that the 1-800 system has not been adapted for the new 200-series A numbers issued by DHS. By trial and error, members have discovered that they can access case information by "dropping" the "2", however this is not clear on court notices or the Notice to Appear, nor is it referred to in the system prompts themselves. Will EOIR consider amending notices and/or the system prompts to remedy this oversight until the system can accommodate the 200-series numbers?*

**RESPONSE:**

On March 9, 2006, the Office of the Director, EOIR, issued a notice explaining how to access the automated telephone case information with a 9-digit alien registration number. See http://www.usdoj.gov/eoir/press/06/9DigitNumbers.htm; see also http://www.usdoj.gov/eoir/npr.htm The automated system has been changed to reflect the new 9-digit alien registration information.

The case information system is in English and Spanish and can be accessed by calling either (703) 305-1662 or 1-800-898-7180, toll-free, 24 hours a day, 7 days a week. When calling case information using a 9-digit number, only enter the last 8 numerical digits of the alien

registration number. Do not enter the letter "A" into the system. After the alien registration number has been entered correctly, the automated system provides the following information:

- Next hearing date, time, and location;
- Elapsed time and status of the clock for asylum cases;
- Immigration judge decisions;
- Board of Immigration Appeals ("BIA") case appeal information, including appeal due date, brief due date, date forwarded to the BIA, BIA decision, and decision date;
- General filing information.

3. *For those of us who have memorized both the 800 number and (impatiently) navigate all of its prompts from memory, we wonder if there is any way to bypass the "maintenance" message that is often provided at the beginning of the system?*

**RESPONSE:**

Currently, the 1-800 application does not allow users to bypass the "maintenance" message.

**Absentia Orders where Insufficient Address Provided by DHS**

4. *Because of the severe consequences of an in absentia order, AILA is concerned about the procedures under which such orders are entered. Many Notices to Appear, particularly those issued in connection with border arrests and detention, state the respondent's address as "c/o DHS" (often without even specifying the facility), and routinely do not specify a hearing date. Respondents regularly provide updated addresses to DHS as part of the terms of their release or merely to comply with the regulations, however the NTA is generally not amended to reflect any subsequent change of address prior to being filed with the court; where the NTA has already been filed with the court, DHS does not provide EOIR with updated address information. When the respondent leaves the detained court's jurisdiction often there is little understanding of the difference between DHS and EOIR and either agency's role or access to current address information.*

a. *What is the procedure that Immigration Judges must follow to determine if notice of hearing was properly and effectively provided, including inquiry of DHS as to the respondent's most current address?*

**RESPONSE:**

The Immigration and Nationality Act ("INA") section 240 provides that any alien who does not attend a removal proceeding "after written notice required under paragraph (1) or (2) of section 239(a)" shall be ordered removed *in absentia*. 8 U.S.C. § 1229(a). Thus, immigration judges must determine if the notice of hearing satisfied INA § 239(a), 8 U.S.C. § 1229(a).

b. *Will OCIJ consider instructing Immigration Judges that, in the case of an apparent in absentia hearing, they should ask the government attorneys if their A file reflects a different address for respondent to determine if the notice was provided to the respondent's most current address?*

**RESPONSE:**

OCIJ declines to instruct the immigration judge's to inquire of the government attorneys if their A files reflect a different address than what was provided on the notice of hearing. INA § 240(b)(5)(A) states that written notice shall be considered sufficient if provided at the most recent address provided by the respondent to the Attorney General. See also 8 U.S.C. § 1229a(b)(5)(A). However, EOIR will bring this up at the upcoming liaison meeting with DHS Office of General Counsel.

c. *Does EOIR consider notice effective and proper when the NTA was not served on the respondent at the current address in DHS' file at the time the NTA is submitted to the court, regardless of whether EOIR provides notice at the address listed on the NTA?*

**RESPONSE:**

OCIJ declines to issue an advisory opinion on this matter. If a party believes that an immigration judge erred in finding proper service of the Notice to Appear ("NTA"), he or she can raise that issue on appeal.

