



**U.S. Department of Justice**

Executive Office for Immigration Review

*Office of the Chief Immigration Judge*

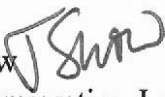
Chief Immigration Judge

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February 9, 2009

**MEMORANDUM**

TO: All Assistant Chief Immigration Judges  
All Immigration Judges  
All Court Administrators  
All Attorney Advisors and Judicial Law Clerks  
All Immigration Court Staff

FROM: Thomas G. Snow   
Acting Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 09-02:  
*Protective Orders and the Sealing of Records in Immigration Proceedings*

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## I. Introduction

This Operating Policies and Procedures Memorandum (OPPM) provides guidance regarding issuance of protective orders and sealing of records in immigration proceedings and supersedes OPPM 02-02, *Protective Orders and the Sealing of Records in Immigration Proceedings*, dated July 16, 2002, which is hereby rescinded. Immigration judges have certain authority to issue protective orders and seal records. *See* 8 C.F.R. 1003.46.

Authority to issue protective orders and seal records in immigration proceedings was granted to ensure that immigration judges, the Board of Immigration Appeals (Board), and respondents have full access to all unclassified sensitive information that is introduced in an immigration hearing, while preserving the Government's interest in protecting such information from general disclosure. The regulation applies only to sensitive law enforcement or national security information (*e.g.*, grand jury information or names of confidential witnesses) which is not classified, but the disclosure of which could nonetheless jeopardize investigations or harm national security.

No special clearance is necessary for individuals handling or reviewing this sensitive information. However, to reduce inadvertent disclosure, only immigration judges and authorized Immigration Court staff should handle these files. Please note that there may be cases that involve both classified and sensitive information. This OPPM does not provide instructions for the handling of classified information. For questions regarding the use and procedures that must be followed with respect to classified information, please consult OPPM 09-01, *Classified Information in Immigration Court Proceedings*, dated February 5, 2009.

This OPPM outlines procedures Immigration Courts must use when adjudicating motions for protective orders and when handling documents filed under seal. It also addresses the steps the Immigration Courts must take to ensure that there is no inadvertent release of any information or documents subject to a protective order or submitted under seal. For specific instructions on CASE System procedures and codes, *see* Appendix A.

## II. Protective Orders in Immigration Proceedings

### A. Motion for a Protective Order

The only party authorized to file a motion for a protective order in immigration proceedings is the Immigration and Customs Enforcement (ICE) Counsel. *See* 8 C.F.R. §1003.46(b). The motion for a protective order must be written. The regulations do not authorize the respondent to seek a protective order or permit the immigration judge to issue a protective order *sua sponte*.

#### 1. Certificate of Service

The motion for a protective order must be properly served on the respondent. 8 C.F.R.

§ 1003.46(b). If the motion does not contain a certificate of service indicating service on the respondent, the court administrator, or his or her designee, must promptly return the motion to the ICE Counsel as improperly filed, with the appropriate rejection letter, and maintain a copy of the letter for the file. A sample rejection letter is attached at Appendix B.

## 2. Contents of the Motion

A motion for a protective order must contain a description, to the extent practicable, of the information the ICE Counsel seeks to protect from disclosure. The motion shall also specify the relief requested in the protective order. In some cases, the ICE Counsel may submit an affidavit or declaration of a senior official in a law enforcement or national security agency concerning the effect that the disclosure of the information would have on law enforcement or national security interests of the United States. If such affidavit is filed, the immigration judge is required to give appropriate deference to the expertise of the official. 8 C.F.R. § 1003.46(d).

## 3. Sealed Annex to the Motion

The ICE Counsel may choose to submit a sealed annex to the motion. 8 C.F.R. § 1003.46(c). Alternatively, the immigration judge, in his or her discretion, may order the ICE Counsel to file a sealed annex containing the sensitive information to assist the immigration judge in deciding the motion. If the immigration judge determines such order is necessary, the order must be written and contain a due date for filing the sealed annex. In either scenario, immigration judges and Immigration Court personnel are not authorized to provide the sensitive information in the sealed annex to the respondent or his or her attorney or accredited representative. The information in the sealed annex will only be considered for purposes of deciding the motion. Once the motion is granted, the parties can submit the information in the sealed annex into evidence, and challenge its admissibility.

## 4. Sealed Annex and ROP Storage Procedures and Provision to the Assigned Immigration Judge

The court administrator must designate a locked file cabinet where the Record of Proceedings (ROPs) and the sealed annex (if any) will be stored, and make it accessible to the assigned immigration judge and authorized Immigration Court staff. A classified evidence safe must not be used to store ROPs and sealed annexes (if any) containing information subject to a protective order, unless the case also involves classified evidence. All Immigration Court personnel who come in contact with the ROP and the sealed annex must return it to the designated locked file cabinet when it is not being used or reviewed. The court administrator, or his or her designee, must purchase a stamp, as depicted in Appendix C, indicating that some contents of the ROP are subject to a protective order or that the order has been vacated.

Upon the ICE Counsel's filing of a properly served motion for a protective order, the court administrator, or his or her designee, must attach the motion to the ROP, along with the sealed annex (if any), and give it to the assigned immigration judge. Upon receipt of any response to the motion

from the respondent, the court administrator, or his or her designee, shall immediately provide it to the assigned immigration judge. The ROP and the sealed annex (if any) must be locked in the designated file cabinet when it is not being used or reviewed by the assigned immigration judge or authorized Immigration Court staff.

If the motion for a protective order is granted, the sealed annex, if any, must be included with the ROP and the cover of the ROP must be stamped with language as indicated in Appendix C. The ROP must continue to be stored in the designated file cabinet when it is not being used or reviewed by the assigned immigration judge or authorized Immigration Court staff.

If the motion for a protective order is denied, the court administrator, or his or her designee, is responsible for returning the sealed annex promptly to the ICE Counsel.

#### B. Respondent's Response to the Immigration and Customs Enforcement Counsel's Motion

The respondent has an opportunity to file a response to the motion for a protective order within ten calendar days of the service of such motion. 8 C.F.R. § 1003.46(b); *see* 8 C.F.R. § 1.1(h). This time limit overrides any Immigration Court Practice Manual time limit on motion response time. The immigration judge may not grant any extensions beyond this ten-day period. All orders granting or denying the motion must state whether the respondent filed or failed to file a timely response.

#### C. Decision on the Motion for a Protective Order

##### 1. Criteria for Deciding a Motion for a Protective Order

The criteria for deciding whether to grant a motion for a protective order is “substantial likelihood that [the] 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 enforcement interests of the United States. . .” 8 C.F.R. § 1003.46(a).

