AILA-EOIR LIAISON AGENDA QUESTIONS
For March 27, 2003

General Issues

1. *Does EOIR know how the transition of INS into the Department of Homeland Security (DHS) will impact on EOIR operations?*

   (a) Will DHS have access to scheduling privileges?

   (b) Will DHS submit asylum applications for Respondents referred for immigration proceedings?

   (c) Will DHS have access to the EOIR computer system?

   (d) Will DHS be given print-outs of the master calendars as notice of hearings, or will they be required to rely on mailed notices as the private bar does?

   (e) Will there continue to be shared facilities by DHS and EOIR?

   (f) When EOIR grants a benefit, how will they determine that the benefit is implemented? Will EOIR have the ability to grant evidence of the benefit? We have asked this question before, but it has a heightened importance now, in view of the INS's transition into Homeland Security.

   RESPONSE: The functions of the former Immigration and Naturalization Service (INS) were transferred to the Department of Homeland Security (DHS), pursuant to the Homeland Security Act of 2002 (HSA). This transfer of functions occurred on March 1, 2003 when INS was abolished. Under the savings provisions contained in section 1512 of the HSA, agency actions of the former INS as they relate to the Executive Office for Immigration Review (EOIR) remain in effect according to their terms.

2. *Do you anticipate that heightened security concerns may impact the travel and availability of Immigration Judges (IJs) and Board members to speak at AILA conferences*?

   RESPONSE: The EOIR is not aware of any additional security concerns which would prevent Immigration Judges (IJs) or Board Members from traveling to speak at AILA conferences. However, budgetary concerns will restrict non-case related travel.

Immigration Court Issues

3. *Are there any existing IJ vacancies that you can announce? Are there any plans to hire additional IJs? If positions do become vacant, will they be filled*?

RESPONSE: The Office of the Chief Immigration Judge (OCIJ) does not have any vacancies available at this time. However, we do expect to have vacancies in the very near future, which we expect to be filled. Please keep checking our website for any vacancy announcements. As for new IJ positions, although OCIJ is hopeful to obtain more positions this fiscal year, it is not likely.

4. *At previous meetings (both AILA Liaison and Town Meetings), EOIR has referred to Case Completion Goals and new case processing guidelines. Please update us on the status of these goals. Are these goals merely guidelines or firm requirements*?

RESPONSE: The OCIJ has implemented case completion goals for all Immigration Courts. The goals are intended as guidelines to be used by judges and court staff to effectively calendar and manage their caseloads.

5. *In recent years, attorneys and other professionals have made increasing use of personal data assistants ("PDAs", "pocket PC's", "Palm Pilots," etc). to keep track of their calendars and schedules. Many AILA attorneys have routinely taken their PDA's into Immigration Court to access their calendars and avoid schedule conflicts in the setting of future hearings. in Recently, however, in passing through security at Immigration Court, several AILA attorneys in Houston had their PDA's – the same ones frequently used in Immigration Court many times before -- confiscated by security because the PDA's have a recording function. They were told that the confiscation was at the insistence of the Immigration Court. Further inquiry at the Immigration Court disclosed that this new directive was based upon instructions from EOIR.*

   Most new generation PDA's have a recording function, and it is difficult if not impossible to purchase a new one that doesn't. A ban on such devices effectively bans virtually all PDA's from the Immigration Court. The inability to use PDA's, after having done so for years, will require attorneys to manually re-enter months of scheduled events from the PDA into a pocket calendar or risk conflicting settings.

   (a) Is this restriction on PDA's an EOIR policy? Is it applied uniformly in all Immigration Courts?

   (b) Obviously, EOIR must have some concern about these devices to justify the instructions issued. What is the perceived problem, and why did it arise so suddenly and without warning?

   (c) Is there some less drastic means of addressing EOIR's concerns short of banning these devices altogether?

RESPONSE: The OCIJ recently requested a legal opinion from the Office of General Counsel (OGC) on this very issue. Once the OGC renders its opinion, the OCIJ will respond to these questions.

