U.S. Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge

Uniform Docketing System Manual

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UNIFORM DOCKETING SYSTEM MANUAL
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INTRODUCTION

A. OFFICE OF THE CHIEF IMMIGRATION JUDGE

The Office of the Chief Immigration Judge (OCIJ) supervises and directs the activities of the Immigration Courts which conduct in excess of 300,000 immigration hearings annually. The Chief Immigration Judge, one Deputy Chief Immigration Judges and eleven Assistant Chief Immigration Judges, under the guidance of the Director of the Executive Office for Immigration Review (EOIR), develop operating policies for the Courts which are located in 56 cities. In addition, they oversee policy implementation and evaluate the performance of the Immigration Courts. OCIJ is responsible for the overall direction and supervision of the Immigration Judges in the performance of their duties and for providing administrative support for the Immigration Court. In addition to the judges mentioned above, OCIJ contains a headquarters staff of management, legal and support personnel which includes, a Chief Counsel to the Chief Immigration Judge, a Special Assistant, an Executive Officer, the Clerk's Office, and a Language Services Unit.

B. IMMIGRATION COURT

Each Immigration Court is staffed with Immigration Judges who conduct immigration hearings. They function in an independent decision-making capacity determining the facts in each case, applying the law, and rendering a decision. Their decisions are final unless appealed to the Board of Immigration Appeals. The judges may be assisted by a law clerk, who researches case law and provides other legal support as required.

Under the supervision of an Assistant Chief Immigration Judge, the Court Administrator manages the daily activities of the court and supervises the support staff which usually includes interpreters and legal assistants. The Court Administrator is the liaison with the local Department of Homeland Security (DHS), the private bar, and volunteer organizations which represent aliens.

Not all court hearings are conducted in the 56 court locations. In addition, the judges hold hearings in designated detail cities where the caseload is not sufficient to warrant the establishment of a permanent court. Hearings also are conducted in DHS detention centers around the country, as well as municipal, state and Federal penal institutions, in conjunction with the Institutional Hearing Program.

C. TYPES OF IMMIGRATION HEARINGS

There are twelve principal types of immigration proceedings conducted by the Immigration Court: removal, deportation, bond redetermination, asylum-only, credible fear, exclusion, withholding-only, reasonable fear, claimed status review, NACARA-only, rescission and continued detention review. All the proceedings involve an alien referred to as either a respondent or an applicant, whom the DHS has charged with violating the immigration laws of the United States.

1. Removal Hearing

A removal case usually arises when DHS alleges that a respondent either is inadmissible to the United States or where a respondent has entered the country illegally by crossing the border without being inspected by an immigration officer. Removal cases also occur when DHS alleges that a respondent has entered the country legally, but then has violated one or more conditions of his admission. For example, a visitor who is admitted to the United States for a specified time period but who overstays his period of authorized stay, violates a condition of his admission and may be subject to removal proceedings.

When the DHS becomes aware of a respondent whom they believe to be removable, they issue a charging document called a Notice to Appear (NTA). An NTA is the appropriate charging document that DHS must file with the court for an alien that it seeks to remove on or after April 1, 1997. A removal proceeding actually begins when the NTA is filed with an Immigration Court. In such proceedings, the government is represented by a DHS Assistant Chief Counsel.

2. Deportation Hearing

Prior to April 1, 1997, a deportation case usually arose when DHS alleged that a respondent entered the country illegally by crossing the border without being inspected by an immigration officer. Deportation cases also occurred when DHS alleged that a respondent entered the country legally with a visa but then violated one or more conditions of the visa.

When the DHS became aware of a respondent whom they believed to be deportable, they issued a charging document called an Order to Show Cause (OSC). An OSC is the charging document that was used prior to April 1, 1997. A deportation proceeding actually began when the OSC was filed with an Immigration Court. In such proceedings, the government, represented by DHS, had to prove that a respondent was deportable for the reasons stated in the OSC.

Deportation and exclusion proceedings are now encompassed by removal proceedings. However, as of the publication of this manual, a small number of deportation and exclusion cases are still pending in the Immigration Courts.

3. Bond Redetermination Hearing

The DHS may detain a respondent who is under removal (except in the case of an arriving alien or an alien charged with being inadmissible to the United States) or deportation proceedings and condition his/her release from custody upon the posting of a bond to ensure the respondent's appearance at the hearing. When this occurs, the respondent has the right to ask an Immigration Court to redetermine the bond. In a bond redetermination hearing, the judge can raise, lower, or maintain the amount of the bond, eliminate it altogether, or change any of the conditions over which the Immigration Court has authority. The bond redetermination hearing is completely separate from the removal or deportation hearing. It is only recorded in cases involving classified information and has no bearing on the subsequent removal or deportation proceeding.

NOTE: Institutional Hearing Program Cases Immigration bonds are not set for incarcerated aliens since they are held in Department of Corrections custody, not by DHS. Therefore, until an incarcerated criminal alien is released from prison to DHS, a bond redetermination hearing is not appropriate.

4. Asylum-Only Hearings

Certain aliens are not entitled to proceedings under § 240 of the Act, yet these aliens are entitled to asylum-only hearings before an immigration judge. If an alien who is not entitled to a proceeding under § 240 of the Act requests asylum, the DHS will file a Form I-863, Notice of Referral to Immigration Judge, with the immigration court. Aliens eligible for asylum-only hearings include crewmen, stowaways, Visa Waiver Pilot beneficiaries, and those ordered removed from the United States on security grounds.

5. Credible Fear Review

If an alien in expedited removal expresses a fear of persecution, or an intention to apply for asylum, that alien will be referred to a DHS officer for a credible fear determination. If the DHS officer determines that the alien has not established a credible fear of persecution (and a DHS supervisor concurs), the alien may request review of that determination by an Immigration Judge on the DHS Record of

Negative Credible Fear Finding and Request for Review by Immigration Judge (DHS Form I-869). That review must be "concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no event later than seven days after the date of the determination [by the supervisory asylum officer]." INA section 235(b)(1)(B)(iii)(III).

6. Exclusion Hearing

Prior to April 1, 1997, an exclusion case involved a person who tried to enter the United States but was stopped at the point of entry because the DHS found the person to be inadmissible. This situation occurred, for example, when a DHS officer believed the applicant's entry papers were fraudulent.

To place an applicant for admission to the United States in exclusion proceedings, the DHS issued a charging document referred to as an "I-122" and filed it with an Immigration Court. Unlike a respondent in deportation proceedings, the DHS had sole jurisdiction over the custody status of an applicant in exclusion proceedings. The DHS District Director could either detain the applicant or "parole" the applicant into the country; i.e., release him/her from detention and allow him/her to remain free until the hearing is completed. In either case, the applicant technically had not entered the country. In the course of the exclusion proceedings, the burden of proof was on the applicant to prove admissibility to the United States. All exclusion proceedings were closed to the public unless requested otherwise by the applicant.

7. Withholding-Only Hearing

Certain aliens are not entitled to proceedings under § 240 of the Act, yet these aliens are entitled to withholding-only hearings before an immigration judge. If an alien who is not entitled to a proceeding under § 240 of the Act requests asylum, the DHS will file a Form I-863, Notice of Referral to Immigration Judge, with the immigration court. Withholding-only hearings are very similar to asylum-only hearings except that aliens eligible for withholding-only hearings have previously been ordered removed (administratively) by the DHS or the DHS has reinstated a prior exclusion, deportation or removal order.

8. Reasonable Fear Hearing

If an alien has been have previously been ordered removed (administratively) by the DHS or the DHS has reinstated a prior exclusion, deportation or removal order and the alien expresses a fear of persecution or torture, that alien will be referred to a DHS officer. If the DHS officer determines that the alien has not established a

reasonable fear of persecution or torture (and a DHS supervisor concurs), the alien may request a review of that determination by an immigration judge on the DHS Record of Negative Reasonable Fear Finding and Request for Review by Immigration Judge (DHS Form I-898). The review must be concluded no later than ten days of the filing of the DHS Form I-863 with the immigration court.

9. Claimed Status Review

If an alien in expedited removal claims under oath to be a United States citizen, to have been lawfully admitted for permanent residence, to have been admitted as a refugee, or to have been granted asylum, he/she can obtain a review of that claim by an Immigration Judge where DHS determines that the alien has no such claim (claimed status review). Although not required by statute or regulation, claimed status review cases (except cases involving claims to United States citizenship) will be heard, to the maximum extent practical, within the same time frame as credible fear review cases (within 24 hours to the extent practical, but not more than seven days from the filing of the charging document).

10. NACARA Only Hearing

Certain aliens who are nationals of Nicaragua or Cuba are eligible to apply for adjustment of status under the Nicaraguan Adjustment and Central American Relief Act (NACARA), if the application was filed before April 1, 2000. In certain instances where an alien has filed an application for adjustment of status under NACARA with DHS, the case may be referred to the Immigration Court by Form I-290C (Notice of Certification) for a NACARA-only hearing. The scope of these hearings is limited to whether the alien is eligible for adjustment of status under NACARA.

11. Rescission Hearing

A less common type of proceeding that comes before the Immigration Court is a rescission case. If, within five years of granting adjustment of status, the DHS discovers that the respondent/applicant was not entitled to lawful permanent residence (LPR) status when it was granted, the DHS issues a Notice of Intent to Rescind. If the respondent/applicant requests a hearing before an Immigration Court, DHS will file the Notice with the Immigration Court and the proceeding to rescind the individual's LPR status commences. As with deportation cases, the government has the burden of proof to show that rescission is warranted. If an individual loses LPR status, he/she then is usually subject to deportation proceedings.

Although rescission proceedings still exist after April 1, 1997, the DHS may place an LPR into removal proceedings. An order of removal is sufficient to rescind the alien's status.

12. Continued Detention Review

A continued detention review hearings occurs when the Commissioner for the DHS certifies in writing that an alien's release would pose a special danger to the public because he or she has committed one or more crimes of violence, is likely to engage in acts of violence due to the alien's mental condition or personality disorder and behavior associated with that condition or disorder.

A continued detention review hearing involves two phases: 1) a reasonable cause hearing; and 2) a special circumstances hearing.

D. THE UNIFORM DOCKETING SYSTEM

The case processing system that governs the management of all cases in the Immigration Court is detailed in the Uniform Docketing System Manual issued by the Office of the Chief Immigration Judge. Operational procedures are amended or created through Operating Policies and Procedures Memoranda (OPPM) issued to the Immigration Courts by the Chief Immigration Judge.

When the Immigration Court receives a charging document, the support staff assigned to the Intake Unit enters the case information into the EOIR computer data base - the Case Access System for EOIR (CASE). CASE automatically schedules the case for a Master Calendar Hearing before a judge and generates a hearing notice informing the parties of the date, time and place for the hearing. The support staff also creates a case file called the Record of Proceeding (ROP).

Generally the support staff schedules 25 cases for each half-day Master Calendar session. Staffs assigned to the Case Processing Unit assist the judge during the Master Calendar Hearing. These staff members usually are interpreters who interpret questions and answers to and from non-English speaking respondents/applicants, update case information in CASE, and perform other clerical functions throughout the session.

E. THE MASTER CALENDAR

At the Master Calendar, all respondents/applicants not represented by counsel will have their rights explained to them by the judge, who will provide them the opportunity to seek counsel/representative at their own expense. For those who are represented, the judge establishes representation for the record by ensuring that the attorney or representative has filed the appropriate notice of appearance form (EOIR-28) with the Immigration Court, and further assures that the respondent/applicant has been fully advised by counsel of his/her rights.

The judge usually is able to complete simple issue cases at the Master Calendar Hearing. For more complex cases, the judge uses the Master Calendar Hearing to establish whether or not deportability or admissibility of the respondent/applicant is a contested issue. Often deportability is established by the respondent's admission of the charges contained in the charging document. Where the issue is contested, the party having the burden of proof must prove deportability or admissibility. Once this has been established, the judge explores with the unrepresented respondent/applicant the types of discretionary relief which may be available or has the respondent's/applicant's attorney/representative indicate the relief sought.

The immigration laws provide a variety of forms of potential relief from deportation ranging from simple grants of voluntary departure to complex waivers of deportation or removal. All such forms of relief however, are granted or denied by the case-assigned Immigration Judge at his/her discretion.

1. Voluntary Departure

Voluntary departure enables a respondent to leave the country at his/her own expense within a time limit specified by the judge. This form of relief allows the respondent to reenter the country at any time after leaving so long as the proper visa for reentry is obtained. This form of relief, while quite common, is also very significant since an order of removal, exclusion or deportation removing an applicant/respondent from the country at the government's expense, bars the respondent from legally reentering for ten years from the date of removal pursuant to an order of removal, five years from the date of deportation pursuant to a deportation order, or one year from the date of deportation pursuant to an exclusion order, even with an otherwise valid visa, unless granted a waiver by the U.S. Government.

2. Request for Asylum

A major form of relief is a request for asylum. To be granted this form of relief, the respondent/applicant must prove he/she has a well-founded fear of persecution because of race, religion, nationality, political beliefs, or membership in a social group if returned to his/her country of origin and he/she is not statutorily barred from such relief. This relief must be completed by the court within 180 days from the filing of the asylum application with the court.

3. Suspension of Deportation/Cancellation of Removal

A respondent who has been living illegally in the United States for seven years or more, may ask for relief known as suspension of deportation. For cancellation of removal, a respondent must have lived in the United States for ten years. For this relief to be granted, the respondent must prove the required amount of continuous physical presence in the United States, good moral character, and extreme or exceptional and extremely unusual hardship if returned to the country of origin.

4. Adjustment of Status

Another type of relief is adjustment of status for a respondent who is deportable but is eligible for lawful permanent resident status based on a number of factors including marriage to a U.S. citizen and waivers of criminal convictions as a basis for deportability.

After determining the type of relief a respondent/applicant seeks, the judge sets a date for the respondent/applicant to file the appropriate application for relief. The judge then schedules the case on the Individual Calendar for a hearing on the merits of the application. The time for the individual hearing is set on the record by the Immigration Judge after consultation with both the government and the respondent/applicant or his/her attorney.

Frequently, failure to file an application on time results in the Immigration Judge determining that a respondent has abandoned his/her intention to apply for relief, and the Immigration Judge will issue an order of deportation or removal.

F. THE INDIVIDUAL CALENDAR

The length of the Individual Calendar hearing ranges from less than an hour to an entire day or more based on the complexity of the issues in the case and the number of witnesses to be called. At the Individual Calendar Hearing, the judge hears testimony from the respondent/applicant and witnesses for either party and cross-examination. The Immigration Court will provide an interpreter for a non-English speaking respondent/applicant or witness. Generally, the judge renders an oral decision in the case on the record at the conclusion of testimony and cross-examination. The decision includes a finding of facts, the establishment of deportability, excludability, or removability, a statement of the relief sought, the application of existing case law, and the judge's conclusion about the case.

After announcing the decision, the judge gives each party an opportunity to waive or reserve appeal. If both parties waive appeal, the judge's order is final. Whether appeal is waived or reserved, a form order ("minute order") summarizing the judge's decision is given to the parties before they leave the court.

G. THE APPEAL PROCESS

When a party files an appeal within the specified time limits (30 days), the staff in the post-hearing unit of the Immigration Court assembles and forwards the ROP to the Board of Immigration Appeals (BIA).

The BIA is composed of a Chairman and fifteen Members who are appointed by the Attorney General. The BIA reviews case decisions of the Immigration Judges that have been appealed by one or both parties to the case. The BIA decisions are subject to review by the Federal Courts.

H. THE INSTITUTIONAL HEARING PROGRAM (IHP)

The Immigration Reform and Control Act of 1986 requires the Attorney General to expeditiously commence immigration proceedings for alien inmates convicted of crimes in the United States. To meet this requirement, the Department of Justice established the Institutional Hearing Program (IHP), which allows aliens serving criminal sentences to have an immigration hearing prior to their release from prison.