##### 2. Written Orders and Time Limits

All orders regarding motions for a protective order must be written. CASE orders to be used are attached at Appendix D. Immigration judges will issue the order as soon as possible, but in no event later than ten business days from the date the respondent has to respond to the motion. If the immigration judge cannot complete the order within the time period, he or she must request written approval for an extension. The request should be forwarded via electronic mail to both the Chief Immigration Judge and the appropriate Assistant Chief Immigration Judge, with a courtesy copy (“cc”) to the Deputy Chief Immigration Judges. The request must contain the following information: (1) the respondent's name; (2) the Alien number; (3) the current order due date; (4) the extension time needed; and (5) an explanation stating why an extension is necessary. The immigration judge will receive a response usually within two business days, but in no event later

than the expiration of the ten-day period. Judges should not delay in seeking an extension, nor assume that an extension will automatically be granted.

### 3. Granting of the Motion

#### a. Contents of the Protective Order

If the immigration judge finds that the ICE Counsel has established a substantial likelihood that the specific information under seal, if disclosed, would harm the national security or law enforcement interests of the United States and grants the motion for the protective order, the immigration judge must issue the order to ensure that the respondent, his or her attorney or accredited representative, and any witnesses who will need access to the protected information will not disclose the protected information. The immigration judge's order must contain the consequences that will result from violating the protective order, and must also warn the parties that any submissions to the immigration judge, including briefs, referring to information subject to the protective order must be filed under seal. 8 C.F.R. § 1003.46(h). Instructions for filing information under seal must also be included in the order. *See* § IV.B of this OPPM. CASE orders to be used are attached at Appendix D.

The regulations outline some possible requirements that may be included in the order, but grant the immigration judge broad discretion to include any other requirements he or she feels are necessary to prevent the disclosure of this information. The order must also direct that the ICE Counsel immediately serve the respondent with the protective order and the sealed information, and require that the ICE Counsel, within five days of the issuance of the protective order, provide the Immigration Court with proof of service of the protective order on the respondent.

#### b. Service of the Protective Order

Once the protective order is issued, the ICE Counsel must serve the protective order on the respondent, along with the sealed information. 8 C.F.R. § 1003.46(f)(3). The court administrator, or his or her designee, will be responsible for:

- (1) notifying the local ICE Chief Counsel (or if a sub-office, the local Trial Litigation Unit) that the protective order has been issued;
- (2) providing two copies of the protective order to the ICE Counsel (one for the ICE Counsel to serve on the respondent and one for the ICE Counsel to retain in its file) and one copy of the sealed annex (for the ICE Counsel to serve on the respondent); and
- (3) supplying any required envelopes for the parties to file documents under seal. *See* § IV.B of this OPPM.

These events should occur no more than one business day after issuance of the protective order. As discussed above in § II.C.3.a of this OPPM, the ICE Counsel must provide proof of service within five days of issuance of the protective order.

c. Admissibility of the Evidence

The mere granting of a protective order does not guarantee the admissibility of the evidence subject to the protective order in the proceedings. Rather, the respondent is entitled to challenge the admissibility of the information during the hearing, and the ICE Counsel has the burden of proving it is relevant and probative.

d. Closing of the Hearing

Once a protective order has been granted, all subsequent portions of the hearings in the affected case will be closed to the public if the information subject to the protective order may be considered during the session. 8 C.F.R. § 1003.27(d). The court administrator, or his or her designee, must code the case in the CASE system to reflect the closure of the hearing. Moreover, the immigration judge must inform any contract interpreter who is used during the hearing that he or she must not disclose any information subject to the protective order.

4. Denial of the Motion

If the motion is denied, the court administrator, or his or her designee, will return the sealed annex, if any, immediately to the ICE Counsel. If the ICE Counsel seeks an appeal of the denial, all further hearings will be continued pending the appeal. 8 C.F.R. § 1003.46(e).

III. Appeal of the Order

A. Immigration and Customs Enforcement Counsel's Appeal

1. Interlocutory Appeal

Only the ICE Counsel has the right to file an interlocutory appeal of the denial of the motion for a protective order. 8 C.F.R. § 1003.46(e).

2. Continuation of the Hearing

If the ICE Counsel appeals the denial, all further hearings in the case must be continued to a master calendar reset with a date certain, but in no case longer than 60 days, pending review by the Board. If the Board does not issue a decision on the interlocutory appeal within the initial 60 days, the immigration judge should continue the matter in increments not to exceed 60 days until the Board does so.

### 3. Procedures

All ROPs will be forwarded to the Board via overnight courier service immediately upon the ICE Counsel's filing the appeal. Immigration Court personnel must also send an e-mail to the Chief Clerk at the Board, informing the Board that the ROP contains information subject to a protective order. The court administrator, or his or her designee, must maintain the tracking number invoice which will indicate the name of the person at the Board who has received the ROP.

#### B. Respondent's Appeal

A respondent can appeal the issuance of a protective order to the Board only in conjunction with an appeal of the immigration judge's final decision resolving all issues of removability and applications for relief. 8 C.F.R. § 1003.46(f)(4).

### IV. Filing Documents under Seal

#### A. Submissions

Once a protective order is issued, any submissions to the immigration judge, including briefs, referring to information subject to the protective order must be filed under seal. 8 C.F.R. § 1003.46(h). Documents filed under seal must be filed in person with the Immigration Court to the attention of the court administrator, or his or her designee. However, a respondent who is both detained and *pro se* must be allowed to file documents under seal at a hearing specifically scheduled for that purpose or at a regularly scheduled hearing.

#### B. Procedures for Filing Information Subject to a Protective Order Under Seal

To submit information subject to a protective order, parties must:

- (1) enclose the information in a yellow, clasp-file envelope (previously provided by the court administrator, or his or her designee);
- (2) check that the protective order has been granted and the appropriate block which describes the enclosed documents;
- (3) prepare a transmittal sheet addressed to the attention of the court administrator, or his or her designee, and attach it to the envelope; and
- (4) file the documents with the Immigration Court as outlined in IV.A of this OPM.

The transmittal sheet must contain the following language: "THE INFORMATION CONTAINED IN THE ATTACHED YELLOW ENVELOPE IS CONSIDERED SENSITIVE AND MUST BE SEALED IN ACCORDANCE WITH THE PROTECTIVE ORDER ISSUED BY JUDGE \_\_\_\_\_ AT *(name of immigration court)* ON *(date)*."



## V. Administrative Enforcement

### A. Consequences of Violating the Protective Order

If the ICE Counsel establishes that the respondent or his or her attorney or accredited representative has disclosed information subject to the protective order, the immigration judge must deny the respondent all forms of discretionary relief, except for bond. The exception is in those cases where (1) the respondent fully cooperates with any investigation relating to the violation of the protective order and disclosure of the information; and (2) it is established by clear and convincing evidence that (a) extraordinary and extremely unusual circumstances exist, or (b) the failure to comply with the protective order was beyond the control of the respondent and his or her attorney or accredited representative. 8 C.F.R. § 1003.46(i). Additionally, the attorney or accredited representative may be suspended from practice before EOIR. 8 C.F.R. § 1003.46(i).