6. *For several months now, lines to enter the elevators leading to the Immigration Court buildings in Los Angeles have been getting longer and longer (20-45 minute wait). Attorneys and clients are arriving late to their hearings due to this problem, risking in absentia orders. Ass't Chief Judge Crosland asked the AILA Southern California chapter to make an announcement asking clients to leave their families at home when scheduled for a master calendar hearing in efforts to reduce the lines. What can the EOIR do to alleviate the problem, and can attorneys be assured their clients will not be ordered removed in absentia because they are stuck in the long lines trying to enter the immigration court*?

   RESPONSE: The OCIJ is aware of the situation. However, we are working in an environment where heightened security is a critical issue, and security will not be compromised for the convenience of parties or their attorneys. Delays are to be expected, and attorneys are encouraged to inform their clients to come early and allow sufficient time to enter into the building to avoid in absentia hearings.

7. *AILA has raised this question in the past, but the problems persist. AILA shares the EOIR's belief that the key to the legitimacy of the EOIR is not only the fairness with which the IJs conduct hearings and render decisions, but that the proceedings maintain the "appearance" of fairness and impartiality. There are times when IJs advise INS trial attorneys regarding the proper charges to be brought in a case and sometimes do so "off the record." Will the Office of the Chief Immigration Judge (OCIJ) instruct IJs not to assist the INS trial attorneys as to the proper charges to be brought in a particular case because doing so violates this important tenet of EOIR policy, the appearance of impartiality*?

   RESPONSE: No. As previously stated, the DHS trial attorneys are entitled to amend the charging documents. IJs often assist parties – either trial attorneys or private attorneys. If an attorney is concerned regarding what occurs off the record, he or she can recap what occurred once the parties are back on the record, and thereby preserve the issue for appeal to the Board of Immigration Appeals (Board).

8. *At the March 2002 EOIR liaison meeting, AILA inquired whether IJs would be required to state on the record the code for the "asylum clock" and to whom the continuance is attributable. There remain additional problems with the clock and the rights of asylum seekers to obtain an employment authorization document (EAD) which the OCIJ Operating Policy and Procedures Memoranda (OPPM) do not address.*

--There are times when an asylum hearing is not completed because the length of the testimony does not fit within the allotted time, even where the alien has requested a longer time slot. The clock remains stopped even when this is not the alien's fault.

--There are times when an IJ will continue the case for a second Master Calendar Hearing (MCH) after the filing of the I-589 to receive "evidence" or an updated affidavit at the second MCH when those items could be filed at a date prior to the Individual Hearing (IH). The clock remains stopped even though the alien did not request the second MCH.

(a) Will OCIJ issue further instructions on the clock to deal with these and other circumstances that keep arising?

RESPONSE: The OCIJ is constantly examining its policies and directives to the field in order to address issues that arise. This includes policies regarding the issue of asylum clocks. In the first example, the clock should not be stopped unless the reason why the hearing was protracted was due to the alien's actions. In the second example, the clock should be stopped, as the alien is causing the delay by not submitting all the documents required at the time the original asylum application was filed or at the first master calendar hearing. It is the alien who is asking for a benefit here–that of amending or updating his or her application. Consequently, it is an alien caused delay.

(b) *What recourse do aliens have if they believe the clock has been improperly stopped? If the recourse is to file a motion to restart the clock, and it is denied, will OCIJ review that decision of the IJ*?

RESPONSE: While cases are pending before the Immigration Court, an alien can contact the Court Administrator, by mail, if they believe that their asylum clock has been improperly stopped due to a data input error (e.g., the legal technician has entered into the system an incorrect code). If it cannot be corrected in a timely manner, please contact OCIJ headquarters. For concerns regarding the IJ's determination to whom the delay will be attributed, the parties should make their arguments at the hearing. If the issue arises after the hearing, please file a written motion with the Judge. Please note, however, that the OCIJ has no authority to overrule an IJ's decision.

(c) In its March 2002 response, EOIR advised AILA to contact the court administrator with regard to clock problems. Do you really want court administrators to deal with these matters on a case by case basis and, if not satisfied, to contact OCIJ?

RESPONSE: Yes.