Almost every Immigration Court has administrative control over at least one IHP site, and many courts handle multiple IHP locations. A chart depicting Immigration Courts and their specific IHP assignments for which they have administrative control can be located on the Administrative Control List found in the EOIR Intranet.

Due to various resource restrictions, immigration hearings are not held in every prison where an alien inmate is housed. Coordination of centralized or regionalized hearing locations within the specific correctional system is important to an efficient and effective IHP hearing program.

Since Immigration Courts use hearing rooms within prison environments to conduct these hearings, the hearing room availability to Immigration Courts and the transportation of alien inmates to and from a centralized facility for immigration hearing purposes must be coordinated by the courts around various other needs identified by corrections officials. Various days of the week and/or weeks of the month restrictions exist in virtually every IHP site.

Only those sites approved as hearing facilities by OCIJ will serve as IHP hearing locations. An extensive site visit is made to each potential hearing location prior to approval.

Immigration Court IHP site selection focused on penal institutions geographically convenient to either an Immigration Court base city or a detail city location. By selecting institutions in geographical locations as outlined above, IHP hearings can be conducted according to one of the following IHP methods:

1. Base Trips

Prison is within commuting distance from an Immigration Court and hearings are held on selected individual days.

2. In Conjunction with Existing Details

Prison is within the vicinity of an existing immigration judge detail city location and the frequency of IHP hearings is tied to the detail. IHP hearings are held on individual days of the existing detail.

3. Permanent Immigration Court

In a few instances caseload growth has necessitated the placement of a full-time Immigration Judge in a courtroom at the prison.

4. Hearings by Video Teleconferencing (VTC)

Installation of VTC equipment in certain courtrooms and penal institutions has proven to be a savings in IJ time and travel, security issues and emergency access.

IHP cases, in some instances, require additional docketing procedures. If any additional procedures are necessary, they will be outlined in detail under an IHP section of the chapter.

CHAPTER I
THE COMMENCEMENT OF IMMIGRATION PROCEEDINGS

PART I
RECEIVING NEW CASES

SECTION I

A. CHARGING DOCUMENTS

The Immigration hearing process for new cases begins upon receipt of a properly filed charging document as described in this chapter. The term charging document means the written instrument which initiates a proceeding before an Immigration Court. Charging documents are filed by the Department of Homeland Security (DHS). The charging document for removal cases is the Notice to Appear, Form I-862 (NTA). The charging document for credible fear, reasonable fear, claimed status review, withholding-only and asylum-only cases is the Notice of Referral to Immigration Judge, Form I-863. The charging document for a NACARA-only case is the Notice of Certification, Form I-290C. The charging document for a rescission case is the Notice of Intent to Rescind and request for hearing by alien.

B. FILING CHARGING DOCUMENTS

Charging documents are usually filed by the DHS at Immigration Courts by mail, overnight mail, or delivered by messenger. For cases that are considered expedited under the Immigration and Nationality Act (INA) as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1997 (IIRIRA), Immigration Courts have set up special procedures for receiving charging documents. DHS **may not** file a new charging document for an administratively closed case. Instead, a motion to recalendar must be filed. See Chapter III, Section IV for the correct procedures for calendaring previously heard cases.

Credible fear review cases must be completed within 24 hours, but not later than seven days pursuant to IIRIRA. The Office of the Chief Immigration Judge has established the policy that claimed status review cases should be heard within seven days if practicable and reasonable fear review cases should be heard within ten days if practicable. Because of the expedited nature of these cases, Immigration Courts have been instructed that for credible fear, reasonable fear and claimed status review cases **only**, the DHS may file charging documents by fax.

C. ESTABLISHING ADMINISTRATIVE CONTROL

Administrative Control simply means assigning responsibility for the creation and maintenance of the Record of Proceeding (ROP) to one Immigration Court. All documents and correspondence pertaining to the ROP will then be filed at the Immigration Court where administrative control has been established. To establish administrative control, review the charging document. The Notice to Appear and the Notice of Referral to Immigration Judge will list the Immigration Court where the DHS will file it. If the Immigration Court listed on the charging document is not yours, it should be rejected as improperly filed. If the administrative control over the charging document is questionable, check the Case Access for EOIR (CASE) data base for clarification. All improperly filed documents should be returned to DHS using the standard reject letter.

D. DESIGNATING A LEAD ALIEN REGISTRATION NUMBER (A-NUMBER)

In those instances where more than one family member is appearing before an Immigration Court, you should designate one family member as the "lead" or control Alien Registration Number (A-Number). This designation will be the file-control A-Number with all other family members attached (rubber-banded or stapled) to the Lead ROP. **You must enter each family member into CASE using the "Add Rider" button**. See CASE Training Manual, Lesson 3, Unit 7. The Immigration Court may sever cases at its discretion or upon request of one or both parties. See Immigration Court Practice Manual, Chapter 4, Section 4.21(b).

E. INTERACTIVE SCHEDULING SYSTEM (ISS)

Interactive scheduling enables the Department of Homeland Security to access the CASE system data base to enter case data and to schedule the initial master calendar hearing. All DHS Asylum Offices and many DHS district offices have access to the CASE data base through interactive scheduling. Charging documents for cases that have been interactively scheduled will contain the date and time of hearing and the CASE data record will have already been created prior to the Immigration Court's receipt.

SECTION II

A. NEW REMOVAL CASES

1. Content of the Notice to Appear, Form I-862

The Immigration Court clerk must review all Notices to Appear (NTAs) upon receipt. The DHS must provide the following administrative information in the Notice to Appear:

a. The alien's name and known aliases;

b. The alien's address;

c. The alien's registration number (A-Number), with any lead alien registration number with which the alien is associated;

d. The alien's alleged nationality and citizenship;

e. The language that the alien understands;

f. The nature of the proceedings against the alien;

h. The legal authority for the proceedings;

i. The acts or conduct alleged to be in violation of the law;

j. The charges against the alien and the statutory provisions alleged to have been violated;

k. The address of the Immigration Court where the DHS will file the Notice to Appear (**Note**: If this information is not included on the NTA or if your court is not the administrative control office, return the NTA as improperly filed);

l. The date and time of the hearing (**Note**: Only cases that have been interactively scheduled will contain this information; cases that were not interactively scheduled do not and the Immigration Court must provide notice of the hearing);

m. Notice that the alien may be represented, at no cost to the government, by counsel or other representative and is given ten days to secure counsel unless waived and will be given a list of free legal services;

n. Notice of the consequences for failure to appear for hearing and of the consequences of failing to provide an address and telephone number;

o. The signature, title of the issuing DHS officer, and issuance date.

2. Alien Address and Telephone Number

For removal cases filed without the alien address, the INA as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1997 (IIRIRA) requires that the alien provide the Immigration Court with an address and telephone number within five days. The alien may notify the Immigration Court by filing an EOIR-33 Change of Address form, or by written correspondence. Aliens must also file a new EOIR-33 or written notice every time that they change addresses. Alien addresses and telephone numbers must be entered into CASE and this information will be preserved in the Central Address File (E-33 Tracking System in the Utilities module). **Cases without alien addresses will go forward regardless of noticing if an address is not provided.**

3. Request for Prompt Hearing

The INA as amended by IIRIRA requires that the alien be given ten days prior to the initial hearing to secure counsel. By signing the waiver on the Notice to Appear, the alien waives this ten day period and may be given a hearing prior to this waiting period.

4. Certificate of Service

A DHS Immigration Officer must execute the certificate of service contained on the Notice to Appear which indicates the manner (in person, by certified mail, or by regular mail) and date that the alien was given the NTA.

5. Asylum Applications

Removal charging documents that are originating from DHS Asylum Offices will be accompanied by a copy of the I-589 Asylum Application and supporting documentation that the alien filed. These documents should be filed in the ROP along with the charging document (see Chapter II, Creating and Maintaining the ROP).

B. NEW CREDIBLE FEAR, REASONABLE FEAR, WITHHOLDING-ONLY, ASYLUM-ONLY, AND CLAIMED STATUS CASES

1. Content of the Notice of Referral to Immigration Judge, Form I-863

The Immigration Court Clerk must review all Notices of Referral to Immigration Judge upon receipt. The Notice of Referral will contain the following administrative information that Immigration Courts will need to process the case:

a. The alien's name;

b. The alien registration number (A-Number);

c. The specific provisions for which the referral is occurring; the Notice of Referral has check-blocks that indicate whether the case is being referred for credible fear review, reasonable fear review, withholding-only, asylum-only or claimed status review;

d. The address of the Immigration Court where DHS will file the Notice of Referral;

e. The date and time of hearing (for cases that have been interactively scheduled);

f. The issue date;

g. The authorizing signature;

h. A certificate of service that indicates the date upon which the alien was given the Notice of Referral.

2. Documents Attached to the Notice of Referral, Form I-863

The Notice of Referral may have several attachments that the Immigration Judge will need to hear the case:

a. **For credible fear review cases**, the following documents will be attached by the DHS to the Notice of Referral (Form I-863): the Record of Sworn Statement in Proceedings under Section 235 (b) (1) of the Act (Form I-867AB); the Notice of Expedited Removal (Form I-860); the Record of Negative Credible Fear Finding and Request for Review by Immigration Judge (Form I-869); and the Record of Determination/Credible Fear Worksheet (DHS APSO Form E);

b. **For reasonable fear review cases**, the Record of Negative Credible Fear Finding and Request for Review by Immigration Judge (Form I-869) will be attached to the Notice of Referral (Form I-863);

c. **For withholding-only cases**, IF the proceeding is initiated by the Notice of Referral (Form I-863), there is no other documentation required to be attached to the Form I-863; however, this proceeding can also be initiated by an Immigration Judge's finding that the alien's reasonable fear of persecution or torture exists;

d. **For asylum-only cases**, there is no other documentation required to be attached to the Notice of Referral (Form I-863);

e. **For claimed status review cases**, the Notice of Expedite Removal (Form I-860) will be attached to the Notice of Referral (Form I-863)

f. **Other documents** that may be attached to the Notice of Referral (Form I-863) include: a passport, visa, Form I-94, forensic document analysis, fingerprints and photographs, an EOIR-33 Change of Address Form.

C. NEW INSTITUTIONAL HEARING PROGRAM CASES

By agreement between EOIR and DHS, all Institutional Hearing Program (IHP) charging documents will be reviewed by a DHS Assistant Chief Counsel and will also include the following information necessary for processing IHP cases:

1. The type of facility where the alien is incarcerated: Federal (F), State (S) or Municipal (M);

2. The alien's inmate number as assigned by the correctional institution where the alien is incarcerated;

3. The earliest possible release date (EPRD) which according to agreement between EOIR, must be in the future at the time it is filed at the Immigration Court. If the NTA is filed within 120 days of the EPRD, be sure to enter a case monitoring code of 4M when entering the NTA in CASE. IHP filings are accompanied by a transmittal memorandum from the DHS attorney who evaluated the submission prior to filing. The additional IHP information listed above can be found either in the body of the charging document or on the transmittal memorandum. If any of the IHP information is missing, return the submission.

D. RESCISSION CASES

A rescission is initiated when the DHS files a copy of the Notice of Intent to Rescind Permanent Residency and a request (in letter format) for hearing. The following information must be provided in the Notice of Intent to Rescind Permanent Residency:

1. The alien registration number (A-Number);

2. The alien's name;

3. The alien's complete address including zip code;

4. The specific charge(s);

5. The authorizing signature.

SECTION III

PROCESSING NEW CHARGING DOCUMENTS

A. CASES THAT HAVE NOT BEEN SCHEDULED BY THE INTERACTIVE SCHEDULING SYSTEM

If any of the above appropriate requirements cannot be verified, return the submission without date-stamping it received. Use the standard reject letter for your court. If all of the information listed above has been provided, the following steps should be taken:

1. Date-stamp the charging document to designate your court with administrative control over the case.

2. Create a case record in the CASE system and calendar the case on the next available Master Calendar using the CASE system. Information from the charging document must be carefully input to ensure that the CASE data base accurately reflects case information. Instructions for initial case processing (Lesson 3, Unit 4), and instructions for scheduling a hearing (Lesson 4, Unit 5) may be found in the CASE Training Manual.

3. Notify the parties of place, date, and time of hearing. See Chapter IV for correct notice procedures.

4. Create the Record of Proceeding (ROP). See Chapter II for the correct procedures for creating ROPs.

5. File the ROP in the correct current case calendar file.

B. CASES THAT HAVE BEEN SCHEDULED USING THE INTERACTIVE SCHEDULING SYSTEM

Charging documents that have been interactively scheduled by the DHS will bear the date and time of the initial hearing and will have already been input into the CASE system. It is still necessary for Immigration Court clerks to review the charging documents very carefully and to compare them to the data that has been entered into CASE. Another requirement for Interactive Scheduling System cases is that the DHS file the charging document, seven (7) days prior to the scheduled hearing for the case for removal cases. **Note**: Immigration Courts have been instructed by the Office of the Chief Immigration Judge to be flexible in dealing with ISS cases, especially for expedited cases. The court should make every attempt at correcting minor errors without returning the charging document to DHS and potentially delaying the case. The following steps should be taken:

1. Interactive Scheduled Cases Step One:

a. Review the charging document, and verify that:

(1) Your court is the court listed on the charging document;

(2) The A-Number and alien name on the charging document match the data that has been entered into the CASE system;

(3) The correct hearing date has been entered into the system.

b. Review the filing date to verify that it is more than seven days prior to the hearing.

2. Interactive Scheduled Cases Step Two:

a. After verifying the requirements of step one, date stamp the Notice to Appear and enter a **received** date into the CASE system.

b. Compare the information on the charging document with the information that is in the system. Verify that the alien's name, initial address, nationality code, entry date, and charges. For asylum cases, verify that the DHS Asylum Office has entered asylum data.

c. If any of the information is incorrect, correct the data and inform your supervisor if any repetitive problems appear.

d. Create the Record of Proceeding (ROP). See Chapter II for the correct procedures for creating ROPs.

e. File the ROP in the correct current case calendar file.

3. Interactive Scheduled Cases Step Three: Untimely Filing or Incorrect Data:

If your court is not the court listed on the charging document, the name and A-Number do not match in the CASE system, the NTA date is different from the date entered into CASE, or the charging document was filed less than seven days prior to the scheduled hearing the following steps should be taken* :

a. DO NOT date stamp the charging document.

b. DO NOT enter a received date into the CASE system.

c. Immediately send the charging document back to DHS with standard court reject letter noting the deficiency along with a "Request to Reschedule" form that DHS may file on the day of the hearing.

***Note: Court Administrators have discretion in setting court policy for remedying deficiencies without returning the charging document, and especially should attempt to do so for expedited cases. Charging documents should not be returned for minor errors that may be corrected by court personnel.**

4. Interactive Scheduled Cases Step Four: The Day of the Scheduled Hearing:

a. **If the CASE data entry was correct and the charging document was received timely**, the case will proceed on the day of the hearing.

b. **If the alien appears and the charging document was not timely filed and the** Assistant Chief Counsel **has the Notice to Appear available with a Request to Reschedule form**, the Assistant Chief Counsel may file the charging document with the Immigration Court clerk and the hearing may proceed. Or the staff may complete the case as a Failure to Prosecute code (F) and then complete a motion to recalendar and schedule a new proceeding for a future calendar date. Both parties must be served personal notice of this new date.

c. **If the alien appears and the charging document was not timely filed, and the Notice to Appear is not available,** the Immigration court clerk should verify the alien's address and inform the alien that the case will not proceed on that day.

d. **If the alien fails to appear and the charging document was not timely filed, but the** Assistant Chief Counsel **has the correct Notice to Appear**, the hearing may proceed as scheduled. Or the clerk may complete the case as a failure to prosecute (F) and the DHS may file a "Request to Reschedule" along with the correct Notice to Appear. Upon receipt of the "Request to Reschedule," the Immigration Court clerk must serve a new notice using the correct notice procedures (See Chapter IV for notice procedures).

e. **If the alien appears with a charging document that has the date and time and it appears that the hearing was set by DHS, but it was not scheduled in CASE,** copy the charging document, verify the alien information, and give it to your supervisor. No further action will be taken until the DHS files the charging document with the Immigration Court.