### B. Administrative Enforcement Hearing

If the ICE Counsel notifies the immigration judge that the respondent or his or her attorney or accredited representative may have disclosed information subject to a protective order, the immigration judge should not defer completing the merits hearings in the case. Instead, the immigration judge must conduct both the hearing on the merits and the hearing regarding the alleged violation (administrative enforcement hearing) before rendering a final decision in the case. Please consult § VI.C of this OPPM with regard to the contents of a final decision in which a violation of the protective order is alleged.

During the administrative enforcement hearing, if the ICE Counsel establishes that the respondent or his or her attorney or accredited representative has disclosed information subject to the protective order, the immigration judge will afford the respondent or his or her attorney or accredited representative an opportunity to establish that one of the exceptions applies.

### C. Referral to Bar Counsel

If the immigration judge finds that an attorney or accredited representative has violated the protective order, and neither of the exceptions applies, the immigration judge must notify, in writing, the Office of the General Counsel's Bar Counsel of the violation. Any referral to the Bar Counsel must include a courtesy copy ("cc") to the Chief Immigration Judge, the Deputy Chief Immigration Judge, and the respective Assistant Chief Immigration Judge. Such referrals should be made no later than 30 days after the issuance of the decision and order of the immigration judge determining that there has been a violation of the protective order.

## VI. Final Removal Decision of an Immigration Judge

### A. Form of the Final Decision

An immigration judge may render either a written or an oral decision.

### B. Time Limits for Issuing a Final Decision on the Merits and Administrative Enforcement Hearing

Within 30 days of the conclusion of the merits and administrative enforcement hearings, the immigration judge must issue a decision and order outlining the evidence and findings. If the immigration judge cannot complete the decision and order within the time period, he or she must request written approval for an extension. The request should be forwarded via e-mail to both the Chief Immigration Judge and the appropriate Assistant Chief Immigration Judge, with a "cc" to the Deputy Chief Immigration Judge. The request must contain the following information: (1) the respondent's name; (2) the Alien number; (3) the current order due date; (4) the extension time needed; and (5) an explanation stating why an extension is necessary. The immigration judge will receive a response usually within two business days, but in no event later than the expiration of the 30-day period. Judges should not delay in seeking an extension, nor assume that an extension will automatically be granted.

### C. Content of Final Decision Regarding a Violation of the Protective Order

If the immigration judge finds that the respondent or his or her attorney or accredited representative has disclosed information subject to a protective order, and neither exception applies, the final removal decision and order must state that the respondent is ineligible for any discretionary relief, except bond.

If the immigration judge finds that the respondent or his or her attorney or accredited representative has disclosed information subject to a protective order, but that one of the exceptions applies, the final removal decision and order must state which exception applies.

If the immigration judge has not found that the respondent or his or her attorney or accredited representative has disclosed information subject to a protective order, the final removal decision and order must state that there has been no violation.

### D. Maintenance of the Record of Proceedings and Appeal of a Decision

When the IJ has issued a final decision in a matter which contains a Protective Order and sealed annex, the ROP must be maintained in accordance with Paragraph VI, Appendix A. If an appeal is filed in the matter with the Board:

- Attach a transmittal letter directed to the Board on the front of the ROP copy.
- Send the ROP copy to the Board using overnight delivery service.

- Make sure to maintain the tracking number for the delivery service.
- E-mail the Chief Clerk at the Board to notify him or her that the ROP is on its way which contains a Protective Order and sealed annex.

## VII. Procedures for Motions to Modify or Vacate the Protective Order

### A. Jurisdiction Retained

The protective order will remain in effect until vacated by an immigration judge. 8 C.F.R. § 1003.46(f)(3). The immigration judge retains jurisdiction to modify or vacate the protective order, even if the protective order is being reviewed on appeal at the Board. 8 C.F.R. § 1003.46(f)(4).

### B. Upon Motion of Either Party

Either party can file a motion to modify or vacate the protective order. 8 C.F.R. § 1003.46(f)(4).

### C. Immigration and Customs Enforcement Counsel's Response to the Respondent's Motion

The ICE Counsel has an opportunity to respond to a respondent-filed motion to modify or vacate the protective order within ten calendar days of the service of such motion. 8 C.F.R. § 1003.46(f)(4). This time limit overrides any Immigration Court Practice Manual time limit on motion response time. The immigration judge may not grant any extensions beyond this ten-day period. All orders granting or denying the motion must state whether the ICE Counsel filed or failed to file a timely response.

### D. Respondent's Response to the Immigration and Customs Enforcement Counsel's Motion

To the extent practicable, and to the extent that it would not undermine the purpose for which the motion to modify or vacate is sought, the respondent should be afforded an opportunity to respond to the ICE Counsel's motion to modify or vacate the protective order. However, in no event should the time granted to the respondent exceed ten calendar days from the service of the motion to modify or vacate the protective order. This time limit overrides any Immigration Court Practice Manual time limit on motion response time. All orders granting or denying the motion must state whether the respondent filed or failed to file a timely response.

#### E. Written Order and Time Limits

Consistent with the requirement that all protective orders be written, all orders regarding motions to modify or vacate a protective order will be written. CASE orders to be used are attached at Appendix E. Immigration judges will issue the order as soon as possible, but in no event later than ten business days from the date the ICE Counsel has to respond to the motion. If the immigration judge cannot complete the order within the time period, he or she must request written approval for an extension. The request must be forwarded via e-mail to both the Chief Immigration Judge and the appropriate Assistant Chief Immigration Judge, with a “cc” to the Deputy Chief Immigration Judge. The request must contain the following information: (1) the respondent’s name; (2) the Alien number; (3) the current order due date; (4) the extension time needed; and (5) an explanation stating why an extension is necessary. The immigration judge will receive a response usually within two business days, but in no event later than the expiration of the ten-day period. Judges should not delay in seeking an extension, nor assume that an extension will automatically be granted.

#### F. Service of the Order to Modify or Vacate the Protective Order

Consistent with the procedures in § II.C.3.b of this OPPM, if a protective order is modified or vacated, the immigration judge will order the ICE Counsel to serve the modified or vacated protective order on the respondent. The court administrator, or his or her designee, will be responsible for:

- (1) notifying the local ICE Chief Counsel (or if a sub-office, the local Trial Litigation Unit) that the protective order has been issued; and
- (2) providing two copies of the modified or vacated protective order to the ICE Counsel (one for the ICE Counsel to serve on the respondent and one for the ICE Counsel to retain in its file).

These events should occur no more than one business day after the issuance of the protective order. If the immigration judge modifies or vacates the Protective Order, and an appeal is pending before the Board of Immigration Appeals, notify the Chief Clerk of the Board by email of that action and forward a copy of the modified or vacated Protective Order to the Board under the procedure in § III.A.3 of this OPPM.