9. *In many jurisdictions, unscrupulous immigration consultants are actively and openly engaged in the unauthorized practice of law before EOIR through self-styled "appearance attorneys." These attorneys often submit baseless applications prepared by the consultant, readily admitting that the consultant has managed the case. Although sanctions against the attorney or the consultant are squarely within the jurisdiction of the appropriate state bar association, does the Immigration Judge have any obligation to confirm with the Respondent the nature of her relationship with her attorney? Where the Immigration Court suspects an improper relationship between an attorney and consultant, what can the court do to protect the Respondent*?

   RESPONSE: IJs are under no obligation to confirm the nature of the relationship between the alien and his or her attorney. Furthermore, it is well established that parties are bound by their choice of attorneys, and any action the attorney may take on behalf of the party. However, there are situations where an IJ may be concerned regarding the ability of the representative appearing before the Court. In those circumstances, it is up to the individual IJ to determine what further actions, if any, he or she wishes to take.

10. *How is EOIR handling proceedings in special registration cases where the applicant is the beneficiary of an approved application for labor certification and has filed a concurrent immigrant petition and adjustment application with a Service Center? Can we assume that Matter of Velarde-Pacheco (which allows proceedings to continue while an I-130 is pending) is extended to these types of cases since the same rationale is applicable? If the I-140 is approved, will EOIR adjudicate a copy of the I-485 application since the original application will normally be in the INS Service Center file*?

    RESPONSE: The OCIJ has previously answered questions relating to I-130 petitions on more than one occasion. Please refer to the agenda questions from the November 29, 2001 liaison meeting for additional information on this subject at http://www.usdoj.gov/eoir/aila.htm. There has been no change in those answers for special registration cases.

BIA Issues

11. *Staffing questions*:

    (a) Does the Board still have a goal of an 11-member panel? If so, is there a time frame for arriving at an 11-member composition?

    (b) Has there been any change in the number of staff attorney positions? Do you contemplate an increase in staff attorney positions to compensate for the reduction in Board members?

(c) The new regulations allow the Director to designate immigration judges, retired Board members, and retired IJs as temporary Board members for terms not to exceed six months (8 CFR §3.1(a)(4)). Has the Board been "rotating in" IJs as temporary Board members, as this regulation permits?

RESPONSE: On August 26, 2002, the Department published the Board of Immigration Appeals; Procedural Reforms Rule to Improve Case Management (BIA Reform Rule), 67 Fed. Reg. 54878. Under this regulation the Attorney General shall reduce the Board to eleven members, within six months of the effective date of the regulation, or such other time as the Attorney General may specify. The Department remains committed to this reform. With respect to staff attorney positions, twenty new attorneys were hired by the Board last fall which in many instances resulted in the staffing of already vacant positions. As noted in the BIA Reform Rule, the Attorney General may reevaluate the staffing requirements of the Board, however, no major change in attorney staffing is anticipated in the near term. Currently, no IJs are serving as temporary Board members.

12. *Has a date been set for the BIA to cease accepting the old EOIR-26 Notice of Appeal form in favor of the new? If so, what will happen if a respondent thereafter submits a timely and otherwise properly completed appeal on the old form? Will the appeal be considered timely and the respondent given the opportunity to refile with the correct form?*

RESPONSE: At this time, the Board does not plan to cease accepting appeals filed on the old version of Form EOIR-26. However, we strongly encourage appellants to use the most recent version of Form EOIR-26, revised September 2002. Use of the updated version of the EOIR-26 benefits the parties because its instructions guide parties in requesting three-Board Member review, it helps the parties clarify exactly which decision they are appealing (which assists the Clerk's Office in efficiently processing the appeal), and contains other updates.

13. *The new BIA streamlining regulations took effect last September and we are now six months into the new system.*

(a) Please give us some statistics concerning the anticipated increase in productivity. For example, how many decisions is the BIA issuing on a monthly basis now, as opposed to the figures for 2002 and 2001?

RESPONSE: The Board's production is a matter of public record and statistics about the Board's production can be found on the EOIR web page in the Statistical Yearbook at http://www.usdoj.gov/eoir/statspub/syb2000main.htm. The Statistical Yearbook will be updated for FY 2002 shortly. For more immediate purposes, the Board received 27,800 appeals and motions in FY 2001 and completed 31,800 cases. In FY 2002, the Board received 34,100 appeals and motions and completed 47,300. During the first five months of FY 2003, the Board has completed on average about 4,600 cases per month.