PART II
RECEIVING PREVIOUSLY HEARD CASES

SECTION I

RECEIVING PREVIOUSLY HEARD CASES

The following submissions are cases that have been previously decided by an Immigration Court but are reentering the hearing process:

A. MOTIONS TO RECALENDAR

This motion initiates receipt procedures and calendaring to the next available Master Calendar.

B. GRANTED MOTIONS TO CHANGE VENUE

This motion initiates receipt procedures and calendaring to the next available Master Calendar.

C. GRANTED MOTIONS TO REOPEN/RECONSIDER

This motion initiates receipt procedures and calendaring to **the original case-assigned Immigration Judge.**

D. REMANDED CASES

A remand order from the Board of Immigration Appeals initiates receipt procedures and calendaring to the original case-assigned Immigration Judge.

SECTION II

PROCESSING PREVIOUSLY HEARD CASES

A. Determine the administrative control office by checking the CASE data base.

B. Date-stamp the filing to establish administrative control.

C. Reopen the case record in the CASE system.

D. Schedule the case for Master Calendar hearing using the CASE system. If the original Immigration Judge is no longer at your court, a motion to reopen should be randomly assigned to one of your present Immigration Judges.

E. Notify the parties of the place, date, and time of hearing. See Chapter IV for correct notice procedures.

F. File the Record of Proceeding in the correct current case file.

PART III
RECEIVING CUSTODY REDETERMINATION HEARING (BOND) REQUESTS

SECTION I

RECEIVING CUSTODY REDERTERMINATION HEARING (BOND) REQUESTS

Bond Redetermination requests from deportable aliens who are being detained by the DHS are separate from the removal hearing process that begins with the filing of the Notice to Appear at the Immigration Court. An alien may request a bond redetermination hearing before the DHS files the Notice to Appear. Bond proceedings begin at the request of the alien; no charging document is necessary.

SECTION II

PROCESSING BOND REDETERMINATION REQUESTS

Bond hearing requests may be written or oral and each Immigration Court has established procedures for receiving and scheduling bond hearing requests. A bond hearing request whether written or oral must provide the information necessary for scheduling the case. The following represent the basic procedures that must be followed in addition to those at your court:

A. Review the written request to ensure that it contains the A-Number, alien name, bond amount, attorney's name and telephone number (if the alien is represented). Obtain this information if the request is oral;

B. Schedule the case for the next available hearing using the CASE system. Instructions for inputting and scheduling bond cases may be found in the CASE Training Manual, Lesson 4, Unit 5. If no Notice to Appear has been filed, you should follow the instructions found in the CASE Training Manual, Lesson 3, Unit 15 and create the CASE record using the charging document date of 00/00/00 as described in the manual;

C. Notify the parties of the hearing using the correct notice procedures outlined in Chapter IV. If the case has been scheduled for a hearing outside of a regularly scheduled detained docket session, notify the Immigration Judge for whom the case has been set;

D. Create a Record of Proceeding for the case using the procedures outlined in Chapter II;

E. File the record of proceeding in the correct current case file.

CHAPTER II
CREATING AND MAINTAINING THE RECORD OF PROCEEDINGS (ROP)

SECTION I

NEW CASES

As the official record of the immigration hearing, the Record of Proceedings (ROP) must contain all case-related information. Since the primary use of the ROP is to serve as a case-history reference guide for the Immigration Judge/Reviewing Official, it is extremely important to maintain a current file.

Once the initiating document has been properly filed, date stamped received and entered into CASE, the ROP must be created. The court clerk shall print an ROP label, containing the A-Number and the alien's name, and affix it to the ROP tab (see CASE Training Manual, Lesson 2, Unit 2 for instructions on how to print an ROP label).

A. ASSEMBLING THE ROP

The Record of Proceedings is assembled into the Administrative side on the left and the Proceeding side on the right, **formatted in chronological order by date received (the newest receipt is placed on top).**

1. Proceedings (Right) Side

Since the charging document starts the immigration hearing process, it will be the first document on the bottom of the Proceedings side of the ROP. **In those instances were a bond redetermination hearing has been held, bond papers are filed beneath the charging document and any immigration judge's bond related notes placed under the IJ Worksheet.**

2. Administrative (Left) Side

The left side of the Record of Proceedings will contain administrative forms for the Immigration Judge's use throughout the hearing process until a decision is rendered. Beginning with the top item on that side:

(a) TOP: Tape Transmittal Record (Form EOIR 10).

(b) SECOND FROM TOP: Immigration Judge Worksheet(s)

The above ROP assembling instructions are for ALL case types and initiating documents and includes the following:

1. BOND REDETERMINATION CASES
2. REMOVAL CASES
3. DEPORTATION CASES
4. ASYLUM-ONLY
5. WITHHOLDING-ONLY
6. NACARA-ONLY
7. EXCLUSION CASES
8. CREDIBLE FEAR REVIEW
9. CLAIMED STATUS REVIEW
10. REASONABLE FEAR REVIEW
11. CONTINUED DETENTION REVIEW
12. CHANGES OF VENUE
13. MOTIONS TO RECALENDAR
14. GRANTED MOTIONS TO REOPEN/RECONSIDER
15. RESCISSION CASES
16. REMANDED CASES (REMAND ORDER)

B. PREPARING AND FILING CASSETTE TAPES

1. Master Cassette Tapes

The Office of the Chief Immigration Judge has delegated the decision to use individual or master cassette tapes for Master Calendar hearings to the Assistant Chief Immigration Judge who supervises each court. If a court elects to use master cassette tapes during a Master Calendar hearing for a group of respondents or for a group of family members, the following procedures must be followed:

a. Designate a "control" Record of Proceedings in which to file the cassette(s);

b. Note the portion of the cassette tape that contains the individual person's hearing by recording the start and stop numbers from the counter on the recording equipment. This information must be included on the Tape Transmittal Record (EOIR-10) filed in the appropriate individual's ROP and the A number should also be entered in the Dispostion tab of CASE (CASE Training Manual, Lesson 7, Unit 2) only if the case is completed at the Master Calendar hearing. Otherwise, this information should be entered on the Comments tab (CASE Training Manual, Lesson 3, Unit 1) for each affected case record until the case has been completed.

c. If an individual who was previously included on a master cassette tape is granted a change of venue, goes forward to an Individual Calendar hearing, or files an appeal, that portion of the hearing pertaining to the individual must be duplicated onto a new cassette before transferring the ROP or requesting a transcript.

2. Individual Cassette Tapes

Individual Calendar hearing(s) must be recorded on a separate cassette tape for each individual (family members with a designated lead file can be recorded on a master cassette tape). The next hearing for the same individual or family should be recorded on the unused portion of the same cassette tape.

SECTION II

PRIORITY AND PRIVACY CASE IDENTIFIERS

A. DETAINED CASES

Records of Proceeding for detained cases are identified by a "RUSH" label stapled to the outside front of the ROP.

B. INSTITUTIONAL HEARING PROGRAM CASES

In addition to the "RUSH" label stapled to the front of the ROP, Institutional Hearing Program cases are identified by stamping "IHP" in red ink on the upper front corner of the file. This identifier remains on the ROP forever. Do not cross out or deface the IHP stamp on the ROP or create another ROP regardless of alien movement from an IHP hearing location to a non-IHP hearing location or custody status change.

C. RECORD OF PROCEEDINGS FOR CREDIBLE FEAR, REASONABLE FEAR AND CLAIMED STATUS REVIEW

Because of the expedited nature of Credible Fear, Reasonable Fear and Claimed Status Review cases (ROPs for these types of cases should be created within 2 hours of the court's receipt of the Notice of Referral to Immigration Judge), the Record of Proceedings for these type of cases are **RED** in color to distinguish them from other ROPs.

D. RECORD OF PROCEEDINGS FOR BATTERED SPOUSE/BATTERED CHILD

Records of Proceeding must be immediately marked **at least twice** with the warning stamp that says :

Warning: Do not disclose the contents of this file
Please see your Court Administrator

as soon as any Immigration Judge, Court Administrator, or Court staff becomes aware that the case involves a battered spouse and/or battered child. Court staff must also immediately update the CASE record to reflect that the case involves a battered spouse and/or child (see CASE Training Manual, Lesson 4, Unit 8 for instructions on inputting battered spouse/child information). Court staff must never answer questions over the telephone or at the reception window pertaining to cases involving a battered spouse/child, but refer the question to their Court Administrator.

E. RECORD OF PROCEEDINGS FOR ASYLUM CASES

Applications for asylum are confidential. Records of Proceeding containing an asylum application may not be disclosed to third parties without the written consent of the applicant and must be marked with the stamp that says:

Warning: Do not disclose the contents of this file
Please see your Court Administrator

as soon as the Court staff enters an asylum application in CASE. Court staff must also immediately update the CASE record to reflect that information should not be released for any case where an asylum application has been filed (see CASE Training Manual, Lesson 4, Unit 8 for instructions on changing the "Release Info" field from "Yes" to "No"). Court staff must never answer questions over the telephone or at the reception window pertaining to cases where an asylum application has been filed, but refer the question to their Court Administrator.

SECTION III

ROP MAINTENANCE

All submissions to the ROP (applications, exhibits, motions, correspondence, transmittal memoranda) are filed chronologically by date-received order on the right side of the ROP with the most recent filing on top. The Form EOIR-28, Notice of Entry of Appearance by Attorney or Representative Before an Immigration Judge, should be filed on the left side of the ROP. Changes in IHP information should be noted in the ROP using the standard form created specifically for this purpose.

If requested, the Immigration Court will provide the filing party with a conformed copy of the filing. Court Staff will date-stamp and return a requested conformed copy if an accurate copy has been provided along with a self-addressed, stamped envelope for requests by mail (if filed by mail). See the Immigration Court Practice Manual, Chapter 3, Section 3.1(f).

A. LEAD ROP

The lead ROP will be the "control-file" in which all hearing submissions are maintained. It is important to remember that if an individual family member receives a change of venue or files an appeal, the complete ROP and the hearing cassette must be reconstructed/copied from the lead file.

B. CHANGE OF ADDRESS/TELEPHONE NUMBER (FORM EOIR-33)

Aliens are required to notify the Immigration Court having administrative control over the Record of Proceedings of any change in address and/or telephone number within five days of their receipt of a charging document without an address or when they move. This information must be filed on a Change of Address Form (EOIR-33).

1. The Change of Address Form should include the following information:

a. The alien's name and A-Number;
b. The old address and new address;
c. The old and new telephone number;
d. The effective date of the change;
e. The alien's signature.

2. When the Change of Address form is received, the Immigration Court clerk should:

a. Date-stamp the form received;
b. Update the CASE system with the new address and telephone number information;
c. File the EOIR-33 in the Record of Proceedings.

Note: If the Change of Address Form (EOIR-33) is missing any of the required information, date-stamp the form, and place a notation in the ROP that the alien must provide the missing information at the next hearing date.

C. CHANGE OF ADDRESS/TELEPHONE NUMBER FROM OFFICIAL FILINGS

If a change of address is received in the form of an official filing (application, correspondence, etc.), date-stamp the correspondence but **do not** update the address in the CASE record. Rather, issue the notice entitled Notice and Warning: Form EOIR-33 Required for Any Change of Address. Attach an EOIR-33 to the notice and send it to the respondent's official address listed in CASE. Also send a copy of the notice and an EOIR-33 to the respondent's new, unofficial, address. A copy of the notice should be stapled to the correspondence and filed in the Record of Proceedings.

SECTION IV

REJECTING FILINGS

Effective July 1, 2008, filings by an attorney or representative (including Department of Homeland Security attorneys) must comply with the provisions of the Immigration Court Practice Manual. The guidance for rejecting filings covers four separate filing parties: (1) filings by an attorney or representative, including Department of Homeland Security attorneys; (2) filings by a non-detained *pro se* respondent; (3) filings by a detained *pro se* respondent; and (4) filings submitted directly by a third party or a represented respondent.

A. FILINGS BY AN ATTORNEY, REPRESENTATIVE, OR DHS

This section provides guidance on how to process filings that do not comply with the provisions of the Immigration Court Practice Manual if the filing was submitted by an attorney or representative (including Department of Homeland Security attorneys).

1. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the party. To return a filing to an attorney, representative, or DHS, please use the new uniform rejection notice entitled **Rejected Filing: Notice to Attorney or Representative**. A copy of the rejection notice should be placed in the Record of Proceeding.

a. **No proof of service** – the filing does not contain a proof of service.
b. **Improper proof of service** – the proof of service does not comply with the Immigration Court Practice Manual's provisions. (See Chapter 3.2.)
c. **No fee receipt, other proof of payment, or fee waiver request** – the filing requires payment of a fee, but the filing does not include a fee receipt, fee waiver request, or interim evidence of fee payment. Interim evidence of fee payment includes:

(1) a respondent's notice from the Department of Homeland Security (DHS) to appear for a biometrics appointment;
(2) a printout from the website of DHS, U.S. Citizenship and Immigration Services, showing that the respondent's application has been received;
(3) a photocopy of the check;
(4) a photocopy of the money order receipt;
(5) an affidavit from the person who submitted the payment.

Note: If interim evidence of fee payment is submitted, the judge may still require the fee receipt prior to adjudication at the hearing. Accordingly, court staff may advise the filing party to submit the fee receipt as soon as possible.

d. **Fee incorrectly paid to court** – the respondent submitted a check or money order to the court, rather than the DHS.
e. **No name** – the filing is missing the respondent's name.
f. **No A-number** – the filing is missing the respondent's A-number.
g. **No Notice of Entry of Appearance** – the attorney or representative has not yet entered an appearance by filing an EOIR-28, and the documents being submitted do not include an EOIR-28.
h. **Attorney has been disciplined** – the filing is submitted by an attorney or representative who has been disciplined. See Immigration Court Practice Manual, Chapter 2, Section 2.3(k).
i. **Other counsel entered** – if an attorney or representative files an EOIR-28, but another attorney or representative has already submitted an EOIR-28, please carefully review Section E for instructions on how to handle.
j. **Incorrect filing location (case at court)** – the respondent is in proceedings, but the filing was made at the wrong court.
k. **Incorrect filing location (case at BIA)** – jurisdiction is with the BIA.
l. **Case not pending** – a Notice to Appear has not been filed.

Exceptions:

(1) EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
(2) Bond re-determination requests are accepted even if no Notice to Appear has been filed.

m. **Missing or improper signature** – the filing is not signed or the signature is improper, under the guidelines below.
n. **All signatures must be original signatures**. Rubber-stamp signatures are not acceptable.

Exceptions: Notices to Appear should not be rejected for signature defects. Determinations regarding signatures on Notices to Appear are made by the judge. Note the following:

(1) Signatures need not be legible, as long as the signature is accompanied by a printed name.
(2) Signatures need not be dated.
(3) Faxed signatures are only acceptable if the fax was authorized.

(4) Photocopied signatures *are* acceptable on supporting documents only.
(5) EOIR-28s without an original signature are rejected.

o. **No translation or improper translation** – foreign language documents are rejected as outlined below. This applies whether the document was submitted by itself or as part of a larger package. If the document was submitted as part of a larger package, the entire package is rejected. This includes the following:

(1) The document is un-translated.
(2) The document is translated, but submitted without a certificate of translation.
(3) The document is translated, but submitted with an improper certificate of translation.

p. **No cover page** – the filing does not include a cover page.
q. **Not two-hole punched** – the filing is not two hole-punched.
r. **No pagination** – the filing does not contain page numbers. The filing is rejected only if it contains no page numbers. Do not reject merely because page numbers are not consecutive.
s. **No proposed order** – for motions, no proposed order is included.
t. **Other** – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above. This space may also be used for any additional comments.

2. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing.

B. FILINGS BY A NON-DETAINED UNREPRESENTED RESPONDENT

This section provides guidance on how to process filings that do not comply with the provisions of the Immigration Court Practice Manual if the filing was submitted by a non-detained pro se respondent. Note that, for non-detained pro se respondents, there are fewer defects for which filings will be rejected than for represented respondents.

1. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the non-detained pro se respondent. To return a filing to a non-detained pro se respondent, please use the new uniform rejection notice entitled **Rejected Filing: Notice to Non-Detained Unrepresented Respondent**. A copy of the rejection notice should be placed in the Record of Proceeding.

a. **No proof of service or improper proof of service** – the filing does not contain a proof of service.

Exceptions: court staff should use their judgment to decide whether to accept a filing from a non-detained pro se respondent if:

(1) There is a proof of service, but it does not fully comply with the Immigration Court Practice Manual's provisions;
(2) There is no proof of service, but circumstances warrant accepting the filing (for example, the filing is simple, such as a letter to the court, or the hearing date is near). However, if accepting a filing, even though it does not have a proof of service, take the following steps:

i. Stamp the filing using a stamp reading "Served on the Department of Homeland Security";
ii. Copy the filing;
iii. Serve the filing on the DHS;
iv. Place the filing in the ROP.

b. **No name** – the filing does not contain the respondent's name.
c. **No A-number** – the filing does not contain the respondent's A-number.
d. **No fee receipt, fee waiver request, or interim evidence of payment** – the filing requires payment of a fee, but the filing does not include a fee receipt, fee waiver request, or interim evidence of fee payment.

(1) a respondent's notice from the DHS to appear for a biometrics appointment;
(2) a printout from the website of DHS, U.S. Citizenship and Immigration Services, showing that the respondent's application has been received;
(3) a photocopy of the check;
(4) a photocopy of the money order receipt;

(5) an affidavit from the person who submitted the payment.

Note: If interim evidence of fee payment is submitted, the judge may still require the fee receipt prior to adjudication at the hearing. Accordingly, court staff may advise the filing party to submit the fee receipt as soon as possible.

e. **Fee incorrectly paid to court** – the respondent submitted a check or money order to the court, rather than the DHS.

f. **Incorrect filing location (case at court)** – the respondent is in proceedings, but the filing was made at the wrong court.

g. **Incorrect jurisdiction (case at BIA)** – jurisdiction is with the BIA.

h. **Case not pending** – a Notice to Appear has not been filed.

Exceptions:

(1) EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
(2) Bond re-determination requests are accepted even if no Notice to Appear has been filed.

i. **No translation** – foreign language documents are rejected if untranslated. This applies whether the document was submitted by itself or as part of a larger package. If the document was submitted as part of a larger package, the entire package is rejected.

Note: unlike filings by attorneys or representatives, foreign language documents from non-detained pro se respondents are accepted if:

(1) translated but submitted without a certificate of translation;
(2) translated but submitted with an improper certificate of translation.

k. **Other** – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above.

2. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing.

C. FILINGS BY A DETAINED UNREPRESENTED RESPONDENT

This section provides guidance on how to process filings that do not comply with the provisions of the Immigration Court Practice Manual if the filing was submitted by a detained pro se respondent. Note that, for detained pro se respondents, the court only rejects filings in very limited circumstances.

1. Reject upon receipt

In the following situations, court staff should reject filings upon receipt and return the filings to the detained pro se respondent. To return a filing to a non-detained pro se respondent, please use the new uniform rejection notice entitled **Rejected Filing: Notice to Detained Unrepresented Respondent**. A copy of the rejection notice should be placed in the Record of Proceeding.

a. **No name** – the filing does not contain the respondent's name.
b. **No A-number** – the filing does not contain the respondent's A-number.
c. **Incorrect filing location (case at court)** – the respondent is in proceedings, but the filing was made at the wrong court.
d. **Incorrect filing location (case at BIA)** – jurisdiction is with the BIA.
e. **Case not pending** – a Notice to Appear has not been filed.

Exceptions:

(1) EOIR-33/ICs are accepted even if no Notice to Appear has been filed.
(2) Bond re-determination requests are accepted even if no Notice to Appear has been filed.

f. **Other** – the filing is rejected for other unusual reasons not listed above. Please check with your supervisor before rejecting documents for any reasons not listed above. This space may also be used for any additional comments.

2. No proof of service

If a filing from a detained pro se alien does not include a proof of service, do not reject the filing. Rather, the filing should be served on DHS by following the steps below:

a. Stamp the filing using a stamp reading "Served on the Department of Homeland Security";

b. Copy the filing;
c. Serve the filing on the DHS;
d. Place the filing in the ROP.

3. Give untimely filings to the judge

Untimely filings should be stamped and processed as usual and given to the judge, whether or not the filing was submitted with a motion to accept an untimely filing.

D. FILINGS SUBMITTED DIRECTLY BY A THIRD PARTY OR A REPRESENTED RESPONDENT

This section provides guidance on how to process a filing in two situations: the filing is submitted directly to the court by a third party (someone who is not the respondent, the attorney, or DHS); or the filing is submitted directly to the court by a respondent who is represented, rather than by the attorney or representative (filings by represented respondents are supposed to be filed by the attorney).

1. Filing is submitted by a third party

If a filing is submitted by a third party, court staff should reject the filing upon receipt and return the filing to the individual who submitted it. To return a filing to a third party, please use the new uniform rejection notice entitled **Rejected Filing: Filing Submitted Directly by Represented Respondent or by Third Party**. A copy of the rejection notice should be sent to the respondent (if unrepresented) or the respondent's attorney (if represented), and to the Department of Homeland Security. A copy of the rejection notice should be placed in the Record of Proceeding.

2. Filing is submitted by a represented respondent

If a filing is submitted to the court directly by a represented respondent, rather than by the attorney or representative, court staff should use their judgment to decide whether to reject the filing or whether to process it and give it to the judge. For example, if a respondent writes a letter to the court reporting that his or her attorney has acted improperly, it may well be appropriate to accept the letter and bring it to the attention of the judge.

If court staff elects to reject a filing because it was submitted directly to the court by a represented respondent, please use the new uniform rejection notice entitled **Rejected Filing: Filing Submitted Directly by Represented Respondent or by Third Party**. A copy of the rejection notice should be sent to the respondent's attorney and the Department of Homeland Security. A copy of the rejection notice should be placed in the Record of Proceeding.

E. PROCESSING AN EOIR-28 WHERE ANOTHER ATTORNEY HAS ENTERED AN APPEARANCE

This section provides detailed guidance on how to process an EOIR-28 where another attorney or representative has already entered an appearance in the case. To determine how to process the EOIR-28, please follow the steps below.

1. EOIR-28 is filed without a motion to substitute

Where a respondent is already represented, and a new attorney or representative files an EOIR-28 without a motion to substitute:

a. **Check whether annotated –** determine whether the EOIR-28 is annotated to reflect that the new attorney or representative is making an appearance "on behalf of" the previous attorney or is joining as "co-counsel." See Immigration Court Practice Manual Chapters 2.3(e) and 2.3(j).

b. **If "on behalf of"** – if the EOIR-28 is annotated to reflect an "on-behalf-of" appearance, place the EOIR-28 in the Record of Proceedings, and enter the appearance in CASE as a non-prime attorney or representative.

c. **If "co-counsel"** – if the EOIR-28 is annotated to reflect that the attorney or representative is joining as "co-counsel," place the EOIR-28 in the Record of Proceedings, and enter the appearance in CASE as a non-prime attorney or representative.

d. **If not annotated** – if the EOIR-28 is not annotated, it is rejected, using the new uniform rejection notice entitled **Rejected Filing: Notice to Attorney or Representative.**

2. EOIR-28 is filed with a motion to substitute

Where a respondent is already represented, and a new attorney files an EOIR-28 with a motion to substitute:

a. **Enter motion in CASE** – enter the motion to substitute in CASE (do not enter the EOIR-28 in CASE), and forward the submission to the judge.

b. **If granted** – if the judge grants the motion to substitute, enter the attorney or representative in CASE.

c. **If denied** – if the judge issues an order denying the motion to substitute, do not enter the attorney or representative in CASE. Stamp the EOIR-28 using a stamp reading "Motion to Substitute Denied" and place the EOIR-28 in the Record of Proceedings.

SECTION V

FILING RECORDS OF PROCEEDING

A. FILING SEQUENCE

Records of Proceedings are filed in A-Number order in numerical sequence using the last three digits, first three digits, then middle three digits if necessary. The following example shows four A-Numbers in correct filing sequence:

A019 061 511
A026 989 511
A026 991 511
A010 001 998

B. FILING STATUS

Records of Proceeding will be in one of four status points during the course of the immigration hearing process: "Open," "Current Case Calendar," "Expedited Case Calendar," or "Closed."

1. Open Files

Consist of any ROP from the date of its creations until the Immigration Judge's action moves the case into a closed status. Open files must be filed in numerical sequence by A-Number beginning with the last three digits, first three digits, and middle three digits.

2. Current Case Calendar Files

Consists of cases calendared no more than one month in advance of the hearing date for the case. ROPs in this category should be maintained in chronological and Immigration Judge-assigned order.

3. Expedited Case Calendar Files

Consist of Records of Proceeding for Credible Fear, Reasonable Fear and Claimed Status Review cases (which are red in color). ROPs in this category should be maintained in chronological and Immigration Judge assigned order.

Note: Records of Proceeding for Credible Fear Review cases are NOT merged with any later proceeding involving the same alien. ROPs for Credible Fear should be retired using the procedures outlined in Chapter IX. Records of Proceeding for Reasonable Fear and Claimed Status Review cases will be merged with the ROP created for any later removal proceeding for the same alien.

4. Closed Files

Consist of any immigration case that has been terminated or completed by the Immigration Judge. Closed Records of Proceeding must be filed in numerical sequence by A-Number, starting with the last three digits, first three digits, and middle three digits. Closed files also include Tape Transmittal Envelopes for ROPs at the Board of Immigration Appeals and original ROPs for cases on appeal at federal court.

Note: Tape Transmittal Envelopes (EOIR-10) may be maintained in a separate filing system while the ROP for the case is at the Board of Immigration Appeals. They must be maintained in numerical sequence by A-Number.

CHAPTER III
CALENDARING OF CASES

All new cases, motions to recalendar, granted motions to reopen/reconsider and remanded cases are set for Master Calendar hearings. The Master Calendar is the initial hearing in which the Immigration Judge rules on the charges that DHS has filed against the alien on the charging document and establishes what relief the person wishes to seek against deportation, exclusion, rescission or removal. Cases in which the alien seeks relief are set on the Immigration Judge's Individual Calendar. The Individual Calendar is the hearing in which the alien presents their case on applications for relief. The Immigration Reform and Immigrant Responsibility Act of 1996 was the impetus for the creation of the following case types currently used in the Immigration Courts: Credible Fear Review, Reasonable Fear Review, Claimed Status Review, Asylum-Only and Withholding-Only. All Immigration Judge agendas must be approved by the Office of the Chief Immigration Judge. The approved agenda will be input into the CASE system by the Court Administrator; it will set session types, number of cases to be scheduled for each session, and detail and IHP sessions for scheduling cases at each Immigration Court.

All cases must be set for hearing using the CASE automated calendaring process. Instructions for setting cases automatically or interactively may be found in the CASE Training Manual, Lesson 3, Unit 5 and Unit 14 respectively.

All cases which are not concluded by an Immigration Judge after a hearing must have a future hearing date. Cases will not be allowed to go "off calendar" until the Immigration Judge completes the case by issuing an order. If a hearing is concluded without a future hearing date or the decision is not reserved, refer the Record of Proceeding to your Court Administrator for resolution.

SECTION I

SETTING THE MASTER CALENDAR

A. NEW CASES

In multiple Immigration Judge courts, cases are assigned to each Immigration Judge's Master Calendar on a random rotational basis, using the CASE automatic calendaring process. Removal cases can only be set 10 days after the service of the Notice to Appear unless the alien requests an earlier hearing date in writing by signing the waiver on the Notice to Appear or submitting a written request. Written requests should be date-stamped received and filed in the Record of Proceeding as part of the case record.

B. RESET CASES

If a case must be reset to another Master Calendar hearing, Immigration Court personnel will respond immediately to the Immigration Judge's request for a future hearing date and schedule the case for the future session selected by the Immigration Judge. A standardized Adjournment Code must be entered into CASE if a case is reset. An Adjournment Code Reference Chart should be available in every court. The parties must also be provided notice of any future hearing; see Chapter IV for correct notice procedures.

SECTION II

SETTING THE INDIVIDUAL CALENDAR

The case-assigned Immigration Judge always sets the Individual Calendar but may request available dates and times from court personnel. Immigration Court personnel will schedule the hearing in the CASE system as requested by the Immigration Judge. The proper adjournment code must be entered in the CASE system. The parties must be provided notice of any future hearing; see chapter IV for correct notice procedures.

SECTION III

CALENDARING PRIORITY CASES

The following types of cases must receive priority attention when calendaring cases. Check with your supervisor or Court Administrator for court-specific procedures in handling these cases.

A. CALENDARING BOND HEARINGS

Bond hearings have high priority and can be held either in-person or telephonically. A charging document is not required, but if the person wishes to go forward with a removal hearing, they must either sign the request on the Notice to Appear, or submit a written request to waive the ten day period. Bond hearings must be held as soon as calendar space is available.

B. CALENDARING CREDIBLE FEAR REVIEW HEARINGS

The Immigration and Nationality Act requires that a Credible Fear Review hearings be heard within 24 hours to 7 days. Immigration Courts have set up special procedures for monitoring the receipt of Notices of Referral to Immigration Judge (Form I-863) and special sessions have been created in the CASE system. Immigration Court personnel must monitor the receipt of Notices of Referral and calendar these cases immediately. Check with your Court Administrator or supervisor for court-specific procedures.

C. CALENDARING CLAIMED STATUS REVIEW HEARINGS

Claimed Status Review hearings should be conducted within 7 days which is a goal that has been established by the Office of the Chief Immigration Judge. Immigration Court personnel must monitor the receipt of Notices of Referral (Form I-863) for Claimed Status Review cases and calendar these cases immediately. Check with your Court Administrator or supervisor for court-specific procedures.

D. CALENDARING REASONABLE FEAR REVIEW HEARINGS

Reasonable Fear Review hearings should be conducted within 10 days. Immigration Courts have set up special procedures for monitoring the receipt of Notices of Referral to Immigration Judge (Form I-863) and special sessions have been created in the CASE system. Immigration Court personnel must monitor the receipt of Notices of Referral and calendar these cases immediately. Check with your Court Administrator or supervisor for court-specific procedures.

E. CALENDARING EXPEDITED ASYLUM CASES

Immigration Courts must complete expedited asylum cases within 180 days. The criteria to determine expedited cases and calendaring requirements may be found in Operating Policy and Procedure Memorandum 00-01, Asylum Request Processing.

F. CALENDARING INSTITUTIONAL HEARING PROGRAM (IHP) CASES

All IHP cases will be scheduled for an initial hearing as expeditiously as possible. IHP cases must be completed prior to the incarcerated alien's Earliest Possible Release Date (EPRD). It is recommended that they be heard and completed as early as possible during the alien's period of incarceration. Court Administrators, under the supervision of their Assistant Chief Immigration Judge, have responsibility for monitoring the IHP caseload and determining the number and duration of Immigration Judge visits to IHP sites.

Although IHP cases are usually heard at centralized facilities, alien inmates are transported to the centralized location from many different housing locations. Many Departments of Correction have requested that cases from the same housing units be scheduled during the same time periods and on the same day to allow for ease of transportation to the centralized/regionalized hearing location.

There are special calendars for the Institutional Hearing Program which differ from the standard calendar format. IHP (formerly CAP) calendars include special criteria to aid the Departments of Correction in identifying aliens. When printing calendars for IHP details, use only IHP (CAP) calendars. These calendars must be sent to the corrections contact at the appropriate Department of Correction as far in advance of the scheduled hearing date as possible.

SECTION IV

CALENDARING PREVIOUSLY HEARD CASES

A. MOTIONS TO RECALENDAR

If a case has been administratively closed, either party may submit a motion to recalendar. Motions to recalendar should be calendared on the next available Master Calendar. See Chapter VI for the correct procedures for processing motions to recalendar.