### VIII. Retirement of ROPs Containing Information Subject to a Protective Order

There are no special requirements for retiring ROPs containing information subject to a protective order. If you have any questions regarding this OPPM, please contact my Chief Counsel at (703) 305-1247.

Appendices A-E

## APPENDIX A - CASE System Codes and Procedures

### I. Motion for Protective Order

A Motion for Protective Order can only be filed by the Immigration and Customs Enforcement (ICE) Counsel. This motion may have a sealed annex (attachment) or the immigration judge may order the ICE Counsel to file a sealed annex containing more information to assist the judge in making a decision on the motion.

Immigration Court staff must treat all annexes as containing information meant solely for the immigration judge's private review. Access to this information is limited to the case-assigned judge and designated court staff. Immigration judges and court personnel are not authorized to release this sensitive information or to make copies for the respondent and/or his or her attorney or accredited representative, without first consulting with the appropriate court administrator.

Any annexed information and ROP that is not being reviewed or used must be kept in a designated locked file cabinet prior to the judge's decision on the Motion. Only the court administrator, his or her designee, the case-assigned judge, and other authorized court personnel (*i.e.*, Judicial Law Clerk) should handle these motions in order to reduce the risk of disclosure of the sensitive information.

### II. Receiving Motions for Protective Order

If a Motion for Protective Order has been filed in your court, you should determine whether it contains a Certificate of Service indicating that the Motion was given to the respondent or his or her attorney or accredited representative.

A. **Improper Filing** - If it does not contain a Certificate of Service, it is improperly filed.

1. Reject the filing as being improperly filed.
2. Immediately return it to the ICE Counsel using the sample rejection letter. **NOTE:** *Do not communicate with the respondent or his or her attorney or accredited representative about the existence of a Motion for Protective Order; providing the letter to the ICE Counsel is sufficient. Annexed information must not be provided to the respondent or his or her attorney or accredited representative at this time.*

B. **Proper Filing** - If it contains a Certificate of Service, it is properly filed.

1. Date-stamp the Motion received in your court.
2. Enter CASE call-up code "MR" into the CASE System to allow the respondent 10 days to respond to the motion. **NOTE:** *This response time*

*overrides any Immigration Court Practice Manual provision for filing responses. Requests for extensions to this request time may not be granted.*

3. Complete a “Sealed Documents” yellow clasp-envelope by entering the A-number, respondent’s name, and an ‘X’ in block 1. Place the sealed annex (if any) to the Motion, in the yellow envelope.
4. Retrieve the ROP and attach the Motion and the sealed annex (if any). Give the ROP, the Motion and the sealed annex (if any) to the case-assigned judge, noting that a sealed annexed to the Motion either was or was not filed. **NOTE:** *Please remember that the ROP and the sealed annex (if any) must be returned to the designated file cabinet when it is not being used or reviewed by the assigned immigration judge or authorized Immigration Court staff.*
5. **NOTE:** *If no sealed annex is included with the motion, and the judge orders that one be filed, immediately serve the order on the ICE Counsel and the respondent. Make sure that the order has a due date for the ICE Counsel to file the sealed annex.*
6. When the judge has finished reviewing the Motion, file it, the ROP and the sealed annex (if any) in the designated locked file cabinet while awaiting a response from the respondent.
7. When the 10-day response time has elapsed (or earlier if the response is received), retrieve the ROP and the Motion on the case, any sealed annexed information (if received), and the respondent’s response to the Motion (if any). **NOTE:** *If the judge had ordered the ICE Counsel to file a sealed annex containing more information to assist in the adjudication of the Motion, provide that sealed annex to the immigration judge immediately upon receiving it, along with the ROP and the motion.*
8. Provide everything to the case-assigned judge for a decision on the Motion.

### **III. Entering Receipts of Motions for Protective Order into CASE**

Motions for Protective Orders are entered into the CASE System under the Action Tab of the Case Manager system, Actions–Add a Motion.

Receipts of Motions for Protective Orders entered into CASE will trigger an automatic disclosure warning on the CASE screen indicating that a Motion for Protective Order is pending and that the case or Motion may contain sensitive information. **NOTE:** *Case-related information will still be accessible from the 1-800 Number and will be printed on any calendars.*

Verify that the disclosure warning is engaged in CASE.

#### IV. Motion Orders

##### A. Motion Granted

1. Enter that the Motion was granted on the CASE System. This entry will trigger an automatic disclosure warning on the CASE screen indicating that the case, hearing, and/or ROP contains information sealed under a Protective Order. *NOTE: Case-related information will still be accessible from the 1-800 Number and on any calendars.*
2. Immediately serve **TWO** copies of the order and **ONE** copy of any sealed annex on the local ICE Chief Counsel or if a sub-office, on the ICE Trial Litigation Unit. **NOTE: Do not serve the respondent. The immigration judge's order will instruct the ICE Counsel to serve the order and the copy of the annexed information on the respondent or his or her attorney or accredited representative.**

##### B. Motion Denied

1. Enter that the Motion was denied on the CASE System.
2. Serve **only** the order on the Motion on both parties. Return the original annexed information (if any) to the ICE Counsel. **NOTE!! Do not make a copy of the information to include as part of the ROP or for the respondent or his or her attorney or accredited representative.**

#### V. Sensitive Information Under Seal

Once an immigration judge issues a Protective Order in a case, either party may file sensitive information under seal. Documents filed under seal with the court must be addressed to the attention of the court administrator, or his or her designee.

##### A. Filing Sensitive Information Under Seal

Parties filing sensitive information must comply with the following requirements listed in 1-4 below. If the court administrator, or his or her designee, is concerned that the party has failed to comply, then he or she must raise the issue with the case-assigned judge. **NOTE: The court administrator, or his or her designee, must not reject sealed annex information filings for administrative inadequacies. All filings under seal should be immediately referred to the case-assigned immigration judge.**

The parties must:

1. Enclose the sensitive information in a yellow, clasp-file envelope which will be provided by the immigration court.
2. Check block 2 on the envelope which describes the enclosed documents.

3. Prepare a transmittal sheet addressed to the attention of the court administrator, or his or her designee, and attach it to the envelope. The transmittal sheet must contain the following language: “THE INFORMATION IN THE ATTACHED YELLOW ENVELOPE IS CONSIDERED SENSITIVE AND MUST BE SEALED IN ACCORDANCE WITH THE PROTECTIVE ORDER ISSUED BY JUDGE\_\_\_\_\_ AT *(name of immigration court)* ON *(date)*.”
4. File the documents in person with the Immigration Court to the attention of the court administrator, or his or her designee. **NOTE:** *A respondent who is both detained and pro se will be allowed to file documents under seal at a hearing specifically scheduled for that purpose or at a regularly scheduled hearing.*

**B Sample of Sealed Documents Envelope**

Please see the next page for the sample.