The Board will consider that issue in the context of cases before them.

5. *The Uniform Docketing System Manual requires that fifteen days notice must be given prior to any hearing (unless waived), however members have reported that in at least one jurisdiction "no address" non-detained cases (i.e., where the NTA lists "DHS custody" as the respondent's address, but the respondent subsequently bonded out) are routinely set with little notice prior to the hearing (less than a week).*

a. *Is the Uniform Docketing System policy applicable to "no address" cases?*

**RESPONSE:**

INA § 239(b)(1) provides that "[i]n order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240 [8 U.S.C. § 1229a], the hearing date shall not be scheduled earlier than 10 days after the service of the NTA, unless the alien requests in writing an earlier hearing date." 8 U.S.C. § 1229(b)(1). The Uniform Docketing System Manual implements this provision in stating "[a]n initial hearing date for aliens in Removal Proceedings cannot be set earlier than 10 days after service of the NTA, unless the 10 days to secure counsel had been waived by the alien." See Uniform Docketing System

Manual, Chapter IV, Section II. The Docketing System Manual also implements former INA § 242B(b)(1), 8 U.S.C. § 1252b(b)(1) (1995), by providing "[f]or aliens in deportation proceedings, an initial hearing date cannot be set earlier than 14 days after service of the charging document, unless the alien has waived the 14 days to secure counsel." See Uniform Docketing System Manual, Chapter IV, Section II. OCIJ is not aware of any cases in which these time frames were not followed. If AILA would like to provide more specific information, OCIJ will investigate further. We note, however, that asylum-only cases can be set earlier than 10 days from the service of the Notice of Referral to Immigration Judge (Form I-863) on the Court. See Uniform Docketing System Manual, Chapter IV, Section II.

The Uniform Docketing System Manual is located on the E-FOIA electronic reading room at http://www.usdoj.gov/eoir/efoia/foiainfo.htm and http://www.usdoj.gov/eoir/efoia/foiafreq.htm.

Additionally, an EOIR-33 may be filed in the immigration court before DHS files the NTA. If an alien or the alien's representative comes across a case where the Notice of Hearing is sent to the address on the NTA and not to the address listed on the previously submitted or filed EOIR-33, OCIJ should be contacted.

b. *Is the ANSIR system used to set cases? If so, how does this system work with "no-address" cases?*

**RESPONSE:**

The interactive scheduling system schedules hearings in "no-address" cases in the same manner it schedules hearings for cases in which the respondent's address appears on the NTA. If the alien's address does not appear on the NTA, the alien must provide to the immigration court where the charging document has been filed, within five days of service of that document, a written notice of an address and telephone number at which the alien can be contacted. 8 C.F.R. § 1003.15(d)(1).

**Where the NTA is Served on the Alien but Not Yet on the Court**

6. *There are occasions where the NTA is served by DHS on the alien but filing with the court does not occur until some time later (a delay which ranges from days to years). Unless and until DHS exercises its prosecutorial discretion and elects to initiate proceedings by filing the NTA, no file or record of the matter exists at EOIR, a situation which raises a number of practical issues and questions:*

a. *Will EOIR retain an E-28 filed by an attorney even where the NTA has not yet been filed on the court, but has already been served on the alien, so that the attorney may be notified of any court hearings?*

**RESPONSE:**

EOIR will not accept an EOIR-28 form unless and until an NTA has been filed, except in a bond determination hearing before an immigration judge or a bond appeal before the Board (Form EOIR-27). Attorneys are encouraged to use the 1-800 number to ascertain whether the NTA has been filed so that they can enter an appearance form. As noted below, because the Attorney General is obligated to create a central address file, EOIR has modified the ANSIR system to accept an EOIR-33 form before the filing of an NTA. However, this is the only form that EOIR will accept before removal proceedings have commenced.

b. *Prior to the NTA being filed and proceedings initiated, will EOIR retain a change of address form filed by the alien with the court?*