(b) What percentage of BIA decisions currently being issued are single member "affirmance without opinions" ("AWO")? How does that percentage compare with the percentages in 2002 and 2001?

RESPONSE: The Board does not keep statistics on the number of decisions which are single Board Member orders affirming without opinion the decision below.

(c) The Los Angeles Times article of January 5, 2003, that criticized the new streamlining regulations, asserts that the increased speed with which the BIA has adjudicated appeals has also resulted in an increase in the percentage of BIA cases decided against the alien and in favor of the INS, suggesting that an alien's chances of winning an appeal at the Board have suffered significantly under the new system. Does EOIR accept these statistics and/or this interpretation? If EOIR believes these numbers or the implications are misleading, why?

RESPONSE: The Board took exception to the Los Angeles Times article and responded with a letter to the editor, a copy of which is available on EOIR's web site at http://www.usdoj.gov/eoir/press/03/getter.pdf.

14. *Obviously, panel decisions are still allowed under the new regulations and we are still seeing some decisions by three member panels. What percentage of recent panel decisions:*

(a) affirm the decision of the Immigration Judge against the alien?

(b) affirm the decision of the Immigration Judge in favor of the alien?

(c) reverse an Immigration Judge decision against the alien?

(d) reverse an Immigration Judge decision in favor of the alien?

Are these percentages comparable to those in 2002 and 2001, or have they changed within the past year?

RESPONSE: The Board does not keep statistics on whether a panel decision affirmed or reversed an IJ decision in favor of either party.

15. *Despite EOIR's assurances to the contrary, perceptions persist among AILA practitioners that the quality of review at the BIA has suffered with the increased use of AWO decisions. Specifically, we are concerned that many meritorious cases involving substantial legal issues and no governing precedent are inappropriately receiving AWO decisions. In raising this issue, we want to emphasize that our concerns are with the system and not the people forced*

to work with it. We believe that all BIA members are committed professionals, devoted in good faith to the performance of their vital review functions.

(a) Please describe for us the process by which an AWO decision is issued. Is the decision that an AWO is appropriate first made by a screening Board member, or staff attorney? If the AWO is proposed initially by the staff attorney, to what extent if any does the Board member review the briefs and record to confirm that the case meets the criteria for AWO?

RESPONSE: Orders affirming the decision of the IJ without opinion are issued in accordance with the regulations. The process by which a Board member issues such a decision is a matter of internal Board procedure.

(b) The Los Angeles Times article of January 5, 2003, mentioned a particularly egregious AWO issued in an in absentia case under circumstances that we hope EOIR would agree were unfortunate. Such examples we know are anecdotal. Nonetheless, in cases where the practitioner sincerely believes the AWO procedure has been inappropriately employed to an unjust result, and also believes the Board may upon reflection agree, should a motion to reconsider be filed? Is there some less formal way of bringing attention to such matters?

RESPONSE: A motion to reconsider is the best way to bring to the Board's attention a perceived error in the Board's review. The regulations do not provide for other or less formal ways for a party to bring to the Board's attention such errors. However, a motion to reconsider based solely on an argument that the case should not have been affirmed without opinion by a single Board Member, or by a three-Member panel, is barred by regulation.

16. *The increasing productivity from the BIA has predictably resulted in an increase in cases ripe for judicial review. As filings in the United States district courts and Courts of Appeals have increased, the preparation and filing of the administrative records is taking much longer. In some cases, the Department of Justice has been forced to request three or four extensions to file the record, delaying submission of the case for months after the case was filed in the court.*

(a) Is EOIR responsible for preparing the administrative records for filing in the Courts of Appeals and district courts? If so, have additional resources been devoted internally to the process of producing the records so that the backlog may be reduced?

(b) May we expect EOIR to receive additional funding and personnel from the Department to expedite the process?

(c) At our September 26, 2002 meeting, you stated that you had no requests from the Office of Immigration Litigation for photocopying of the administrative record pending before the Board older than one month. Could you give us an update on your current backlog?