**{CONTINUED ON NEXT PAGE}**



A-number: A- \_\_\_\_\_ Name: \_\_\_\_\_



***Sealed Documents: Do Not Disclose Contents!***

1.  Protective Order Pending. This envelope may contain sensitive information. It should not be discussed with, or provided to the respondent.
  
2.  Protective Order Granted. This envelope contains sensitive information subject to a Protective Order that was issued by Judge \_\_\_\_\_ at (name of immigration court) on (date).
  
3.  Protective Order Vacated on (date).

**Envelope contains:**

- Annexed information subject to Motion for Protective Order filed before Judge \_\_\_\_\_ on (date).
- Response to Motion for Protective Order dated: \_\_\_\_\_.
- List of Witnesses
- Motion for: \_\_\_\_\_.
- Other: \_\_\_\_\_.

## **VI. ROP Maintenance and Sealed Record Cases**

All ROPs with granted Protective Orders and sealed annexes must be maintained in a locked file cabinet designated for this purpose. They should only be accessible to the case-assigned immigration judge and other authorized court personnel. All court staff coming in contact with the ROP must return it to the designated file cabinet when it is not being used or reviewed.

## **VII. Appeal of Motion for Protective Order**

Only the ICE Counsel can file an appeal of the immigration judge's order denying a Motion for Protective Order. If the ICE Counsel files an appeal of the order denying the Protective Order, the immigration judge must adjourn any future hearing on the case to a Master Calendar Reset session no later than 60 days from the filing of the ICE Counsel's appeal. If the Board of Immigration Appeals does not issue a decision in that 60-day period, the case cannot go forward. The hearing must be continued to a Master Calendar Reset session in increments of not greater than 60 days. **NOTE:** *The respondent cannot appeal the immigration judge's order granting a Motion for Protective Order.*

### **A. Adjournment of Future Hearing**

1. The immigration judge must adjourn further hearings to a future date-certain if the ICE Counsel appeals the denial of the Motion for Protective Order. Enter adjournment code **IA**, indicating that the ICE Counsel has filed an interlocutory appeal, into the CASE system for this continuance.
2. Any future hearing in the case must be calendared to a Master Calendar Reset Session with a date-certain, but no later than 60 days from the date of appeal.
3. If the Board does not issue a decision on the interlocutory appeal within the initial 60-day adjournment, the immigration judge should continue any subsequent future case hearings by entering adjournment code **IA** in increments not greater than 60 days until the Board issues its ruling on the appeal of the denied Motion.

### **B. Creating a Separate Record of Proceeding File (ROP)**

1. Immediately create a separate ROP for this appeal type. The original ROP remains at the Immigration Court. The ROP copy must contain the following documents in chronological sequence of filing/issuance dates.
  - a. One copy of the immigration judge's order denying the Motion for Protective Order.
  - b. One copy of the Motion for Protective Order, with the annexed information (if applicable).
  - c. One copy of the charging document.

2. Write "Interlocutory Appeal" on the front of the ROP copy.
3. Enter the Sent to BIA date for the Interlocutory Appeal in the CASE System.
4. Write "Interlocutory Appeal" on the front of the original ROP file also.
5. Attach a transmittal letter directed to the Board on the front of the ROP copy.
6. Send the ROP copy to the Board using overnight delivery service.
7. Make sure to maintain the tracking number for the delivery service.
8. E-mail the Chief Clerk at the Board to notify him or her that the ROP is on its way.

### **VIII. Vacating or Modifying Removing The Protective Order**

The immigration judge may, upon motion by either party, modify or vacate the Protective Order at any time. If the immigration judge modifies or vacates the Protective Order, and an appeal is pending before the Board of Immigration Appeals, notify the Chief Clerk of the Board by email of that action and forward a copy of the modified or vacated Protective Order to the Board under the procedure in § III.A.3 of the OPPM.

### **IX. Motion to Modify Protective Order**

Either party may file a Motion to Modify the Protective Order. If this occurs, you should determine that the Motion contains a proper Certificate of Service on the opposing party.

#### **A. Improper Filing**

If the Motion does not contain a Certificate of Service:

1. Reject the filing as being improperly filed.
2. Immediately return the Motion the filing party, with the appropriate rejection letter.

#### **B. Proper Filing**

If the Motion contains a Certificate of Service:

2. Date stamp the Motion received in your court.
3. Enter the Filing Date in the Motion for Protective Order Actions-Add a Motion and the CASE call-up code MR in Actions-Add a call up into the CASE system and allow the respondent 10 days to respond. *Note: This response time overrides any Immigration Court Practice Manual provision for filing responses and extensions to this 10-day limit may not be granted.*
4. If the Motion contains annexed information, complete a "Sealed Documents" yellow clasp-envelope by entering the A number, respondent's name, and check 'X' in block 1. Place any annexed

- information on the Motion in this envelope.
5. File the yellow envelope in the designated locked file cabinet.
  6. Retrieve the case Record of Proceeding File (ROP) and give the Motion and the ROP to the case-assigned judge noting that a sealed annexed to the Motion was/was not filed.
  7. When the judge has finished the review of the Motion return it and the ROP to the locked file cabinet while awaiting the Motion response.
  8. When the 10-day response time has elapsed (or earlier if the response(s) is/are received) retrieve the ROP with the Motion along with any sealed annexed information and the respondent's response to the motion (or advise the judge if a response was not filed).
  9. Give this information to the case-assigned judge for a decision.
  10. Enter the judges order on the motion and serve both parties.

## **X. Motion to Vacate Protective Order**

Either party may file a Motion to Vacate the Protective Order. If this occurs, you should determine that the Motion contains a proper Certificate of Service on the opposing party. A granted Motion to Vacate will automatically remove the Disclosure Warning from the CASE Case Screen.

### **A. Improper Filing**

If the Motion does not contain a Certificate of Service:

1. Reject the filing as being improperly filed.
1. Immediately return the Motion the filing party, with the appropriate rejection letter.

### **B. Proper Filing**

If the Motion contains a Certificate of Service:

1. Date stamp the Motion received in your court.
2. Enter a Yes in the Motion for Protective Order vacate field **under Disposition IJ Motions** and the CASE call-up code MR into the CASE System and allow the respondent 10 days to respond. *Note: This response time overrides any Immigration Court Practice Manual provision for filing responses and extensions to this 10 day limit may not be granted.*
3. When the 10-day response time has elapsed (or earlier if the response(s) is/are received) retrieve the ROP with the Motion along with any sealed annexed information and the respondent's response to the motion (or advise the judge if a response was not filed).
4. Give this information to the case-assigned judge for a decision.
5. Enter the judge's order on the motion and serve both parties.