**RESPONSE:**

EOIR will accept an EOIR-33 form before the NTA has been filed. The ANSIR system has been modified to accept an EOIR-33 form before the filing of an NTA because the statute requires the Attorney General to "create a system to record and preserve on a timely basis notices of addresses and telephone numbers (and changes) provided under [INA § 239(a)(1)(F)]." INA § 239(a)(3), 8 U.S.C. § 1229(a)(3). When an EOIR-33 is filed before an NTA, ANSIR stores the Alien number, input date, and the base city code in a central site file. Each time batch runs, it attempts to match the Alien number on the EOIR-33 record with the Alien number of the case records entered at a field site. When it finds a match, ANSIR will attach the EOIR-33 record to the matching case proceeding.

c. *If pro se respondents or their attorney have taken the above step(s), but notice of hearing is still sent to the alien at an old address (resulting in an absentia order), will the court reopen the case on this basis?*

**RESPONSE:**

Motions to reopen orders of removal entered *in absentia* are adjudicated on a case-by-case basis.

7. *Given, what we assume is the unlikelihood of an affirmative response to the above questions, will OCIJ reconsider its policy and consider the submission of an NTA to the court as the "filing" of a document, requiring simultaneous service on all parties? See 8 C.F.R. 1003.32(a). AILA suggests that, were OCIJ to adopt such a policy, at a minimum, all parties can be assured of a better attempt at actual service on the respondent by DHS using the most current address available or on the respondent's counsel of record (assuming that there is a G-28 Entry of Appearance on file before the agency). Such a policy would maximize the chances that effective notice is provided, both strengthening due process for the respondent and avoiding the additional difficulties for all parties of dealing with the inevitable need to move for reopening of*

*absentia orders.*

**RESPONSE:**

The INA dictates how the DHS must serve the charging document and the consequences of failing to appear after such service. INA §§ 239(a)(1), 239(a)(2), 239(c), and 240(b)(5).

**E-Pay/Pay.gov Pilot**

8. *Will EOIR please update AILA on the pilot program to accept BIA appeal and motion fees? We understand that few AILA members attempted to use the program and that, due to some technical issues (which have since been remedied), few people actually tested the program.*

a. *Will EOIR reopen the testing?*

**RESPONSE:**

The testing has been and is open and ready for users to pay appeal or motion fees electronically. The Treasury Department's pay.gov web site was configured to accept EOIR appeal fees, and the BIA began a pilot for electronic payment of fees in the last quarter of 2005. At least one user attempted to pay an appeal fee through the pay.gov web site but found that some of the data fields were not properly configured to accept the data. EOIR contacted the Treasury Department, and the errors were fixed. At that point the pilot was again active, but no other attorneys have attempted to use the site to pay fees. We hope that attorneys will try the pay.gov site so that EOIR can ensure that it works before expanding further electronic filing.

b. *Will EOIR consider opening the payment options to include fees for applications at the immigration court level not currently covered by the backgrounds and biometrics procedures through the Texas Service Center (e.g., motions to reopen)?*

**RESPONSE:**

As noted above, before EOIR can expand further the electronic filing system, attorneys must try the pay.gov site so that EOIR can ensure that it is working properly.

c. *There is significant interest in utilizing pay.gov-style filing where it is combined with electronic filing of the Notice of Appeal before the Board. Will EOIR be expanding the program to include actual e-filing of appeals, or motions for which the fee is due?*

**RESPONSE:**

Yes, electronic filing has been on EOIR's agenda for some time as a long-term planning issue. Right now, however, this remains a long-term project. CASE must be fully implemented

in all the immigration court's before electronic filing of immigration court matters can be considered.