B. MOTIONS TO REOPEN/RECONSIDER

If a motion to reopen or reconsider has been granted, the case should be calendared on the original case-assigned Immigration Judge's next available Master Calendar. See Chapter VI for the correct procedures for processing motions to reopen/reconsider.

C. REMANDED CASES

If a case is remanded to your court from the Board of Immigration Appeals or a federal court, it should be calendared on the original case-assigned Immigration Judge's next available Master Calendar and the parties notified of the hearing according to the procedures outlined in Chapter IV. The Record of Proceeding should be submitted to the Immigration Judge for review.

CHAPTER IV
HEARING NOTIFICATION PROCEDURES

SECTION I

INTRODUCTION

Section 239 of the Immigration and Nationality Act, (INA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA), substantially changed the notice requirements for aliens in immigration proceedings. These new notice provisions apply to those individuals placed in proceedings under the new INA. 8 C.F.R. § 1003.13. Because the requirements did not change for individuals in deportation/exclusion proceedings, the Immigration Court will need to operate under two sets of rules, depending on the type of proceeding that has been instituted against the individual. Where appropriate, the two procedures have been unified.

THESE PROCEDURES ONLY APPLY TO THOSE CASES WHERE THE DEPARTMENT OF HOMELAND SECURITY (DHS) (INS) HAS PROPERLY FILED A CHARGING DOCUMENT VESTING JURISDICTION WITH THE IMMIGRATION COURT.

The following sections include guidance on mailing notices to aliens, if unrepresented, or to the alien's attorney or representative. Please note that in accordance with the Immigration Court Practice Manual, Chapter 2, Section 2.3(k), if an attorney or representative has been disciplined, the Immigration Court treats the alien as unrepresented.

SECTION II

NOTIFICATION OF HEARINGS TO ALIENS

A. IN-PERSON

In-person service of the Hearing Notice to the alien MUST be used whenever practicable in lieu of mailing, regardless of the type of proceedings. If in-person service of the Hearing Notice is not practicable, however, the Hearing Notice, accompanied by a Change of Address Form (EOIR Form-33), must be mailed to the alien, if unrepresented, or to the alien's attorney or representative. Procedures for mailing, including any additional notice requirements, are outlined below. **Notwithstanding the different mailing requirements, a copy of all Hearing Notices sent, including any accompanying attachments, must be placed in the Record of Proceedings.**

B. NON-DETAINED CASES

In non-detained cases a Hearing Notice will be printed through the CASE system. The Hearing Notice will contain a certificate of service at the bottom of the page. The Court personnel serving the Hearing Notice **MUST SIGN** the certificate of service and check the appropriate box indicating how the service was completed. If in-person service is not practicable, one copy of the **SIGNED** Hearing Notice will be sent to the alien or his/her representative with a Change of Address Form (EOIR Form-33).

1. Mailing Requirements for Non-Detained Aliens in Removal Proceedings

Section 239 of the new INA, as amended by IIRIRA, does not require that the charging document, Notice to Appear or any change/rescheduled Hearing Notice be served by Certified Mail in those instances where in-person service is not practicable. The Court Administrator, therefore, will ensure that all Hearing Notices, including the Hearing Notice containing the time, place and date of the hearing (pursuant to 8 C.F.R. § 1003.18) are served by **regular mail**. The certificate of service at the bottom of the Hearing Notice, will be executed in every case by Court personnel as proof of service.

There may be circumstances, however, when the use of Certified Mail may be appropriate. If Certified Mail is used, it should be Certified Mail-Return Receipt Requested. **In no case should Certified Mail be used as a regular practice**.

2. Mailing Requirements for Non-Detained Aliens in Deportation Proceedings

Section 242B of the old INA required that the Hearing Notices be served by Certified Mail if in-person service was not practicable. *See* § 242B(a)(2)(A) of the old INA. The Certified Mail requirement also applied to any Hearing Notices notifying the alien of a change or a rescheduling. In deportation proceedings Immigration Courts will continue the practice of sending Hearing Notices, accompanied by a **Spanish** translation, in deportation proceedings by Certified Mail-Return Receipt Requested.

3. Mailing Requirements for Non-detained Aliens in Exclusion Proceedings

Since the statute and regulations are silent regarding notice requirements in exclusion proceedings, non-detained aliens in exclusion proceedings will be served their Hearing Notices by **regular mail.** There may be circumstances, however, where the use of Certified Mail may become necessary. If the Hearing Notice is sent Certified Mail, it must be sent Certified Mail-Return Receipt Requested. **In no case should Certified Mail be used as a regular practice**.

4. Mailing Requirements for Non-detained Aliens in Rescission Proceedings

The same mailing requirements as for non-detained aliens in exclusion proceedings will apply to aliens in rescission proceedings under § 246 of the INA.

C. DETAINED CASES (INCLUDING IHP)

1. In-Person

Both the new and the old INA direct that all Hearing Notices for proceedings shall be in writing and provided to the alien in-person, if practicable, or to the alien and his or her representative by mail. No exception is made for cases in which the alien is detained by the DHS or incarcerated by state or federal authorities on criminal grounds. In order to ensure that an alien is afforded proper notice of his or her hearing, the following procedures will be used for mailing the Hearing Notices in all detained settings, including but not limited to, Service Processing Centers (SPC); state, county, and municipal jails; and IHP sites where in-person service is not practicable.

In detained cases, a Hearing Notice will be printed through the CASE system. The Hearing Notice will contain a certificate of service at the bottom of the page. The Court personnel serving the Hearing Notices **MUST SIGN** the certificate of service and check the appropriate box indicating how the service was completed. The Hearing Notice for detained or incarcerated aliens shall state the alien's name, followed by a line addressing the Hearing Notice in care of the person in charge of the facility or institution where the alien is being detained or incarcerated.

The Court Administrator or his/her designee must deliver **in-person** the individual Hearing Notices with the signed certificate of service (except that aliens in deportation also get a Spanish translation), to the alien in care of the person in charge of the facility/institution where the alien is being detained. When in-person delivery is not practicable, delivery should be made by the procedures set forth in part II, § C(2), (3) & (4) of this Chapter with an executed certificate of service. The Court Administrator must ensure that the Hearing Notices are delivered to the custodial authority with sufficient time to permit the custodial authority to serve the aliens.

In addition to delivery of the individual Hearing Notices, Court Administrators shall also provide the custodial authority or the person in charge of the facility where the alien is being detained with the full hearing calendar. The Court Administrator will also provide the DHS a copy of the Court Calendar.

2. Mailing Hearing Notices for Detained Aliens in Removal Proceedings

An initial hearing date for aliens in Removal Proceedings cannot be set earlier than 10 days after service of the Notice To Appear, unless the 10 days to secure counsel has been waived by the alien. Once the Hearing Notices have been printed and signed (in duplicate), they will be sent to the alien, in care of his or her Custodial Authority, and his or her attorney, if any, via **an appropriate overnight courier**. One copy of the Hearing Notice will be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service upon the custodial authority will be deemed service upon the alien.

Service of the copy of the Hearing Notice will also be sent to the DHS official via **regular mail**.

3. Mailing Hearing Notices for Detained Aliens in Deportation Proceedings

For aliens in **deportation proceedings**, an initial hearing date cannot be set earlier than 14 days after the service of the charging document, unless the alien has waived the 14 days to secure counsel § 242B(b)(1) of the old INA. Once the Hearing Notices have been printed and signed (in duplicate), they will be sent, accompanied by a **Spanish** translation, to the alien in care of his or her Custodial Authority, and his or her attorney, if any, via **Certified Mail-Return Receipt Requested.** One copy of the Hearing Notice will be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service upon the Custodial Authority will be deemed service upon the alien, 8 C.F.R. § 103.5a(c)(2)(I).

Service of the copy of the Hearing Notice to the DHS official shall be sent by **regular mail**.

4. Mailing Hearing Notices for Detained Aliens in Exclusion Proceedings

An initial hearing for aliens in exclusion proceedings may be scheduled at anytime after the filing of the charging document (Form I-122) with the Court. Once the Hearing Notices have been printed and signed (in duplicate), they will be sent to the alien in care of his or her Custodial Authority, and his or her attorney, if any, via **an appropriate overnight courier**. One copy of the Hearing Notice can be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service to the Custodial Authority will be deemed service upon the alien.

Service of the copy of the Hearing Notice to the DHS official shall be sent via **regular mail**.

D. HEARING NOTICES FOR ALIENS IN CREDIBLE FEAR, REASONABLE FEAR AND CLAIMED STATUS REVIEW

Due to the expedited nature of these proceedings, an attempt should be made to serve the Hearing Notice within 24 hours of receiving the Form I-863, Notice of Referral to Immigration Judge. The Hearing Notice MUST be served in-person, if practicable. If in-person service is not practicable, then the Hearing Notice must be sent to the alien, in care of his or her Custodial Authority, via **an appropriate overnight courier.** However, because time is of the essence with regard to these expedited cases, the Court Administrator may elect to allow the DHS to file the Form I-863 and accompanying documents via fax. If distance from the court renders it impractical for DHS to file the Form I-863 and accompanying documents in person, the Court Administrator shall establish a procedure to allow for filing of the charging document by fax. Filing by fax shall be limited only to referring a request for a credible fear, reasonable fear, claimed status review cases, asylum-only and withholding-only (See § E below for Hearing Notices for asylum-only and withholding-only proceedings). The Immigration Court may serve the hearing notices by fax in appropriate circumstances**.**

E. HEARING NOTICES FOR ALIENS IN WITHHOLDING-ONLY AND ASYLUM-ONLY PROCEEDINGS

Withholding-only and asylum-only cases will generally follow the procedure rules for removal cases, except that an initial hearing date for aliens in withholding-only and asylum-only proceedings can be set earlier that 10 days from the service of the Notice of Referral to Immigration Judge (Form I-863) on the Court. The 10 day requirement in removal proceedings is only applicable to a Notice to Appear under § 239 and not a Form I-863. Court Administrators can therefore schedule these cases accordingly, and Hearing Notices for aliens in withholding-only and asylum-only proceedings will be served according to the procedures outlined for aliens in removal proceedings.

F. RESCHEDULED OR CONTINUED HEARINGS

If the alien is not before the Court, the Hearing Notices will be mailed according to the procedures outlined in part II, §§ A, B & C of this Chapter. In situations when the case must be continued or rescheduled for hearing, and the alien is present before the Court, the following procedures apply. When providing the alien with notice of a future scheduled hearing the Immigration Judge must ensure:

(a) That the scheduled hearing date and time have been entered on the Hearing Notice and that a "Change of Address Form, EOIR-33, is provided to the alien;

(b) The oral warning of the consequences for failing to appear has been given on the record and the appropriate box has been checked on the "Limitation on Discretionary Relief" form. The oral warning, if given, must be provided by the Immigration Judge, not by Immigration Court personnel nor by a contract interpreter, and;

(c) If applicable, that the "Limitation on Discretionary Relief" form has been signed and dated by the Immigration Judge or Immigration Court personnel.

1. Non-Detained Rescheduled or Continued Cases in Removal Proceedings

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the CASE system. In addition, a notice entitled "Limitation on Discretionary Relief" will be printed and placed in the ROP prior to each hearing for all aliens, as well as a Change of Address Form (EOIR Form-33).

The "Limitation on Discretionary Relief" form is to be used ONLY after the alien has been given the appropriate oral warning by the Immigration Judge in the alien's own language or a language the alien understands. "Limitation on Discretionary Relief" form must be completed and signed by the Immigration Judge or Immigration Court personnel who are present in the courtroom and who witnessed the giving of oral notice. The oral notice must be given only by the Immigration Judge. A contract interpreter is only authorized to translate the oral warnings. The Immigration Judge, however, may obtain a waiver of the reading of the oral warnings from the alien's attorney or accredited representative. To effect the waiver, the Immigration Judge must obtain a statement on the record from the alien's counsel or representative that he or she has advised the alien and explained the consequences of failing to appear, in lieu of the Immigration Judge's explanation.

After the alien has been given the warnings orally (or the warnings have been waived by the alien's attorney or representative), one copy of the "Limitation on Discretionary Relief" form shall be given to the alien in-person in **English**, in addition to the written Hearing Notice and Change of Address Form (EOIR Form-33) which were previously printed by the Court personnel.

2. Non-Detained Rescheduled or Continued Hearings in Deportation

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the CASE system. In addition, a notice entitled "Limitation on Discretionary Relief" will be printed and placed in the ROP prior to each hearing for all aliens, as well as a Change of Address form (EOIR Form-33).

The "Limitation on Discretionary Relief" form is to be used ONLY after the alien has been given the appropriate oral warning by the Immigration Judge in the alien's own language or a language the alien understands. The "Limitation on Discretionary Relief" form must be completed and signed by the Immigration Judge or Immigration Court personnel who are present in the courtroom and who witnessed the giving of oral notice. The oral notice must be given only by the Immigration Judge. A contract interpreter is only authorized to translate the oral warnings. The Immigration Judge, however, may obtain a waiver of the reading of the oral warnings from the alien's attorney or accredited representative. To effect the waiver, the Immigration Judge must obtain a statement on the record from the alien's counsel or representative that he or she has advised the alien and explained the consequences of failing to appear, in lieu of the Immigration Judge's explanation.

After the alien has been given the warnings orally (or the warnings have been waived by the alien's attorney or representative), one copy of the "Limitation on Discretionary Relief" form shall be given to the alien in-person in **English and Spanish**, in addition to the written Hearing Notice, with a **Spanish** translation, and Change of Address Form (EOIR Form-33) which were previously printed by the Court personnel.

3. Non-Detained Rescheduled or Continued Hearings in Exclusion, Rescission and Asylum-Only Proceedings

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the CASE system. Aliens in **exclusion, rescission, and asylum-only proceedings** will be given notice orally by the Immigration Judge as well as written notice via the CASE generated Hearing Notice and a Change of Address Form (Form EOIR-33)

4. Detained Cases (Including IHP)

In all cases, during the first master calendar appearance, and at every hearing thereafter, the alien shall be provided with written notice of the date and time of the reset hearing. This is in addition to **orally** advising the alien on the record of the next scheduled hearing date. Each ROP should contain a pre-printed Hearing Notice so that the immigration judge or Immigration Court personnel need only hand-write the date and time on the form. **For aliens in deportation proceedings, a Spanish translation of the Hearing Notice needs to be provided in addition to the Hearing Notice.** A copy should be kept in the ROP and served on the DHS, and the original should be served upon the alien. The procedures outlined above for oral warnings of limitations on discretionary relief should be followed.

If personal service is not feasible, then service should be provided by sending the Hearing Notice by the procedures previously outlined in part II, §§ A, B & C of the Chapter. Strict adherence to the in-person written notice procedures will obviate the need for mailing in all but the most unusual cases.

SECTION III

NOTIFICATION OF HEARINGS TO DHS

Regardless of what type of proceeding is initiated against the alien, the Courts will notify the DHS in the following manner:

A. INITIAL MASTER CALENDAR HEARINGS

The Immigration Court will send the DHS an Immigration Judge's Master Calendar Summary with a transmittal letter signed by the Court Administrator to the DHS District Counsel no later than ten calendar days before the hearing date.

The Immigration Court will send a revised Master Calendar summary, including any additions to the original calendar and/or rescheduled Master Calendar hearings for which notice was not provided during a prior hearing, with a transmittal letter signed by the Court Administrator to the DHS District Counsel as far in advance of the hearing date as possible.

The Immigration Court will post a copy of the Master Calendar summary in the public waiting area by 2:00 PM on the Friday before the week of scheduled hearings.

B. INDIVIDUAL HEARINGS

Immigration Courts will send the DHS an Immigration Judge's Master and/or Individual Calendar summary with a transmittal letter signed by the Court Administrator to the DHS District Counsel by 2:00 PM on the Friday prior to the scheduled hearings. The Individual Calendar Summary will include all hearings scheduled for the following week in the base city and will list each case by the Alien Number.