**XI. Maintenance of the Record of Proceedings and Appeal of a Decision**

When the IJ has issued a final decision in a matter which contains a Protective Order and sealed annex, the ROP must be maintained in accordance with Paragraph VI above. If an appeal is filed in the matter:

- Attach a transmittal letter directed to the Board on the front of the ROP copy.
- Send the ROP copy to the Board using overnight delivery service
- Make sure to maintain the tracking number for the delivery service
- E-mail the Chief Clerk at the Board to notify him or her that the ROP is on its way which contains a Protective Order and sealed annex.

APPENDIX B - SAMPLE FORM LETTER REJECTING THE FILING OF A MOTION FOR A PROTECTIVE ORDER FOR LACK OF CERTIFICATE OF SERVICE

Date

*[Chief Counsel's Name]*  
Chief Counsel  
*[Street Address, Suite/Floor Number]*  
*[City, State, Zip Code]*

Dear *[Chief Counsel's Name]*:

The (city) Immigration Court is in receipt of the Immigration and Customs Enforcement's motion for a protective order in Matter of XXXX, A#000-000-000. However, the ICE Counsel has failed to provide a certificate of service that the motion was served on Respondent or his counsel.

The motion and sealed annex, if any, is being returned as improperly filed. See 8 C.F.R. § 1003.46(b). Should you decide to re-file your motion for a protective order, it must contain a certificate of service indicating that Respondent or his counsel was served with the motion.

Sincerely,

Court Administrator/Designee

(Enclosures)

APPENDIX C - SAMPLE OF LANGUAGE TO BE STAMPED ON COVER OF ROP  
(Customized to fit the bottom portion of the cover of an ROP)

W A R N I N G

- Information in this ROP is subject to a protective order.
  
- The protective order was vacated on  
\_\_\_\_\_ by \_\_\_\_\_.  
*(date)* *(name of immigration judge)*

W A R N I N G

APPENDIX D.1. - SAMPLE ORDER GRANTING A MOTION FOR A PROTECTIVE ORDER (WITH THE WARNING OF THE CONSEQUENCES FOR FAILURE TO COMPLY)

CASE HEADING

ORDER OF THE IMMIGRATION JUDGE

The motion for a protective order is hereby GRANTED.

The issuance of this protective order encompasses Respondent, his or her attorney or accredited representative, and any witnesses that Respondent demonstrates are reasonably necessary to presentation of his or her case. See 8 C.F.R. § 1003.46(f)(1). Any submission to the Immigration Court, including any briefs, referring to information subject to a protective order shall be filed under seal and will remain under seal as part of the administrative record. See 8 C.F.R. § 1003.46(h). In addition, Respondent and his or her attorney or accredited representative, if any:

- Must not divulge any of the information submitted under this protective order, or any information derived therefrom, to any person or entity, other than authorized personnel of the Executive Office for Immigration Review (EOIR), Immigration and Customs Enforcement (ICE), or such other persons as approved by the Immigration Court or ICE. See 8 C.F.R. § 1003.46(f)(2)(i).
- Must include a cover sheet identifying the contents of the submission as containing information subject to this protective order when transmitting any information under it, or any information derived therefrom, to EOIR or ICE. See 8 C.F.R. § 1003.46(f)(2)(ii). If a party files a brief referring to information subject to the protective order, it must be filed under seal.

To submit information subject to this protective order or any information derived therefrom, the party must enclose the information in a yellow, clasp-file envelope (which has been provided with this order), check the appropriate block which describes the enclosed documents, prepare a transmittal sheet addressed to the attention of the Court Administrator, or his or her designee, and it to the yellow envelope, and file the documents with the Immigration Court.

- Must store any information under this protective order, or any information derived therefrom, in a reasonably secure manner. See 8 C.F.R. § 1003.46(f)(2)(iii).
- Must return all copies of such information to the ICE Counsel upon completion of the proceedings, including judicial review. See 8 C.F.R. § 1003.46(f)(2)(iii).



- ❑ Other requirements necessary to protect the information from disclosure. See 8 C.F.R. § 1003.46(f)(2)(iv).\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

The ICE Counsel shall immediately serve Respondent with a copy of this order granting protection of information it intends to submit or is submitting under seal in immigration proceedings, along with the sealed information. See 8 C.F.R. § 1003.46(f)(3). Within five days of this order, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

All subsequent portions of the hearings in this case will be closed to the public if the information subject to the protective order may be considered. See 8 C.F.R. § 1003.27(d). The issuance of a protective order does not prejudice Respondent’s rights to challenge the admissibility of the information subject to a protective order in removal proceedings. See 8 C.F.R. § 1003.46(g).

Review of the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court’s resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). This Court will retain jurisdiction to modify or vacate a protective order upon the ICE Counsel’s or Respondent’s motion. See 8 C.F.R. § 1003.46(f)(4).

If Respondent or his or her attorney or accredited representative discloses information subject to this protective order, the Court will deny all discretionary forms of relief, except bond, unless Respondent fully cooperates with any investigation relating to noncompliance and disclosure of the information, and establishes by clear and convincing evidence that (1) extraordinary and extremely unusual circumstances exist, or (2) failure to comply was beyond the control of Respondent and his or her attorney or accredited representative. See 8 C.F.R. § 1003.46(i). In addition, if his or her attorney or accredited representative fails to comply with the protective order, he or she may be suspended from appearing before EOIR or the Department of Homeland Security. See 8 C.F.R. § 1003.46(i).

This protective order remains in effect until vacated by the Immigration Court. See 8 C.F.R. § 1003.46(f)(3).

APPENDIX D.2. - SAMPLE ORDER DENYING A MOTION FOR A PROTECTIVE ORDER

CASE Heading

ORDER OF THE IMMIGRATION JUDGE

The motion for a protective order is hereby DENIED. The Immigration Court is returning the sealed annex to Immigration and Customs Enforcement and will give no weight to such information contained therein. See 8 C.F.R. § 1003.46(e).

The Immigration and Customs Enforcement may immediately appeal the Court's denial of this protective order to the Board of Immigration Appeals. See 8 C.F.R. § 1003.46(e). If Immigration and Customs Enforcement appeals this denial of the protective order, the removal proceedings will be continued pending the appeal. See 8 C.F.R. § 1003.46(e).

APPENDIX E.1. - RESPONDENT'S MOTION TO [VACATE/MODIFY] IS GRANTED

CASE Heading

ORDER OF THE IMMIGRATION JUDGE

- Respondent's motion to vacate has been GRANTED. Respondent shall return all copies of information subject to it to the Immigration and Customs Enforcement (ICE) Counsel on or by \_\_\_\_\_ . See 8 C.F.R. § 1003.46(f)(2)(iii).  
(insert date)

The ICE Counsel shall immediately serve Respondent with a copy of this vacated order. See 8 C.F.R. § 1003.46(f)(3). Within five days of this vacatur, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

The issuance of this vacated protective order does not prejudice Respondent's rights to challenge the admissibility of the information that was subject to it. See 8 C.F.R. § 1003.46(g). Review of the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4).