**Circuit Court Remands**

9. *When a case is remanded by a Circuit Court to the Board of Immigration Appeals, the Board does not issue any receipt of such remand to the parties and their attorneys of record announcing that the case is back with the Board. Such lack of notice creates significant problems for counsel, especially if that individual was not counsel of record at the time of the prior decision (e.g., there is no way to file an entry of appearance in the case until the file is "back" at the Board). Further, a detained respondent would (potentially) become bond-eligible at the moment the case is returned to Board, but would have no way of knowing when this eligibility arose. Will the Board consider taking steps to remedy this lack of notice?*

**RESPONSE:**

Yes. The Board is reviewing the process involved in adjudicating Circuit Court remands and will take into account the American Immigration Lawyers Association's ("AILA") suggestion to issue receipts when the Office of Immigration Litigation advises the Board of a court order remanding a matter to the Board.

An important consideration in this regard is whether the respondent's address and attorney information in our database has changed since the date of the Board's last order. Usually, the Board waits to receive a copy of the federal court's order from the Office of Immigration Litigation before acting on the remand, but the Board will accept a copy of the remand order along with a new Notice of Appearance (Form EOIR-27) from the attorney, which would allow the Board to update our records immediately.

**Biometrics Regulation**

10. *Please update AILA on the current status of the Biometrics and Background check processing at both the immigration court and Board level for remanded cases. Members report several continuing issues, including:*

a. *Biometrics notices and receipt notices continue to be delayed, making it difficult for respondents to prove compliance or obtain results prior to hearings (especially with expedited asylum cases);*

**RESPONSE:**

Biometrics checks and procedures are entirely within the control and purview of DHS. AILA should raise this issue with DHS.

b. *Some courts require respondents to obtain "old style" fingerprints before receiving a biometrics notice from DHS to avoid a lack of results, unfortunately causing major inconvenience and additional expense for respondents and confusion with USCIS;*

**RESPONSE:**

OPPM 05-03 clearly states that when a respondent states his or her intent to file an application for a covered form of relief, counsel for DHS must provide respondent with instructions for submitting biometrics. See OPPM 05-03, *Background and Security Investigations in Proceedings before Immigration Judges and the Board of Immigration Appeals*, at http://www.usdoj.gov/eoir/efoia/ocij/oppm05/05-03.pdf. Shortly after issuing OPPM 05-03, OCIJ reminded immigration judges that they may not provide respondents with biometrics instructions because only DHS can determine what instructions are appropriate in a particular case. If AILA would like to provide more information on this practice, OCIJ will remind particular immigration judges that they should not require respondents to obtain fingerprints or otherwise advise respondents how to comply with biometrics procedures.

c. *Where an immigration judge grants a fee waiver, DHS is rejecting or ignoring the judge's order and requiring payment of the application filing fees in addition to the $70 biometrics fee;*

**RESPONSE:**

OGC will bring this up at next month's liaison meeting with DHS Office of General Counsel.

d. *Certain applications which are not listed on the form, but would appear to require a background check, are missing from the form (e.g., I-191 applications for § 212(c) relief; no form/no fee § 237(a)(1)(H) waivers); others, such as referred I-751 petitions, leave all parties confused as to whether a filing or background check is necessary.*

**RESPONSE:**

EOIR has raised this issue with U.S. Citizenship and Immigration Service ("USCIS") and it is our understanding that USCIS is working on revising the pre-filing instructions.

**Immigration Judge/Immigration Court Openings**

11. *We note that EOIR recently opened recruitment for new immigration judge positions. Where are the openings and does this indicate an increase in the immigration judge corps? Does OCIJ anticipate opening any new courts or expanding any existing courts?*

**RESPONSE:**

Currently there are no positions to be filled. However, this is a snapshot of today, and we encourage candidates to apply as the immigration judge hiring process is very fluid and needs can arise quickly, depending on such things as departures, retirements and transfers. Regarding immigration judge vacancies, the Attorney General may elect to make a direct appointment. EOIR will review applications submitted in response to the recent vacancy announcement to fill any vacancies not filled by the Attorney General. EOIR will open a new immigration court in Cleveland, Ohio before the end of the fiscal year. There will be two immigration judges in this court.