The Immigration Court will send by First Class mail and Immigration Judge Individual Calendar Summary, with a transmittal letter signed by the Court Administrator, to the District Counsel in each detail city, ten calendar days prior to the beginning of the detail.

The Immigration Court will post a copy of the Individual Calendar Summary in the public waiting area by 2:00 PM on the Friday before the week of scheduled hearings.

One copy of the Hearing Notice should be given to the DHS during the hearing.

SECTION IV

TELEPHONIC HEARINGS

The procedures outlined above apply to all telephonic hearings. When oral notice of the next date and time of hearing has been given, and/or the oral warnings concerning failure to appear, the written notices of both and a "Change of Address Form" will be sent to the alien or the alien's representative after the telephonic hearing is completed. The written notice shall be served in accordance with the procedures for notice in the underlying proceedings (e.g., removal, deportation or exclusion proceedings.)

SECTION V

CERTIFIED MAIL PROCEDURES/RECEIPT

Although the new INA eliminates the Certified Mail requirement for cases filed with the court on or after 04/01/97, Certified Mail will still be used for deportation cases and there may be circumstances where it still be used. In those instances when Certified Mail is used, the following procedures apply:

A. Court personnel will generate the Certified Mail form from the CASE system. It is a four part form with each part sequentially numbered. Parts 1 and 2 contain the alien's address. Separate Part 1 and place it in a window envelope so that the alien's address appears. Dispose of Part 2. Part 3 is the receipt for Certified Mail. Tear off the self-adhesive sticker from the right hand position on the receipt and affix it to the front top center of the envelope. Staple the receipt to the file copy of the hearing notice and place it in the Record of Proceeding. Part 4 is the return receipt card that has the Immigration Court's pre-printed address on it. This card should be attached to the back of envelope.

B. The U.S. Postal Service will make an initial attempt to deliver the Certified Mail notice to the addressee. If successful, the receipt (green) will be returned to the Immigration Court, date-stamped and included in the Record of Proceeding.

C. If the delivery of the Certified Mail notice is unsuccessful and the Certified Mail is returned to the Immigration Court, the returned Certified Mail notice will be date-stamped and included in the ROP. If returned, the Postal Service will stamp on the mail the reason for non-delivery. If the Certified Mail notice is returned indicating that no such address exists, or the address is insufficient, the Central Address File (E-33 Tracking System in the Utilities module of the CASE system) should be checked to verify the accuracy of the address. If, according to the Central Address File (E-33 Tracking System), the original Hearing Notice was improperly addressed, the Hearing Notice should be sent again to the proper address.

SECTION VI

CHANGE OF ADDRESS FORM

The alien is required to notify the Immigration Court having administrative control over the case of any change in address and/or telephone number within five (5) days of such change. These changes must be recorded on the "Change of Address Form," EOIR-33. Whenever practicable, Court personnel should have the alien complete and sign the form himself or herself. Otherwise, Court personnel may transfer new address information received from an alien to the EOIR-33. To provide the alien with the proper form to use, distribution of this form should occur at each hearing unless the Immigration Judge determines that the alien already possesses the form.

SECTION VII

CENTRAL ADDRESS FILE

An alien's address shall be kept current in the Central Address File (E-33 Tracking System in the Utilities module of the CASE system). Even if an attorney or representative files an EOIR-28, the alien's address must be maintained and updated whenever a "Change of Address Form" is filed.

SECTION VIII

BOND HOLDER/OBLIGOR

The Immigration Court will not provide a Hearing Notice to a bond holder/obligor.

CHAPTER V
CONTRACT INTERPRETER SCHEDULING PROCEDURES

A. CONTRACT INTERPRETER SERVICES

The Language Services Unit (LSU) of the Office of the Chief Immigration Judge (OCIJ) is responsible for coordinating and managing all requests for contract interpreter services. The LSU serves as the official "conduit" for communications between the Immigration Court (IC) and contract interpreter service providers, including, but not limited to, Lionbridge Global Solutions (LGS) and Language Services Associates (LSA). As such, any and all questions or concerns regarding interpreter quality, language resources, interpreter operations, or order processing should be directed to LSU staff. While LGS representatives may be available on-site in many ICs for consultation, all communications with them must be simultaneously relayed to the LSU to keep us abreast of the situation.

Contract interpreter services are available to all ICs, specifically for hearings for which an IC staff interpreter is not available to interpret in the required language or dialect, and in some instances to assist in meeting interpreter requirements for which IC staff interpreters are not able or not available to fully meet the interpreter needs (it should be stressed, however, that the staff interpreters' number one priority must be to interpret as much as possible). Currently there are three types of contract interpreter services available to the IC.

1. On-Site Contract Interpreter

This is the most commonly used contract interpreter service. As language requirements for hearings are identified that cannot be handled by IC staff interpreters, requests for in person, on-site contract interpreters are made by IC staff utilizing the web-based Electronic Contract Interpreter Ordering System (ECIOS). This service is primarily used for Individual Calendar hearings (or Master Calendar hearings where at least five respondents require the same language and a waiver is approved by the LSU), once an Immigration Judge (IJ) has determined that an interpreter will be required in order to proceed with the hearing. All requests for on-site contract interpreters must be made via ECIOS.

2. Scheduled Telephonic Contract Interpreter

Scheduled telephonic interpretation services are provided when requested or approved by the IC. The term "scheduled" refers not to the hearing, but to the contract interpreter order. The decision to accept a telephonic interpreter is left up to the presiding IJ.

The criteria for ordering a scheduled telephonic interpreter are the same as for ordering an in-person interpreter (i.e. individual calendar hearing, or master calendar hearing with at least five respondents requiring the same language and an approved waiver from the LSU). Occasionally the IC will agree to use a telephonic contract interpreter if an on-site contract interpreter for which they are placing an order is not available. Telephonic interpreters must be prepared to begin at the scheduled order start time. If after one hour from the scheduled order start time the IC has not contacted the telephonic interpreter, the interpreter is released and the contractor is paid one hour. As with on-site contract interpreter orders, all requests for scheduled telephonic contract interpreters must be made via ECIOS.

3. Unscheduled Telephonic Contract Interpreter

Unscheduled telephonic contract interpreter services provide relatively quick access to an interpreter network via the telephone. This service is meant to be utilized for all Master Calendar hearings or emergency situations for which a last minute on-site or scheduled telephonic contract interpreter cannot be provided. The use of the term "unscheduled" refers not to the hearing, but to the contract interpreter order, though, as mentioned before, it is sometimes used as a backup for previously ordered on-site contract interpreters. Unscheduled telephonic contract interpreter services are handled directly by the IC by calling either LGS' Unscheduled Telephonic Interpretation (UTI) service or LSA's InterpreTalk line.

B. REQUESTING AND USING ON-SITE AND SCHEDULED TELEPHONIC CONTRACT INTERPRETER SERVICES

The IC must order all on-site and scheduled telephonic contract interpreter services through ECIOS. Under no circumstances should the IC order an on-site or scheduled telephonic contract interpreter by calling LGS, a subcontracting agency, or by informing the contract interpreter personally that interpreter services will be required. In order to facilitate the filling of orders, they should be submitted as far in advance of the hearing as possible. At a minimum, orders should be submitted 30 days in advance, as discussed in section B.2.a. Orders should also contain any special requests regarding the use or non-use of a specific contract interpreter. While LGS is not obligated to fill name-specific requests, they are sometimes able to honor these requests. (Please note: interpreters whom the Court does not wish to appear must also be formally disqualified via completion and submission to the LSU of a Contract Interpreter Performance (CIP) form - see Section E.)

1. Placing Orders

All orders are placed via ECIOS. The ECIOS system, a web-based, paperless process allows the IC to order contract interpreters, query previously placed orders, and perform other administrative tasks associated with contract interpreter orders. With the implementation of the ECIOS system the IC is able to submit the contract interpreter orders simultaneously to the LSU and LGS. The system also gives confirmation to the IC of the receipt of each contract interpreter order by both the LSU and LGS.

2. ECIOS Contract Interpreter Order Reports

a. Generate Contract Interpreter Order Report - This is the only acceptable means of ensuring that on-site and scheduled telephonic contract interpreter orders are sent to the LSU/LGS. E-mail, fax, and telephone orders are not accepted unless the ECIOS system is down and the LSU has asked for the orders to be placed in that manner. This report must be generated and submitted on the first of the month for the following month (e.g. Feb. 1 for March orders), with the knowledge that weekly audits and updates will be required.

b. Generate Special Contract Interpreter Order - This feature is not to be used to place regular single orders. This feature is only to be used to place special orders, to address situations such as:

i. .The witness or a rider respondent requires the assistance of an interpreter in a language different from that of the respondent. Please note that if for one case two interpreters need to be ordered this is not considered a double booking, but a waiver stating the need for the two interpreters must be forwarded to the LSU;

ii. A conference call scheduled for a date prior to the scheduled hearing on the merits;

iii. A detainee session where the charging document has not yet been entered in CASE, but the IC knows that a specific interpreter will be needed for 5 or more respondents requiring the same language.

c. Orders Receipt Confirmation/Review Pending Orders - This feature is used to check the receipt confirmation of orders by both the LSU and LGS, or to review pending orders. The LSU confirmation indicates whether the

LSU Contract Interpreter Database has received the order, while the COI confirmation indicates whether LGS has received the order. This report also allows the IC to verify if and when an order has been placed.

d. **Cancel/Change Previously Ordered Interpreter** - This feature allows the IC to cancel or modify existing contract interpreter orders. For example, if an order has been placed for a specific date and time and subsequently the hearing time is changed from an AM to a PM session (or other situation, with proper notification to the LSU), the user can modify the order to reflect the new time without having to cancel and place a new order, which would incur a 10% premium if not done with at least two business days between the (new) order date and hearing date.

e. **View Orders Without a CASE Match** - This feature serves to track any orders that indicate there is no CASE match. If a CASE hearing is rescheduled after a contract interpreter order has been placed, ECIOS will still reflect the contract interpreter order but will indicate that there is no CASE match.

f. **View Sign In/Sign Out Report** - This feature enables users to automatically generate and print the contract interpreter sign in/sign out log for all orders for a particular day at a particular hearing location. (See Section B.3 for additional information regarding the log.)

3. Scheduled Telephonic Contract Interpreter Services

Scheduled telephonic contract interpreters may be used when on-site interpreters are not available, at the IJ's discretion. The LSU will forward to the IC a COTI form containing all of the information necessary to contact the interpreter, usually the day prior to the hearing. The contract interpreter will be on stand-by at the scheduled time awaiting the call from the IC. **If for any reason it appears that the hearing will be delayed, the IC must contact the LSU so we may, in turn, advise Lionbridge of the delay and ensure the interpreter's continued availability.**

If a scheduled telephonic contract interpreter is to be used for an Institutional Hearing Program (IHP) hearing location, the IC must be certain that the location has a suitable speaker phone and a long distance phone line available for the IC's exclusive use during the hearing. Billing responsibility and procedures for these calls (including placement through a switchboard, if necessary) should be addressed with the corrections facility prior to the day of the hearing. The COTI form previously faxed to the IC should be fully completed and subsequently returned to the LSU.

Judges are strongly encouraged to order scheduled telephonic interpreters in place of in-person interpreters for individual hearings in all situations where doing so will result in cost savings to the Government. For example, if an individual hearing is expected to take one hour or less, and a contract interpreter is needed, it would be more cost effective to order the interpreter as a scheduled telephonic rather than ordering an in-person interpreter. This is because, if in this example, the hearing is concluded in 45 minutes, the scheduled telephonic interpreter would be paid for one hour of interpreting. If, on the other hand, an in-person interpreter was ordered for this 45 minute hearing, LGS would be paid for the minimum two hours for in-person orders.

There will be situations where you may have ordered a scheduled telephonic interpreter for a hearing only to discover on the day of the hearing that, for whatever reason, the interpreter will not be needed. If this should occur, we ask that the IC neither cancel the order nor call the interpreter at the scheduled time. This is because if after one hour from the scheduled start time the IC has not contacted the telephonic interpreter, the interpreter is released and LGS is paid for one hour. If the order were to be cancelled on the day of the hearing, the IC would be responsible for paying LGS two hours for a late cancellation for the language in question. The cancellation policy will be discussed in detail in a later section. Often, when LGS cannot locate an in-person interpreter for an in-person order they will notify the IC of this fact through the LSU, and advise us of the availability of a scheduled telephonic interpreter. Acceptance of the telephonic interpreter, when identified, is at the discretion of the IJ, though the IJ should be cognizant of the budget and travel costs associated with the alternative of traveling an interpreter when making his decision. If one should accept the telephonic option please be aware that the LSU will fax the information regarding the telephonic interpreter the day prior to the hearing. If the telephonic option is not accepted, then the in-person order may become a no-show if LGS notifies the LSU that they are subsequently unable to travel an interpreter and a Suspension of Search notice is submitted. A Suspension of Search notice is formal notification that LGS has ceased efforts to identify an interpreter. At this point the appropriate damages are assessed to LGS by the LSU. Without canceling the interpreter order, the IC is free to reschedule the case and utilize the time for other matters.

4. Institutional Hearing Program Clearance

Judges who travel to IHP locations to conduct hearings are aware that many of these locations require personal information (e.g. Social Security Number, date of birth, etc.) 10 working days in advance of the hearing in order to ensure that the interpreter will be given access to the facility. This information is provided to the hearing

location by the IC. LGS must provide this information to the LSU within two working days after receipt of the order. If the order is placed within two working days of the hearing, LGS must provide this information by close of business the next working day or two hours prior to the hearing, whichever is earlier. Failure to provide the information within two working days will result in the assessment of payment deductions. A failure on the part of LGS to subsequently gain access to the facility will result in no-show liquidated damages.

If a judge is traveling to one of the IHP sites unaccompanied by IC personnel, it will be the judge's responsibility to contact the Base City IC to report a no-show on the part of the interpreter. The Base City IC will in turn contact the LSU, who will assess the proper liquidated damages.

5. Contract Interpreter Log

The IC must maintain a Contract Interpreter Log to be used by each on-site contract interpreter to sign-in upon arrival and sign out upon departure. This log should be kept behind the window where it can be closely monitored. The Court Administrator will designate a contact person in the reception area to monitor this procedure. In addition to having the contract interpreter sign in and out, it is very important that the contract interpreter's Certification of Interpretation form be **date stamped** by IC personnel immediately upon his or her arrival. The date stamp is used for billing purposes. The Contract Interpreter Log should be maintained for a period of not less than one year.

6. Reassignment of On-Site Contract Interpreters

While contract interpreters are generally ordered based on a specific hearing and under a specific case number, the IC is authorized to reassign contract interpreters to other IJs and other hearings. In addition, after a contract interpreter's services are no longer required for one hearing they may be asked to interpret in another. The Certification of Interpretation (COI) form should reflect the additional cases by inclusion of the case "A" numbers in the "Assignment" section, with each IJ noting the "Start time" and "End Time" corresponding to their usage. The form may be signed by any authorized IC staff member. It should be noted that a contract interpreter is not released from duty until their services are no longer needed, as determined by the IJ, Court Administrator, or other IC-designee. It is extremely important that the official release time (usually indicated as the "End Time") be clearly indicated on the COI form.

7. Completing the Certification of Interpretation Form

Every contract interpreter should present a three-part COI form to the presiding IJ. If an interpreter is shared amongst various IJs, each IJ must indicate the start and end time to annotate their use of the same interpreter.

When completing the bottom portion of the COI, it is very important for the IJ to use the actual interpretation start time. Although the actual start time reflected by the IJ will not necessarily coincide with the order scheduled start time, it is very useful to LSU staff when reviewing COI forms to track the actual contract interpreter usage, especially in cases of multiple interpreter bookings. It is also very important to enter the "End" time the interpreter finishes interpreting. This time is considered the end time of the order for payment purposes. Additionally, any time taken for lunch or breaks should also be annotated on the bottom portion of the COI.