RESPONSE: The Board has for some time faced a significant challenge in timely preparing records for judicial review when requested by the Office of Immigration Litigation given the tremendous increase in court filings. In response the Board has assigned additional personnel and approved overtime for this task. However, the increase continues. To compare, there were an average of 166 requests for preparation per month during fiscal years 1998 through 2001, but for fiscal year 2003 through February there has been an average of 693 requests per month, with 838 requests received in January alone. Our oldest pending requests go back approximately 3 months.

The Board continues to address this challenge. We are planning to assign the preparation of records to a private contractor. Meetings have been held with the contractor, and we hope to have the new process in place in the next month or so. This should significantly reduce the number of pending requests.

17. *As you know, IJs generally issue oral decisions immediately after a hearing, and are required by regulation to state findings of fact and legal conclusions in that decision. The Board has traditionally reviewed these findings de novo. The new regulations, however, have replaced the traditional de novo standard of review at the BIA with a "harmless error" standard insofar as factual determinations are concerned. Further, the increased reliance upon AWO orders means that the oral decisions of the IJs are increasingly reviewed as the "final agency determination" by federal district courts and Circuit Courts of Appeals. As a consequence of these changes, the findings of fact and mixed questions of fact and law made by an Immigration Judge in the oral decision are of even greater importance than ever.*

(a) In view of these changes, has EOIR modified the instructions or training of IJs to encourage greater care and clarity in the findings stated in the oral decisions?

RESPONSE: Yes.

(b) If so, what directives have been issued in this regard?

RESPONSE: After the BIA Reform Rule was published on August 26, 2002, the OCIJ reminded IJs that, in light of the changes, their decisions will receive more attention than in the past, and to be aware of this factor when issuing their decisions, be it oral or written.

18. *The BIA's practice of holding oral arguments outside Falls Church has provided many practitioners with an otherwise unavailable look at Board's inner workings. What is the BIA's current policy regarding requests for oral argument, and can we expect the Board to*

hold argument to coincide with AILA's next Annual Conference?

RESPONSE: There are no cases currently scheduled for oral argument in other cities and no foreseeable plans for the Board to hold oral argument outside of Falls Church for now. Under the BIA Reform Rule, oral argument must be held in the Board's offices unless the Deputy Attorney General authorizes oral argument to be held elsewhere. The Board reviews each request for oral argument on a case by case basis. There is no policy about when to hold oral argument or how many arguments to hear in any given period of time.

19. *Who is the contact person at the BIA if a motion to reopen or reconsider must be granted prior to expiration of voluntary departure? Can we have his/her name & phone number?*

RESPONSE: There is no one particular person to contact at the Board regarding expediting a motion to reopen where the individual's period of voluntary departure is about to expire. To make such a request, counsel should call the Clerk's Office at 703-605-1007. The office will make every attempt to make sure the file is reviewed. If not already done, counsel should follow up the phone call by filing a written motion to expedite that will be included in the file when received.

The Board would like to point out that the law regarding voluntary departure was intended to have consequences whether or not the individual is seeking reopening with EOIR. The Board appreciates the circumstances the individual has been placed in, but there is always a risk that the motion will not be addressed in the time necessary, and we cannot be a guarantor that it will be adjudicated before voluntary departure expires. As you know, the Board has many priorities it must meet under the law. Further, the status of the case and the simple processing of a case may make the deadline problematic. The Clerk's Office may still need to process the case because files have not have been received or we are still awaiting a response to the motion. Also, the issues raised by the motion may require significant work. Finally, this may all arise with a request first made only days before expiration of voluntary departure time.

20. *The BIA should be advised that oftentimes, after sitting on hold to speak to a real live clerk, just as the caller becomes "number one" and is about to be transferred to a human, the line disconnects.*

RESPONSE: Although the Board at times receives complaints from individuals who have been disconnected from the Clerk's Office after being placed on hold, we are not aware that this occurs with any great frequency based on the number of complaints received. We are confident that this is not a system error, and that the occurrences that take place are the result of human error. In response to AILA's observation, the Clerk's Office managers have been asked to discuss this with the staff so that the proper steps are taken to reduce the possibility of mistakenly disconnecting callers.