Immigration and Customs Enforcement may immediately appeal the Court's granting of Respondent's motion to vacate the protective order to the Board of Immigration Appeals. See 8 C.F.R. § 1003.46(e). If the ICE Counsel appeals this grant of Respondent's motion to vacate, the removal proceedings will be continued, pending the appeal. See 8 C.F.R. § 1003.46(e).

- Respondent's motion to modify has been GRANTED. The scope of the modified protective order is as follows:

The issuance of this modified protective order encompasses Respondent, his or her attorney or accredited representative, and any witnesses that Respondent demonstrates are reasonably necessary to presentation of his or her case. See 8 C.F.R. § 1003.46(f)(1). Any submission to the Immigration Court, including any briefs, referring to information subject to this modified protective order shall be filed under seal and will remain under seal as part of the administrative record. See 8 C.F.R. § 1003.46(h). In addition, Respondent and his or her attorney or accredited representative, if any:

- Must not divulge any of the information submitted under this modified protective order, or any information derived therefrom, to any person or entity, other than authorized personnel of the Executive Office for Immigration Review (EOIR), Immigration and Customs Enforcement, or such other persons as approved by the Immigration Court or the ICE Counsel. See 8 C.F.R. § 1003.46(f)(2)(i).
- Must include a cover sheet identifying the contents of the submission as containing information subject to this modified protective order when transmitting any

information under it, or any information derived therefrom, to EOIR or the ICE Counsel. See 8 C.F.R. § 1003.46(f)(2)(ii). If a party files a brief referring to information subject to this modified protective order, it must be filed under seal.

To submit information subject to this modified protective order or any information derived therefrom, the party must enclose the information in a yellow, clasp-file envelope (which has been provided with this order), check the appropriate block which describes the enclosed documents, prepare a transmittal sheet addressed to the attention of the court administrator or his or her designee, and attach it to the yellow envelope, and file the documents with the Immigration Court.

- Must store any information under this modified protective order, or any information derived therefrom, in a reasonably secure manner. See 8 C.F.R. § 1003.46(f)(2)(iii).
- Must return all copies of such information to the ICE Counsel upon completion of the proceedings, including judicial review. See 8 C.F.R. § 1003.46(f)(2)(iii).
- Other requirements necessary to protect the information from disclosure. See 8 C.F.R. § 1003.46(f)(2)(iv) \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

The ICE Counsel shall immediately serve Respondent with a copy of this modified order. See 8 C.F.R. § 1003.46(f)(3). Within five days of this modified protective order, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

All subsequent portions of the hearings in this case will be closed to the public if the information subject to the modified protective order may be considered. See 8 C.F.R. § 1003.27(d). The issuance of this modified protective order does not prejudice Respondent’s rights to challenge the admissibility of the information that is subject to it. See 8 C.F.R. § 1003.46(g).

Review of the modified protective order before the Board of Immigration Appeals shall only be had pursuant to this Court’s resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). The Court will retain jurisdiction to modify or vacate this modified protective order upon the ICE Counsel’s or Respondent’s motion. See 8 C.F.R. § 1003.46(f)(4).

If Respondent or his or her attorney or accredited representative discloses information subject to this modified protective order, the Court will deny all discretionary forms of relief, except bond, unless Respondent fully cooperates with any investigation relating to noncompliance and disclosure of the information, and establishes by clear and

convincing evidence that (1) extraordinary and extremely unusual circumstances exist, or (2) failure to comply was beyond the control of Respondent and his or her attorney or accredited representative. See 8 C.F.R. § 1003.46(i). In addition, if his or her attorney or accredited representative fails to comply with the modified protective order, he or she may be suspended from appearing before EOIR or the Department of Homeland Security. See 8 C.F.R. § 1003.46(i).

This modified protective order remains in effect until vacated by the Immigration Court. See 8 C.F.R. § 1003.46(f)(3).

Immigration and Customs Enforcement may immediately appeal the Court's granting of Respondent's motion to modify the protective order to the Board of Immigration Appeals. See 8 C.F.R. § 1003.46(e). If the ICE Counsel appeals this grant of Respondent's motion to modify the protective order, the removal proceedings will be continued, pending the appeal. See 8 C.F.R. § 1003.46(e).

APPENDIX E.2. - RESPONDENT'S MOTION TO [VACATE/MODIFY] IS DENIED

CASE Heading

ORDER OF THE IMMIGRATION JUDGE

Respondent's motion to [*vacate/modify*] the protective order is hereby DENIED; the protective order issued by this Court on \_\_\_\_\_, 20\_\_\_\_, remains in effect. The Immigration and Customs Enforcement (ICE) Counsel shall immediately serve Respondent with a copy of this order denying his or her motion to [*vacate/modify*] the protective order that was previously issued by this Court. Within five days of this order, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

All subsequent portions of the hearings in this case will be closed to the public if the information subject to the protective order may be considered. See 8 C.F.R. § 1003.27(d). The issuance of the protective order does not prejudice Respondent's rights to challenge the admissibility of the information subject to it in removal proceedings. See 8 C.F.R. § 1003.46(g).

Review of the protective order or the denial of a motion to [*vacate/modify*] the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). This Court will retain jurisdiction to vacate or modify a protective order upon the ICE Counsel's or Respondent's motion. See 8 C.F.R. § 1003.46(f)(4).

If Respondent or his or her attorney or accredited representative discloses information subject to the protective order, this Court will deny all discretionary forms of relief, except bond, unless Respondent fully cooperates with any investigation relating to noncompliance and disclosure of the information, and establishes by clear and convincing evidence that (1) extraordinary and extremely unusual circumstances exist, or (2) failure to comply was beyond the control of Respondent and his or her attorney or accredited representative. See 8 C.F.R. § 1003.46(i). In addition, if his or her attorney or accredited representative fails to comply with the protective order, he or she may be suspended from appearing before EOIR or the Department of Homeland Security. See 8 C.F.R. § 1003.46(i).

The protective order remains in effect until vacated by the Immigration Court. See 8 C.F.R. § 1003.46(f)(3).

APPENDIX E.3. - IMMIGRATION AND CUSTOMS ENFORCEMENT'S MOTION TO  
[VACATE/MODIFY] IS GRANTED

CASE Heading

ORDER OF THE IMMIGRATION JUDGE

- ❑ The Immigration and Customs Enforcement (ICE) Counsel's motion to vacate has been GRANTED. Respondent shall return all copies of information subject to it to the ICE Counsel on or by \_\_\_\_\_, 20\_\_\_. See 8 C.F.R. § 1003.46(f)(2)(iii).