When an interpreter arrives late, they are paid from the time they arrive up to the time their services are no longer required, regardless of whether the IJ commenced the hearing at the scheduled time or waited for the interpreter to arrive. Whenever an interpreter arrives late for a hearing, it must be noted on the COI by the IJ so that the proper adjustments can be made to the invoice. If a hearing is canceled due to late arrival of the contract interpreter, the IC must immediately notify the LSU and the IJ must make the appropriate entry on the COI. Whenever the box marked "Interpreter Appeared, But Not Used" is checked on a COI, the "Comments" section must indicate the reason why the interpreter was not used.

Ensuring that all this information is accurately reflected on the COI is essential because the COI is the primary documentation used to invoice the contractor for services rendered. Inaccurate or omitted information on the COI can drastically affect the final invoice.

If an interpreter appearing for a morning hearing is also scheduled to be with the same (or another) IJ for an afternoon case that is canceled the same day, the IC must inform the interpreter that their services will not be required and also notify the LSU immediately. This is considered a timely cancellation and, thus, no monetary penalties will be incurred by the Government (in this situation, the IC should NOT cancel the order in ECIOS). If a contract interpreter arrives and cannot be used for any other hearing, the Court Administrator or IC designee must note this on the COI.

The IC must retain the top copy of the COI and return the other two copies to the contract interpreter. The IC must forward the COIs (via regular mail), in chronological order and according to hearing location, to the Financial Management Staff at the following address:

Executive Office for Immigration Review
Financial Management Staff
5107 Leesburg Pike, Suite 2250
Falls Church, VA 22041
ATTN: Barbara Boden

COTI forms containing comments should be mailed directly to the LSU (Suite 2500).

8. Contract Interpreter No-Shows

The IC must notify the LSU immediately when a contract interpreter fails to appear for an on-site hearing or is unavailable for a scheduled telephonic hearing. **A determination must be made at this point as to whether or not the IJ is willing to wait for the originally assigned contract interpreter, or for a substitute contract interpreter.** This is particularly important because there are different monetary damages assessed against LGS based on whether the contract interpreter arrived late or was a no show. Once the IJ agrees to wait for the interpreter, the LSU cannot assess a no show charge - only a "late fee" - against LGS if the IJ subsequently decides to continue the case and does not wait for the contract interpreter. If the IJ is not willing to wait and proceeds without the interpreter or reschedules the hearing, the IC must advise the LSU that the contract interpreter was a no-show.

Should a contract interpreter appear at the IC after a no-show is documented, the contract interpreter should be dismissed without the IC date stamping or accepting the COI. If there is a need for the contract interpreter's services in another hearing for which there was a previous contract interpreter order placed, the IC should contact the LSU to determine whether or not the contract interpreter is scheduled to be used for the subsequent hearing.

9. Canceling Orders

The IC must immediately submit a cancellation via ECIOS when the services of a previously ordered contract interpreter are no longer needed. Failure to submit the cancellation by 5 pm EST the calendar day prior to the hearing for on-site or scheduled telephonic contract interpreters results in charges to EOIR.

Should a contract interpreter appear at the IC after it has been determined by either the IJ or the Court Administrator that the hearing will not be held, and the proper cancellation notification has **not** been made, the interpreter should be reassigned or dismissed immediately. In those instances where the proper cancellation notification **was** made, and there is no need for the contract interpreter's services, it should be noted on the COI that the contract interpreter appeared despite having been previously cancelled in a timely manner.

Timely order cancellations are made with no monetary consequences to the Government. However, untimely cancellation of orders results in charges to the Government in the amount of two hours for the language in question. For same day cancellations, if an interpreter is assigned to a morning and an afternoon case and it is determined that they will not be needed for the second case, the IC should instruct the interpreter not to return for the second order at no charge to the Government. This same day cancellation applies to the second order only.

In those instances where an attorney decides to proceed in English and the services of the contract interpreter will no longer be required, the IJ should place the contract interpreter on the record and inquire of the respondent or witness as to the attorney's request to proceed in English (the box on the COI marked "Interpreter Appeared, But Not Used" should **not** be checked in these instances; instead a "Start" and "End" time should be entered).

C. UNSCHEDULED TELEPHONIC CONTRACT INTERPRETER SERVICES

1. General Information

Every IC has direct access to a network of contract interpreters via the telephone. These services are accessed by the IC by calling the Contractors directly.

Unscheduled telephonic contract interpreter services are charged on a per minute basis and must be used for all Master Calendars or emergency situations where an on-site or regular telephonic contract interpreter is not available.

Currently there are two unscheduled telephonic contract interpreter services available to the IC: LGS' Unscheduled Telephonic Interpretation (UTI) service ($1.19 per minute), and LSA's InterpreTalk line ($1.47 per minute). Neither service is currently designated as "primary" and courts are able to call either at their discretion. Detailed information on how to access either the LGS or LSA unscheduled telephonic contract interpreter service is available in the LSU section of the OCIJ Intranet page.

2. Completion of the Certification of Telephonic Interpretation Form

A COTI form must be completed and forwarded to the LSU for any call where the court is unable to secure a telephonic interpreter, or where the court has concerns regarding the quality of either the interpreter or the system itself. The current version includes several checkboxes to denote specific concerns. Blank COTI forms may be printed from the LSU section of the OCIJ intranet page. The interpretation date, immigration court, hearing location code, and name of the immigration judge, as well as the alien number and language should all be filled in. Of particular importance are the name of the provider (company), the interpreter name or ID code, the connect, start and end times. The connect time refers to when the IC places the call while the start and end times refer to the period that the interpreter is actually present on the line. Any feedback regarding either the interpreter's performance or the quality of the service in general may be included under "comments," although any interpreter concerns must also be recorded and submitted to the LSU via the Contract Interpreter Performance (CIP) form. All completed COTI forms should be mailed directly to the LSU.

D. REVIEW OF FIRST TIME INTERPRETER (FTI) RECORDINGS

EOIR's contract with LGS requires the evaluation of each and every first time interpreter (FTI) recording. This evaluation is a critical step in the overall quality assurance process. While interpreters may score well on the simulated exam administered prior to their first appearance in the IC, their performance in the actual court setting may not always measure up. Evaluation of their first hearings is thus extremely important and can only be accomplished with the cooperation of the IC staff.

In order to complete this evaluation, ICs are asked to submit copies of the related hearing tapes directly to the LSU, who, in turn, forwards them to LGS. *****For those courts where Digital Audio Recording (DAR) has been implemented, staff should notify the LSU when submitting the necessary forms that a digital recording exists in CASE. The LSU will then burn a CD for submission to Lionbridge.***** Aside from the fact that it is required by policy, submitting copies of recordings to the LSU has the added advantage of allowing us to track and monitor LGS' progress in evaluating them.

Once notified by Lionbridge of a first time interpreter's pending assignment to a hearing, the LSU will send an email to the IC to communicate the related information, along with an FTI form (in PDF). This form must be printed out, completed, and returned to the LSU along with the related hearing tape or information regarding the digital recording in CASE, and a copy of the COI form.

As a general rule, the COI's "Interpreter's First Hearing" box will be marked, but if any interpreters with whom staff are unfamiliar should appear in the IC, they should be asked if it is indeed their first hearing.

Recording evaluation requests submitted by the ICs should be accompanied by a **copy of the completed COI form (with the "Interpreter's First Hearing" box checked). Actual copies of hearing tapes should be marked with the alien number and date, as well.**

By contract, LGS is required to return the cassette - or CD - along with a written formal evaluation, including score and comments sheets, to the LSU **within 10 working days** of their having received it. These results may, in turn, be forwarded to the IC.

The first time interpreter evaluation results are taken extremely seriously. Any interpreter who receives a **failing score (below 70)** is automatically removed by LGS from its roster of interpreters eligible for the IC assignments.

The LSU maintains its own internal database of contract interpreters about whom concerns, many leading to disqualifications, have been raised. Those interpreters who fail their first time interpreter evaluation are added to this database to serve as a cross-check against LGS' records.

Given the above, the role the LSU plays with regard to the evaluation of first time interpreters and the related recordings becomes evident. The LSU acts as a quality assurance monitor of contract interpreter performance. Therefore, IC staff are reminded of the importance of submitting copies of hearing tapes - or notification regarding the existence of digital recordings in CASE - directly to the LSU for each and every interpreter appearing for the first time before the IC.

E. INTERPRETER DISQUALIFICATIONS / CIP FORM

By virtue of the Government's contract with LGS, when interpreters are deemed inadequate, they may be disqualified from appearing again for a particular dialect, language, Judge, Court, or all Courts based on input received by the LSU from the IC.

The disqualification may stem from:

- Lack of familiarity with protocol
- Substandard foreign language or English proficiency
- Lack of knowledge of IC terminology
- Inability to interpret accurately or completely
- Unprofessional behavior

- Inappropriate attire or hygiene
- Conflict of interest

When submitting interpreter disqualification requests to the LSU, always include all related hearing and interpreter information. This is best accomplished by utilization of **both the Contract Interpreter Performance (CIP) form** (see the LSU section of the EOIR intranet for the most current version) and **COPIES of the Certification of Interpretation (COI) or Certification of Telephonic Interpretation (COTI) forms.**

The CIP form should be completely filled out to include all case information and detailed comments regarding what specific problems occurred. At least one box under "Interpreter Performance" must be checked (usually "interpreter inadequate") and the 5 "Did the Interpreter" questions should be answered "yes" or "no."

Most importantly, the **specific course of action** being requested by the IC must be indicated by checking the appropriate box on the CIP form:

- Disqualification for this IJ's court room
- Disqualification for all IJ's at this court
- Disqualification for this case only (one or all IJs)
- Disqualification for this language only (one or all IJs)
- Evaluation of hearing recording prior to returning (one or all IJs)
- Additional training required prior to returning (one or all IJs)
- Other (one or all IJs)

To ensure that interpreters are disqualified in a timely manner, IC staff should fax the CIP and COI/COTI forms to the LSU (703-305-1094). In addition to the CIP and COI/COTI forms, ICs may subsequently mail - do NOT FedEx - a copy of the related hearing tape (accompanied by copies of the CIP and COI/COTI forms) to the LSU - or notify us of the existence of a digital recording in CASE - for evaluation.

Once the LSU is notified by an IC about a problematic interpreter, and the extent of a subsequent disqualification or warning is determined, LGS is notified in writing of the decision and all relevant paperwork is forwarded. Deductions for inadequate interpretation (**in the amount of ½ of the hourly rate for the first hour**) are also made to LGS' payment for the order at this point. It should be noted that the LSU may subsequently determine that the extent of a particular disqualification should be expanded, depending upon the reasons and circumstances.

Upon official disqualification, an interpreter's name is entered into the LSU's contract interpreter database. On the other end, LGS adjusts their Case Management System to indicate that the interpreter is disqualified or "excluded" for a particular Judge, Court, language, or all languages/sites. Once this is accomplished, the system automatically prevents a LGS coordinator from assigning the interpreter when any information about the order in question matches the disqualification/exclusion criteria.

Despite the above, there are very rare occasions where a LGS coordinator may verbally give an assignment to a previously disqualified interpreter without at the same time entering the name into the system. This usually happens only in the case of a last minute order.

If a previously disqualified interpreter should appear for a hearing, despite the disqualification having been properly and timely communicated to LGS and the safeguards put into place, it is imperative that the IC immediately notify the LSU. Doing so will allow the Government to properly assess LGS with liquidated damages for a no-show. Further, if the IC is willing and able to wait, another eligible contract interpreter may be identified at this point to interpret for the hearing in question.

If an interpreter shows up to the IC improperly dressed, such as wearing jeans and a t-shirt, and the IJ decides not to utilize him or her as a result, the IC should document this on the COI and indicate the interpreter order was a "no-show" (due to interpreter inadequacy). Every time the IC has a "no-show" they should so advise the LSU to ensure proper assessment of damages to LGS.

Finally, upon successful evaluation of the disqualification-related hearing recording, additional formalized training, or counseling, LGS may request the **reinstatement** of a disqualified interpreter. This is accomplished by LGS submitting a formal written memo to the LSU accompanied by supporting documentation. The LSU, in turn, forwards this information to the IC to solicit their position regarding the reinstatement. LGS is then notified by the LSU of the IC's decision.

F. WAIVERS FROM INTERPRETER USAGE POLICIES OUTLINED IN OPPM 04-08

Due to the tight budgetary situation experienced in recent years, and in an effort to promote greater fiscal efficiency, the Chief Immigration Judge issued OPPM 04-03 regarding contract interpreter services. This OPPM was subsequently updated and revised in the form of OPPM 04-05 and, most recently, OPPM 04-08. The policies outlined in OPPM 04-08 include:

- Usage of unscheduled telephonic interpreters for all master calendars unless special circumstances are involved (e.g. sign language interpreter required, case involves a minor, difficulty experienced in the past securing an unscheduled telephonic interpreter for the language in question, etc.).
- Submission of non-detained in-person contract interpreter orders with more than two business days between the order date and hearing date.
- Prohibition from placing more than one contract interpreter order per time slot (unless second language is required for witness, a relay interpreter is required, etc.).
- Prohibition of Courts having a 1:1 (or higher) ratio of Spanish staff interpreters to Judges from placing Spanish contract interpreter orders without prior approval from LSU.

Requests for waivers from any of the above policies should be e-mailed directly to the interpreter waiver request mailbox ("Interpreter, Waiver Request"). The requests must include all case information (e.g. site, IJ, date/time, language, A #, etc.) for the hearings in question. Most importantly, they must incorporate a detailed justification as to why the waiver request should be granted. IC staff should be mindful to submit waiver requests as far in advance as possible. ICs with a 1:1 ratio of IJ's to Spanish staff interpreters needing to order contract Spanish interpreters as a result of anticipated annual leave must do so far enough in advance to avoid the premium rate added to orders placed with two or fewer business days notice. It should be noted that submission of a waiver request does not guarantee its approval.

Examples of waiver requests normally resulting in approval include the following circumstances:

- Requests to order an in-person or scheduled telephonic interpreter for a Master Calendar having five or more respondents requiring the same language.
- Requests to order an interpreter with two or fewer business days notice for aged cases that must be completed by a certain date designated by OCIJ.
- Requests to order an interpreter with two or fewer business days notice to keep an expedited asylum case under 180 days.
- Requests to order a Spanish interpreter from ICs with a one to one ratio of Spanish staff interpreters to IJs when a staff interpreter must take leave.
- Double booking of contract interpreters for individual calendar time when a second language is needed for a witness or relay interpreter.

- Request to order an in-person or scheduled telephonic interpreter for a master calendar having fewer than five respondents requiring the same language if the IC has repeatedly experienced difficulty in the past securing an unscheduled telephonic interpreter.

Examples of waiver requests usually resulting in denial include the following circumstances:

- Requests to order a Spanish interpreter in ICs with a one to one ratio of Spanish staff interpreters to IJs in order to allow a staff interpreter to engage in an administrative activity.
- Any request that, if granted, would result in an additional violation of OCIJ policy regarding contract interpreter services. Example: Requesting to order an interpreter with two or fewer business days notice for an individual calendar hearing that, if granted, would result in double booking of interpreters.

The following examples of waiver requests are disfavored and should occur infrequently:

- Requests to order an interpreter with two or fewer business days notice when a case has been overlooked and a timely order has not been previously placed.
- Requests to order an interpreter with two or fewer business days notice when a previously placed (timely) order has been cancelled by mistake.

ICs previously granted a blanket waiver for situations other than for master calendars having at least five respondents requiring the same language (mainly certain ICs having a 1:1 ratio of IJ's to Spanish staff interpreters) are reminded that they must still send an email notification to the "Interpreter, Waiver Request" mailbox each and every time they are placing an ECIOS order covered by the blanket waiver. To assist the ICs in complying with the above mentioned policies, the LSU will continue to give the ICs advance notice of instances of non-compliance regarding multiple bookings. The LSU will monitor orders placed for the following week, at the end of every week. ICs will then be given advance notice of the instances of non-compliance with policy, which should allow time to resolve these issues before the ACIJ's are notified. Notices will be sent every Friday for the following week's orders.