21. *As you are aware, on some occasions, decisions have been mailed to attorneys at very old addresses, addresses that never appear at all in the file of that particular case. While we appreciate the Board's willingness to re-issue decisions when this problem is brought to its attention, this has nonetheless caused huge problems in some situations, problems that are not so simple to "undo" -- such as the INS breaching a bond and clients being taken into custody when they unknowingly overstay the voluntary departure period.*

    (a) Could you confirm that the attorney address on the EOIR-27 will be the address to which all BIA correspondence and decisions will be mailed?

    (b) When a decision mailed to an attorney is returned to the BIA as "undeliverable", is there an attempt to locate the file, check the address, and re-mail the decision to the address on the EOIR-27?

    (c) Do you have any suggestions for actions that AILA attorneys can take to avoid this situation?

    RESPONSE: Unless an attorney withdraws as the attorney of record or is suspended from practice before EOIR, the Board's policy is to send all notices and decisions to the attorney at the address on the most recent EOIR-27 in the Record of Proceedings for that case. It is therefore critical for attorneys to keep a current EOIR-27 on file in each and every case before the Board.

    All returned decisions are reviewed to verify the correct address of record. This includes comparing the address to the attorney address recorded for that case in our computer records, and re-issuing the decision when necessary.

    Attorneys should make sure their appearance has been registered in each of their cases by following the guidelines presented in Chapter 2 of the Board's Practice Manual. In particular, we remind attorneys of the following points:

    (1) An original Notice of Appearance should always be filed in the following situations:

        -the filing of an appeal
        -the filing of a motion to reopen
        -the filing of a motion to reconsider
        -the first appearance of an attorney or representative
        -any change of business address for the attorney or representative

    (2) If an attorney moves, he or she must submit a separate EOIR-27 for each alien represented. An attorney may *not* submit a list of clients for whom his or her change of address should be entered.

(3) Attorneys are advised to use the most current version of the form, which can be found on the EOIR website at www.usdoj.gov/eoir. Attorneys are also advised to observe the distinction between the Board's Notice of Appearance (Form EOIR-*27*) and the Immigration Courts' version (Form EOIR-*28*). The Board will *not* recognize an attorney based on an Immigration Court appearance form (Form EOIR-28), whether filed with the Immigration Court or the Board.

(4) Attorneys are advised to take special care when changing law firms. Please see the guidelines in the Practice Manual at Chapter 2.3(e) (Multiple representation).

22. *In light of the fact that there is no regulation that addresses the timing of opening and responsive briefs, could you confirm the following:*

(a) When the INS has been granted an extension to file their opening brief in a case they have appealed, can the respondent's attorney assume that his or her responsive brief will be due 30 days after the due date for the INS's brief?

(b) *If the INS files an appeal, but does not timely file an appeal brief, can we assume that the Service's appeal will be summarily dismissed and that no brief will be required from the respondent? If the INS later files a late appeal brief, and the Board accepts it, can the respondent assume that she will have thirty days to respond to the Board's brief?*

There has been enormous confusion on this point, mostly arising in cases where the INS seeks additional time to file its opening brief. The BIA notice granting the extension to the INS is often not served on the respondent, or does not contain a filing date for submission of the respondent's brief. Then, when the respondent files its brief 30 days after the INS brief is filed, because the respondent did not adhere to the original briefing schedule, her brief is dismissed. Yet the respondent could not adhere to the original briefing schedule, because she is responding to the INS's appeal, and has to wait to see the INS brief in order to respond to it.

RESPONSE: The BIA Reform Rule amended the regulations at § 3.3(c) regarding the timing of briefing schedules issued by the Board. In cases where the alien is detained, both parties are expected to file briefs simultaneously within 21 days of issuance of the briefing schedule. There is a sequential briefing schedule in non-detained cases where the appealing party is granted 21 days to file the appellate brief and the other party is granted 21 days to file a response brief. In a non-detained case, where the appealing party is granted a 21-day extension of time in which to file a brief, the other party is likewise granted 21 days to respond. Briefing schedules are addressed more thoroughly in the BIA Practice Manual on the EOIR web site at http://www.usdoj.gov/eoir/bia/qapracmanual/apptmtn4.htm.