The ICE Counsel shall immediately serve Respondent with a copy of this vacated order. See 8 C.F.R. § 1003.46(f)(3). Within five days of this vacatur, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

The issuance of the vacated protective order does not prejudice Respondent's rights to challenge the admissibility of the information that was subject to it in removal proceedings. See 8 C.F.R. § 1003.46(g). Review of the vacated protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4).

Review of the protective order or the grant of the ICE Counsel's motion to vacate the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). This Court will retain jurisdiction to modify or vacate a protective order upon the ICE Counsel's or Respondent's motion. See 8 C.F.R. § 1003.46(f)(4).

- ❑ The ICE Counsel's motion to modify has been GRANTED. The scope of the modified protective order is as follows:

Issuance of this modified protective order encompasses Respondent, his or her attorney or accredited representative, and any witnesses that Respondent demonstrates are reasonably necessary to presentation of his or her case. See 8 C.F.R. § 1003.46(f)(1). Any submission to the Immigration Court, including any briefs, referring to information subject to this modified protective order shall be filed under seal and will remain under seal as part of the administrative record. See 8 C.F.R. § 1003.46(h). In addition, Respondent and his or her attorney or accredited representative, if any:

- ❑ Must not divulge any of the information submitted under this modified protective order, or any information derived therefrom, to any person or entity, other than authorized personnel of the Executive Office for Immigration Review (EOIR), Immigration and Customs Enforcement, or such other persons as approved by the Immigration Court or Immigration and Customs Enforcement. See 8 C.F.R. § 1003.46(f)(2)(i).

- Must include a cover sheet identifying the contents of the submission as containing information subject to this modified protective order when transmitting any information under it, or any information derived therefrom, to EOIR or the Immigration and Customs Enforcement Counsel. See 8 C.F.R. § 1003.46(f)(2)(ii). If a party files a brief referring to information subject to the modified protective order, it must be filed under seal.

To submit information subject to this modified protective order or any information derived therefrom, the party must enclose the information in a yellow, clasp-file envelope (which was previously provided), check the appropriate block which describes the enclosed documents, prepare a transmittal sheet addressed to the attention of the court Administrator, or his or her designee, and attach it to the yellow envelope, and file the documents with the Immigration Court.

- Must store any information under this modified protective order, or any information derived therefrom, in a reasonably secure manner. See 8 C.F.R. § 1003.46(f)(2)(iii).
- Must return all copies of such information to the ICE Counsel upon completion of the proceedings, including judicial review. See 8 C.F.R. § 1003.46(f)(2)(iii).
- Other requirements necessary to protect the information from disclosure. See 8 C.F.R. § 1003.46(f)(2)(iv). \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The ICE Counsel shall immediately serve Respondent with a copy of this modified order. See 8 C.F.R. § 1003.46(f)(3). Within five days of this modified protective order, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

All subsequent portions of the hearings in this case will be closed to the public if the information subject to the modified protective order may be considered. See 8 C.F.R. § 1003.27(d). The issuance of this modified protective order does not prejudice Respondent's rights to challenge the admissibility of the information that is subject to it in removal proceedings. See 8 C.F.R. § 1003.46(g).

Review of the modified protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). The Court will retain jurisdiction to modify or vacate this modified protective order upon the ICE Counsel's or Respondent's motion. See 8 C.F.R. § 1003.46(f)(4).



If Respondent or his or her attorney or accredited representative discloses information subject to this modified protective order, the Court will deny all discretionary forms of relief, except bond, unless Respondent fully cooperates with any investigation relating to noncompliance and disclosure of the information, and establishes by clear and convincing evidence that (1) extraordinary and extremely unusual circumstances exist, or (2) failure to comply was beyond the control of Respondent and his or her attorney or accredited representative. See 8 C.F.R. § 1003.46(i). In addition, if his or her attorney or accredited representative fails to comply with the modified protective order, he or she may be suspended from appearing before EOIR or the Department of Homeland Security. See 8 C.F.R. § 1003.46(i).

This modified protective order remains in effect until vacated by the Immigration Court. See 8 C.F.R. § 1003.46(f)(3).

Review of the protective order or the grant of the ICE Counsel's motion to modify the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). This Court will retain jurisdiction to modify or vacate a protective order upon the ICE Counsel's or Respondent's motion. See 8 C.F.R. § 1003.46(f)(4).

APPENDIX E.4. - IMMIGRATION AND CUSTOMS ENFORCEMENT'S MOTION TO  
[VACATE/MODIFY] IS DENIED

CASE Heading

ORDER OF THE IMMIGRATION JUDGE

The Immigration and Customs Enforcement (ICE) Counsel's motion to [*vacate/modify*] the protective order is hereby DENIED. The ICE Counsel shall immediately serve Respondent with a copy of this order denying the ICE Counsel's motion to [*vacate/modify*] the protective order. Within five days of this order, the ICE Counsel shall provide the Court with proof of service indicating the time and place Respondent was served.

All subsequent portions of the hearings in this case will be closed to the public if the information subject to the \_\_\_\_\_, 20\_\_\_\_, protective order may be considered. See 8 C.F.R. § 1003.27(d). The issuance of the protective order does not prejudice Respondent's rights to challenge the admissibility of the information that is subject to it in removal proceedings. See 8 C.F.R. § 1003.46(g).

If Respondent or his or her attorney or accredited representative discloses information subject to the protective order, the Court will deny all discretionary forms of relief, except bond, unless Respondent fully cooperates with any investigation relating to noncompliance and disclosure of the information, and establishes by clear and convincing evidence that (1) extraordinary and extremely unusual circumstances exist, or (2) failure to comply was beyond the control of Respondent and his or her attorney or accredited representative. See 8 C.F.R. § 1003.46(i). In addition, if his or her attorney or accredited representative fails to comply with the modified protective order, he or she may be suspended from appearing before EOIR or the Department of Homeland Security. See 8 C.F.R. § 1003.46(i).

The protective order remains in effect until vacated by the Immigration Court. See 8 C.F.R. § 1003.46(f)(3).

Review of the protective order before the Board of Immigration Appeals shall only be had pursuant to this Court's resolution of all issues of removability and any applications for relief. See 8 C.F.R. § 1003.46(f)(4). The Court will retain jurisdiction to modify or vacate the protective order upon the ICE Counsel's or Respondent's motion. See 8 C.F.R. § 1003.46(f)(4).

Immigration and Customs Enforcement may immediately appeal the denial of the its motion to [*vacate/modify*] the protective order to the Board of Immigration Appeals. See 8 C.F.R. § 1003.46(e). If the ICE Counsel appeals this Court's denial, the removal proceedings will be continued, pending the appeal. See 8 C.F.R. § 1003.46(e). The Court retains jurisdiction to modify or vacate a protective order upon the ICE Counsel's or Respondent's motion during the appeal. See 8 C.F.R. § 1003.46(f)(4).