**Delayed Briefing Schedule Where No Transcripts Produced**

12. *In certain cases, the Board does not normally provide a transcript (e.g., an appeal of a denial of a motion to reopen before the immigration judge where no underlying appeal was taken). Unfortunately, without a more complete record for review, any appeal or further pleading may be inadequate; though we understand the attorney may request that a transcript be generated, members have reported that such transcripts are rarely provided and that there is significant conflict over the timing of the briefing schedule.*

*Where the respondent is unable to get a copy of the file from prior counsel or access the actual tapes of the hearing, and current counsel does file a FOIA request (but the delay may be several months), would the Board be willing to delay the briefing schedule until two weeks after the FOIA response is sent?*

**RESPONSE:**

Counsel may inspect the entire record of proceedings by prior arrangement with the Clerk's Office or may ask the Clerk's Office in writing for assistance in obtaining copies of a small portion of the record. While the Board will consider requests for briefing extensions, the Board does not favor extensions based on substitution of counsel or Freedom of Information Act ("FOIA") requests. See Board Practice Manual 2.3(h)(i); see also question 11 of the AILA-EOIR liaison agenda questions dated March 16, 2005, available at http://www.usdoj.gov/eoir/statspub/eoiraila031605.pdf; see also questions 21(d) and (e) of the AILA-EOIR liaison agenda questions dated November 8, 2000, available at http://www.usdoj.gov/eoir/statspub/ailaqa.htm.

When counsel files a request for transcripts, the request should clearly articulate, explain, or specify why the transcript is needed. If the Board agrees to provide the transcript, the briefing schedule will be cancelled and re-set when transcripts are served.

Additionally, if a Board Member requests transcripts of a hearing, the DHS and the alien or alien's representative will receive a copy of the transcript and will have an opportunity to brief.

**Special Handling of Respondents Placed into Proceedings after DHS "Initiatives"**

13. *Both DHS and former INS occasionally launch enforcement initiatives (e.g., Special Registration/NSEERS, Operation Predator) which result in certain classes of aliens being placed in proceedings.*

a. *Does EOIR receive advance notice or other guidance from DHS regarding such initiatives?*

**RESPONSE:**

EOIR does not generally receive advance notice from DHS regarding initiatives unless it has a direct impact on immigration court operations.

For example, in the context of DHS Operation Compliance (originally piloted in Hartford, Connecticut and eventually piloted in Denver, Colorado and Atlanta, Georgia), EOIR was informed of that initiative. However, we believe this was because there was a need to modify a pre-existing MOU between EOIR and Immigration and Naturalization Service (now known as the Department of Homeland Security) regarding arrests in the courtroom.

b. *Does EOIR provide any guidance or memoranda to Board Members and/or Immigration Judges regarding such classes of respondents, including relevant bond and detention issues, for cases involving persons identified or arrested as part of such specialized operations?*

**RESPONSE:**

OCIJ has not issued any guidance to immigration judges on DHS enforcement operations.

The Board has not provided any guidance memoranda to its staff based on DHS enforcement operations.

c. *If so, can you please summarize the guidance or memoranda and provide AILA with copies?*

**RESPONSE:**

See the above response to Question 13(b).

**Pro Bono**

14. *Will EOIR update AILA on the current state of the pro bono initiatives? Has EOIR taken any steps regarding representation (pro bono or otherwise) of minor children (including detained children) in proceedings?*

**RESPONSE:**

Since July 2005, the Legal Access/Pro Bono Program has continued to work within the agency and with outside organizations on various initiatives aimed at improving access to legal services for those with limited means in EOIR removal proceedings. Access to legal services includes access to counsel for representation, access to attorneys and other legal workers for non-representative intake and screening, and access to legal information through written and taped (self-help) materials.