If the DHS does not file a brief after taking an appeal, the respondent should not assume that there is no need to file a brief thinking that the DHS appeal will be summarily dismissed. While the regulations allow summary dismissal in certain cases where the appealing party does not submit a brief, the Board reviews the entire file and makes a case by case determination of whether summary dismissal is appropriate.

In the rare instance where the Board accepts a late-filed brief, a new briefing schedule will not be set. For more information on filing reply briefs, see the Board's Practice Manual at Chapter 4.6(h).

St. Cyr Rule

23. *When does EOIR anticipate publishing final regulations regarding St.Cyr/212(c)?*

RESPONSE: The public comment period for the St. Cyr rule closed on October 15, 2002. The Department is currently reviewing these comments.

Special Registration Issues

24. *It appears that a significant number of people who appeared for call-in special registration were placed in proceedings upon registering. These numbers will eventually impact the workload of the immigration judges and, ultimately, the Board. Therefore, certain questions arise:*

(a) Does EOIR have statistics on the number of NTAs issued to those who were apprehended attending a special registration interview?

RESPONSE: EOIR has no information on the number of NTAs that have been issued to aliens attending a special registration interview. This question should be directed to the Department of Homeland Security.

(b) Can EOIR supply statistics on the number of NTAs issued for failure to specially register? If not, can EOIR please maintain these statistics?

RESPONSE: EOIR has no information on the number of NTAs that have been issued to aliens who failed to specially register. This question should be directed to the Department of Homeland Security.

(c) Has EOIR implemented any changes to accommodate increased NTAs due to special registration issues?

RESPONSE: No.

(d) Are there any directives concerning the handling of special registration cases? If so, can you share these with us?

RESPONSE: EOIR has not received any directives concerning the handling of special registration cases.

(e) How is EOIR handling proceedings in special registration cases where the applicant has an application for labor certification pending?

RESPONSE: EOIR has no special procedures for these cases. They are treated like all other cases which have pending labor certification applications.

25. *Several AILA members around the country report that unusually high bonds have been set in cases of individuals from nations whose citizens are subject to special registration. For example, a visa overstay from Pakistan might be assigned a $15,000 bond, or may even be held under "no bond," while an undocumented Mexican might receive a $5,000 bond from the Service.*

(a) Has there been any communication, directive, or suggestion from the Attorney General that nationals from special registration countries be issued higher bonds?

RESPONSE: No.

(b) Are there any guidelines to immigration judges calling for relative uniformity among bond decisions where the only significant difference between cases is nationality? Would the EOIR consider implementing such a guideline?

RESPONSE: Case law serves as guidance to IJs. No other guidance is anticipated at this time.

(c) Has there been an overall increase in bond appeals?

RESPONSE: There has been a slight increase in bond appeals. During fiscal years 2000 and 2001, approximately two percent (2%) of bond decisions were appealed. In fiscal year 2002, and for the first four months of fiscal year 2003, the bond appeal rate has been approximately five percent (5%). The average number of bond appeals per month in fiscal years 2000 and 2001 was about 50; for fiscal year 2002 and the first three months of fiscal year 2003, the monthly average was about 140 appeals.

E-Filing

26. *We appreciate EOIR including AILA and other stakeholders in the development of its E-filing initiative. As a result of those initial meetings, it appears that EOIR is considering making E-Filing compulsory. AILA, in concert with other stakeholders, is extremely concerned that such a policy would have an unacceptable adverse impact on Respondents. Such a policy would fail to take into account technical difficulties facing Respondents and practitioners alike. We understand that making it compulsory for pro se Respondents is no longer being considered, a decision that we applaud, as such a move would force many unrepresented Respondents to turn to notarios in order to participate in their defense. We urge that the same position be adopted with respect to attorneys.*

RESPONSE: Electronic filing of documents will not be mandatory for respondents or practitioners when eWorld is first launched. EOIR is confident, however, that e-filing will be such a benefit to practitioners that they will voluntarily choose to use it. At this time, no final decision has been made on making e-filing mandatory for practitioners.

All attorneys and accredited representatives will, however, be required to register electronically. This will be done from a practitioner's computer that has internet access. For those practitioners who do not have computers with internet access, there are other means by which to register. Practitioners can use any public computer workstation that has internet access (such as at a public library).