The Program has principally focused on three areas - the Legal Orientation Program, the BIA Pro Bono Project, and interagency efforts to implement pro bono programs for Unaccompanied Alien Children. The Legal Orientation Program (LOP) continues to serve over 20% of the nation's detained aliens in immigration court proceedings on a weekly basis at six immigration detention facilities: 1) Eloy, Arizona; 2) Port Isabel, Texas; 3) El Paso, Texas; 4) Tacoma, Washington; 5) Lancaster, California; and 6) Aurora, Colorado. In fiscal year 2006, Homeland Security Appropriation Bill increased funding for the LOP to $2 million. In February 2006, DHS and EOIR signed an Interagency Reimbursement Agreement to handle the transfer of the funding. Through the increased funding, LOP services increased at the existing 6 sites to include regularly scheduled self-help workshops, and greater pro bono recruitment/coordination. Plans are currently being drafted to expand LOP to an additional 5-6 detention facilities, as well as to create and fund LOPs for Unaccompanied Alien Children.

Since its implementation in January of 2001, the BIA Pro Bono Project ("Project") has succeeded in recruiting attorneys, law students and Accredited Representatives to write appeal briefs for close to 400 immigration detainees who would have otherwise appeared without representation before the BIA.

The Legal Access/Pro Bono Program continues to work closely with OCIJ, the Office of Refugee Resettlement ("ORR") and nonprofit organizations such as AILA to better identify and resolve issues affecting legal access, as well as design and implement new initiatives aimed at improving legal assistance for children in EOIR removal proceedings. Additionally, OCIJ assisted the Women's Commission for Refugee Women and Children in the production of an orientation video for children in EOIR removal proceedings.

The Legal Access/Pro Bono Program coordinates efforts with ORR's Division for Unaccompanied Children Services (DUCS), to identify areas of greatest need and track children's cases more effectively; and assists the Vera Institute of Justice (ORR Contractor) on potential sites to carry out the ORR-funded Pro Bono Outreach Program for Unaccompanied Alien Children.

The Legal Access / Pro Bono Program continued to further promote and develop the Model Hearing Program ("MHP"), a training program designed to improve the quality of advocacy before the immigration court, as well as increase levels of pro bono representation by

providing practical and relevant 'hands-on' immigration court training to small groups of attorneys and law students with an emphasis on practice, procedure and advocacy skills. In August 2005, the Legal Access / Pro Bono Program, together with the Rocky Mountain Survivors Network and Board Member Juan Osuna, presented to pro bono attorneys on immigration court practice and procedure at the Denver Immigration Court. In March, April and September 2006, there are MHP's scheduled at the Arlington, Philadelphia and Boston Immigration Courts.

If there is interest in setting up a MHP in an immigration court, the EOIR Pro Bono coordinator needs several months advance notice in order to make arrangements.

**Unauthorized Practice of Law & "Consumer" Protection Issues**

15. *As you know, AILA shares EOIR's and DHS' concerns about the unauthorized practice of law in the immigration field, especially as it relates to victimization of respondents by "notarios" or others posing as legal consultants, as well as poor or unethical legal representation by members of the bar. AILA has recently produced a generalized brochure regarding the unauthorized practice of law for distribution, and would like to provide a more specialized brochure for respondents in proceedings. Will EOIR consider allowing AILA to provide such materials at immigration courts or otherwise collaborate with AILA to ensure such valuable information reaches the public?*

**RESPONSE:**

AILA may leave these brochures in the pro bono room of the immigration court. If there is no pro bono room, the appropriate ACIJ can be contacted for further information. The appropriate ACIJ can be contacted with any further issues or questions. Moreover, the Office of General Counsel is extremely interested in cases involving attorney fraud. AILA members are encouraged to relay any concerns regarding such matters to the attention of Jennifer Barnes, Bar Counsel, Office of General Counsel.

**Case Completion Guidelines and Adjournment Codes**

16. *Have there been any changes to the case completion guidelines (i.e., what are the current parameters)?*

**RESPONSE:**

Case completion goals are internal, aspirational goals for the agency, and they do not dictate the completion of any given case by any given date. The current case completion goals are as follows: Motions to Reopen/Reconsider are to be completed within 60 days of receipt. Expedited Asylum applications are to be completed within 180 days. Detained cases with applications for relief, other than expedited asylum, are to be completed within 120 days of

receipt. Non-detained cases with applications for relief, other than expedited asylum, are to be completed within 240 days of receipt. In addition to case completion goals, OCIJ has endeavored to reduce the number of "aged" cases pending before the immigration judges.

In addition, with "aged" cases, if it appears that the case will not be completed within the case completion goal deadline, an immigration judge may request a "waiver" from his or her ACIJ to extend the case past the deadline. However, it is in the ACIJ's discretion on whether or not to grant the extension.

If an attorney believes that a continuance is required that might take the case beyond the case completion deadline, then they should make their motion for continuance on the record and fully articulate the basis or reasons that a continuance is needed.

17. *There is no adjournment code which "stops the clock" where there has been prior ineffective assistance of counsel (e.g., respondent hires new counsel shortly before a merits hearing and discovers there is eligibility for relief which was not previously requested) or where there simply has been a change of attorney (e.g., prior counsel withdraws shortly before a hearing and respondent cannot find competent counsel to take the case as scheduled).*

*Will OCIJ consider issuing guidance to Immigration Judges on the interaction of such issues and the case completion guidelines or consider adding a new adjournment code for such situations?*

**RESPONSE:**

As noted above, case completion goals do not dictate the completion of any given case by any given date. Immigration judges adjudicate requests for continuances on a case-by-case basis and will consider the issue of ineffective assistance of counsel or newly discovered forms of relief if raised in a request for a continuance. With regard to adjournment codes, OPPM 05-07, sets forth the adjournment codes that can be used by immigration judges when a case is adjourned. See OPPM 05-07, *Definitions and Use of Adjournment, Call-up and Case Identification Codes*, at http://www.usdoj.gov/eoir/efoia/ocij/oppm05/05-07.pdf. There are no current plans to add additional adjournment codes at this time.

**Impact of Motions to Terminate under the October 9, 2005 Howard Memo**

18. *In a memorandum published October 9, 2005, ICE General Counsel William Howard set forth criteria and procedures by which ICE trial attorneys could join in a motion to terminate proceedings without prejudice for adjustment of status in cases where adjudication would be more appropriate by USCIS. Members report that these procedures often allow respondents with "plain vanilla" adjustments to more efficiently complete the process before USCIS, without the additional stress and expense of proceeding before an immigration judge.*

a. *Does EOIR maintain any statistics on the number of such terminations granted?*

**RESPONSE:**

No, OCIJ does not maintain statistics on these terminations.

b. *Has the institution of this policy had any impact on the caseload and lengthy continuances necessary for such straightforward adjustment cases?*

**RESPONSE:**

OCIJ has no information on the impact of the policy at this time.

c. *In the interests of further reducing the burden on the agencies and respondents, would EOIR consider working with ICE and USCIS to expand this program to apply to cases where the matter is not yet ripe for adjudication, but appears bona fide and approvable (e.g., where USCIS has not yet reviewed a clearly approvable and bona fide underlying petition, but the case otherwise meets all the factors listed in the Howard memo)?*

**RESPONSE:**

If DHS expands the program, the immigration judges will consider motions to terminate under the expanded program. EOIR will bring this up at the upcoming liaison meeting with DHS Office of General Counsel.

**Attorney General Review of Immigration Judges**

19. *As you know the Attorney General mandated a review of the immigration courts nationwide to explore what he described as "intemperate" and "abusive" behavior of a small number of immigration judges. While we agree with the Attorney General that the vast majority of immigration judges discharge their duties ably and professionally, we share his concerns regarding OCIJ's review and evaluation of those whose behavior we believe is not up to par.*

*In the past AILA has requested that OCIJ consider amending its complaint and discipline procedures to be more transparent and responsive.*

a. *In light of the Attorney General's comments, is EOIR considering any changes to its training and review of judges?*

**RESPONSE:**

EOIR is awaiting the Attorney General's report.

b. *Can OCIJ comment on the ongoing review?*

**RESPONSE:**

OCIJ is fully participating in the Attorney General's review and is confident that productive recommendations will follow.