CHAPTER VI
PROCESSING APPLICATIONS AND MOTIONS

SECTION I

FEES

A. FILINGS REQUIRING PAYMENT OF A FEE

The following list of applications /motions requires a fee payment. This covers the more common applications/motions filed at the Immigration Court:

1. Motions to Reopen and Reconsider;

2. Appeal (EOIR-26);

3. Application for Adjustment of Status as a Permanent Resident (Form I-485);

4. Application for Advance Permission to Unrelinquished Permanent Domicile (Form I-191);

5. Application for Waiver of Foreign Residence Requirement;

6. Application for Waiver (Form I-601);

7. Application for Cancellation of Removal and Adjustment of Status for Certain Permanent Residents (EOIR 42-A) and Application of Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Resident (EOIR 42-B).

Note: There is no fee for an asylum application nor for a motion to reopen or reconsider for a decision on an application for which no fee is chargeable. See 8 C.F.R § 103.7 for current fee schedule or click here.

B. PROCESSING FEES

All documents and applications requiring a fee must be accompanied either by a receipt from the DHS, which collects all fees relating to Immigration Court proceedings, interim evidence of fee payment, or an application for a fee waiver pursuant to 8 C.F.R. § 1003.24.

Interim evidence of fee payment includes: (1) a respondent's notice from the Department of Homeland Security to appear for a biometrics appointment; (2) a printout from the website of DHS, U.S. Citizenship and Immigration Services, showing that the respondent's

application has been received; (3) a photocopy of the check; (4) a photocopy of the money order receipt; or (5) an affidavit from the person who submitted the payment.

Note: If interim evidence of fee payment is submitted, the judge may still require the fee receipt prior to adjudication at the hearing. Accordingly, court staff may advise the filing party to submit the fee receipt as soon as possible

C. PROCESSING FEE WAIVERS

If an application or motion is filed with a fee waiver request, submit the Record of Proceedings with the filing to the case-assigned Immigration Judge. If the waiver is denied, return the submission with the Immigration Judge decision to the filing party. If the waiver is granted, proceed with processing as if a fee receipt was attached.

SECTION II

A. FILING APPLICATIONS

All documents and applications to be considered in proceedings before an Immigration Judge must be filed with the Immigration Court having administrative control over the ROP. This section provides processing instructions for the following applications:

Application for Cancellation of Removal (EOIR 42-A and EOIR 42-B);

Application for Status as Permanent Resident (Form I-485);

Application for Advance Permission to Unrelinquished Domicile (Form I-191);

Application for Waiver of Foreign Residence Requirement;

Application for Waiver (Form I-601).

1. Filing Schedule

If the respondent elects to apply for relief from removal, the Immigration Judge will:

a. Assign a filing deadline for receipt of the application and any supporting documents;
b. Assign a date for a full hearing on the merits of the case.

2. Call-Up

Filing dates should be monitored on a weekly basis using the CASE Call-Up Report. If an application is not filed on time, Immigration Court staff should notify the case-assigned Immigration Judge.

B. QUICK-CHECK FILING REQUIREMENTS FOR ALL APPLICATIONS

1. Verify administrative control for your Immigration Court by checking the CASE system.

2. Verify that any required filing fee has been paid, interim evidence of fee payment submitted or that a fee waiver request is attached (asylum applications do not require a filing fee).

3. Verify that the filing party has included a certificate of service on the opposing party (supporting documentation must have a separate proof of service). See Immigration Court Practice Manual Chapter 3, Section 3.2(ii).

4. Verify the language, signature and format requirements that may be found in the Immigration Court Practice Manual and in Chapter II, Section IV.

If any of the above requirements cannot be verified or the Immigration Judge has denied the fee waiver request, return the submission to the filing party without date-stamping it received. Guidance for rejecting filings may be found in Chapter II, Section IV. Use the standard filing rejection letter for the appropriate filing party (attorney or representative, pro se non-detained respondents, pro se detained respondents and third party or represented alien).

C. PROCESSING ALL APPLICATIONS EXCEPT ASYLUM

If all of the filing requirements listed in Section II of the chapter can be verified, continue the application processing procedures listed below:

1. Date-stamp the application as received in your Immigration Court.

Note: Applications that are submitted during the course of a hearing must be date-stamped or hand-dated received.

2. Update the CASE record with the date that the application was received in your Immigration Court. (See CASE Training Manual, Lesson 3, Unit 12.)

3. File the application in the appropriate Record of Proceedings.

D. IMMIGRATION COURT PRACTICE MANUAL

In addition to complying with the requirements of this chapter, applications, motions, and documents must also comply with the Immigration Court Practice Manual.

SECTION III

ASYLUM APPLICATIONS

A. AFFIRMATIVE/DEFENSIVE APPLICATIONS

Asylum case processing is distinguished by two types of applications under the asylum reform initiative that applies to applications filed on or after January 4, 1995:

1. Affirmative Applications

Those asylum applications that were filed originally with a DHS Asylum Office for adjudication and are being referred to the Immigration Court with a Charging Document.

2. Defensive Applications

Those asylum applications which are being filed originally with the Immigration Court during the course of proceedings.

B. RECEIVING ASYLUM APPLICATIONS

1. Receiving Affirmative Asylum Applications

a. Referred Applications

A DHS referred asylum application will be transmitted with the charging document for the case and will consist of the following:

(1) A copy of the asylum application.
(2) Any supporting documentation.
(3) The DHS referral sheet generated by the CASE system.

The application must be complete and free of any DHS asylum officer notes or documentation. If any of the above documents are missing or incomplete or if it contains DHS Asylum office documents or notations, bring the filing to the attention of the Court Administrator who will notify the DHS Asylum Office which referred the case.

b. Processing Affirmative Asylum Cases

DHS Asylum Offices have access to the CASE system through the Interactive Scheduling System for initially inputting the case, inputting the received date for the asylum application, scheduling the case, and providing the initial notice of hearing for the first Master Calendar date. In most instances, the Court will only be required to create the ROP for Affirmative asylum cases after reviewing the charging document and the referred asylum application.

c. Department of State Advisory Opinions

In most instances affirmative asylum applications will not be sent to the Department of State for advisory opinions because DHS Asylum Offices are required to have already requested an opinion. Immigration Judges may allow applicants to update their I-589 and there may also be special circumstances where a Department of State opinion is needed. In these cases, an opinion should be requested from the Department of State following the procedures outlined in this section.

C. DEFENSIVE APPLICATIONS

1. Receiving Defensive Asylum Applications

a. Required Forms

A defensive asylum application will consist of:

(1) Form I-589: an original and one copy; one additional copy for each dependent listed on the principal's application;
(2) Form FD-258 for every individual listed on the application who is 14 years or older;
(3) Any supporting documentation;
(4) Certificate of Service.

b. Filing the Application

A defensive asylum application may **ONLY** be filed during a Master or Master Reset Hearing. See Operating Policy and Procedure Memorandum 00-01, Asylum Request Processing for the procedures for filing defensive applications.

c. Completeness

A defensive asylum application must be complete and contain all supporting documentation. After Immigration Judge review, incomplete applications should be returned to the filing party without being date-stamped received or entered into the CASE system.

d. CASE System

Once the Immigration Judge has established that the defensive asylum application is complete and properly filed, enter the asylum application into the CASE system.

e. Applications Filed With Motions to Change Venue

Applications that are attached to a Motion to Change Venue should not be entered into the CASE system. Applicants will file a copy of their I-589 application; this will be placed in the file and transmitted to the Court to which the case is transferred. The Court receiving the application will not entered it as received in CASE until the Master Calendar hearing at which an Immigration Judge accepts the filing as complete.

f. Applications Filed in Detail Courts

Applications may be filed during the course of a telephonic or televideo Master or Master Reset hearing. See your Court Administrator or supervisor for specific procedures for processing applications that have been filed during the course of a telephonic or televideo Master or Master Reset hearing.

2. Requesting Department of State Opinions

For **all** defensive applications and those affirmative applications that have been supplemented or have special circumstances, the Immigration Court is required to request an advisory opinion from the Department of State. This request must be made as soon as possible after the Form I-589 has been received at a Master or Master Reset Calendar hearing, is complete, and an Individual Calendar hearing has been set using the following procedures:

a. Prepare and attached the standard transmittal letter to a **copy** of the asylum application, which must include any supporting documents, requesting an advisory opinion from the State Department. This letter must include the respondent/applicants' name, "A" number, country of citizenship, nationality, and the next Individual Calendar hearing date. Each letter should indicate whether the person is detained.

b. Send all advisory opinion requests with attachments to:

Department of State
Office of Multilateral and Global Affairs
2201 "C" Street, N.W., Room 7822
Washington, D.C. 20520

D. IMMIGRATION JUDGE SPECIAL REQUESTS

Immigration Judges may submit requests for specific information to the Department of State. The Immigration Judge letter which request case specific information should include the Individual Calendar Hearing date for the case and be submitted to the State Department at the address above.

E. ASYLUM OPINION TRACKING

Asylum opinions are issued at the State Department's option and Immigration Judges are not required to wait to proceed with an Individual Calendar hearing for a State Department response. Tracking is limited to Immigration Judge **specific requests** for information. If an Immigration Judge has requested case specific information and the Court has not received it within 14 days of the scheduled Merits hearing date for the case, the Court should notify the Office of the Chief Clerk. The Office of the Chief Clerk will work with the State Department to ensure whenever possible that these specific request are obtained in time for the scheduled hearing. When making the request, the following items are needed:

1. "A" Number;
2. Control Name of Applicant;
3. Country;
4. Date of request for specific information;
5. Date of Individual Calendar Hearing.

F. RECEIVING AND PROCESSING DOS ASYLUM OPINIONS/RESPONSES TO SPECIAL REQUESTS:

1. DOS Responses

At its option the Department of State will respond to requests for advisory opinions with an Advisory Opinion Letter, specifically addressing the submitted application.

2. Processing Asylum Opinions

The Department of State will transmit advisory opinions to the Office of the Chief Judge by messenger once each week. The Office of the Chief Immigration Judge will send advisory opinions to the Immigration Courts by overnight mail. When the Court receives the opinion it will:

a. Date stamp the opinion;
b. Make two copies to serve on the parties;
c. File the original in the ROP.

G. SERVING THE ASYLUM OPINION

Asylum opinions may be served on either party by the following:

1. First Class Mail using the standard transmittal letter;

2. Personal service before the hearing, or during the scheduled hearing if there is not sufficient time to mail the opinions.

SECTION IV

MOTIONS

A. MOTIONS TO RECALENDAR

A Motion to recalendar a previously administratively closed case does not require a filing fee, an opposing response or an Immigration Judge decision on the motion. When this type of motion is filed, the Immigration Court clerk must:

1. Verify the administrative control office by checking the CASE data base and that the motion contains a certificate of service on the opposing party and a current address for the alien.

2. Retrieve the Record of Proceedings from either the Closed files or the Federal Record Center and schedule the case on the next available Immigration Judge's Master Calendar.

3. Notify the parties of the scheduled hearing date. See Chapter IV for the correct notice procedures.

B. QUICK-CHECK FILING REQUIREMENTS FOR ALL OTHER MOTIONS

1. Verify that your Immigration Court has administrative control over the case by checking CASE system.

2. Verify that any required filing fee has been paid, interim evidence of fee payment submitted, or that a fee waiver request is attached.

3. Verify that the filing party has included a certificate of service on the opposing party.

4. Verify whether or not the representative is required to file an EOIR-28 with the motion. See Immigration Court Practice Manual Chapter 5 Section 5.1(b).

5. For Motions to Change Venue: Verify that the filing party has included an EOIR-33 with the motion. If an EOIR-33 is not included, see Chapter II, Section III for further guidance.

6. For Institutional Hearing Program Cases: the following additional information is necessary:

a. Program Type: Federal (F), State (S) or Municipal (M);
b. Earliest Possible Release Date from Incarceration Date (EPRD);
c. Inmate Number.

Should the IHP information submitted with the motion differ from that previously provided, update this information at the time of motion processing. If the IHP criteria is submitted orally, complete an IHP Information Change Request Form and file it with the motion.

C. REJECTING MOTIONS

If any of the appropriate requirements cannot be verified or the Immigration Judge has denied the fee waiver request, return the submission to the filing party without date-stamping it received. **Guidance for rejecting filings may be found in Chapter II, Section IV. Use the standard filing rejection letter for the appropriate filing party (attorney or representative, pro se non-detained respondents, pro se detained respondents and third party or represented alien).**

D. PROCESSING MOTIONS

If all of the filing requirements can be verified, continue the motion processing procedures listed below:

1. Date-stamp the motion received in your Immigration Court.

2. Update the CASE record and enter the appropriate call-up date for the response brief from the opposing party (see CASE Training Manual, Lesson 4, Unit 12).

3. Retrieve the Record of Proceedings and file the motion on the Proceedings (right) side. If the case has been closed, and the ROP is currently at the Federal Record Center (FRC), create a temporary ROP while awaiting the original from the FRC.

4. Opposing party should be given ten (10) days to respond to the motion, if submitted during proceedings; fifteen (15) days for motions to reopen.

5. File the ROP in the Pending-Case Status file and await response.

6. Submit the ROP and any opposing brief to the Immigration Judge for review and decision. Follow additional instructions of the Immigration Judge, if any.

7. File original orders in the ROP and update the Immigration Judge's decision in the CASE system.

8. Serve copies of the Immigration Judge's decision on the parties using first class mail.

E. PROCESSING GRANTED MOTIONS TO CHANGE VENUE

If a Motion to Change Venue is granted, the Immigration Court clerk must then:

1. Verify that the new administrative control office is correct (The Administrative Control List can be found on the EOIR Intranet);

2. Verify that the respondent/applicant has provided an address at the new Immigration Court where they seek a change of venue;

3. Update the CASE system (see CASE Training Manual, Lesson 7, Unit 3);

4. Forward the Record of Proceedings to the new Immigration Court by overnight mail; detained cases are sent by overnight mail.

Note: It is important to remember that if a motion to change venue is granted for and individual family member of a lead ROP the complete ROP must be reconstructed and hearing cassette copied from the lead file.

Note: Any ROP received that lacks a valid forwarding address should be returned to the sending Immigration Court as an improperly issued Change of Venue.

SECTION V

PROCESSING MOTIONS TO REOPEN AND MOTIONS TO RECONSIDER

A. DETERMINING ADMINISTRATIVE CONTROL

If the Immigration Judge decision was never appealed, jurisdiction rests with your case-assigned judge. If an appeal has been filed or completed, the Board of Immigration Appeals has jurisdiction unless the appeal was dismissed as untimely filed, or the case was remanded back to your Immigration Court without specifically maintaining jurisdiction at the BIA. All properly filed Motions to Reopen and Motions to Reconsider must be given to the case-assigned Immigration Judge to determine jurisdiction. If the case-assigned Immigration Judge is not available, bring the motion to your supervisor or Court Administrator for further guidance.

B. MOTIONS TO REOPEN AND MOTIONS TO RECONSIDER WHERE THE IMMIGRATION COURT HAS JURISDICTION

If the Immigration Judge determines that he/she has jurisdiction to rule on the motion, the Immigration Court clerk must:

1. Follow the procedures outlined in this chapter for processing motions.

2. If the Immigration Judge grants the motion:

a. Update the CASE system (see CASE Training Manual, Lesson 7, Unit 3);

b. Recalendar the case on the case-assigned Immigration Judge's next available Master Calendar;

c. Notify the parties of the hearing; see Chapter IV for correct notice procedures.

3. If the Immigration Judge denies the motion:

a. Update the CASE system (see CASE Training Manual, Lesson 7, Unit 3);

b. Notify the parties of the decision and their appeal rights.

Note: If the motion is filed with a Stay of Deportation/Removal, give the motion and the Record of Proceedings for the case to the Immigration Judge immediately for a ruling on the "Stay."

C. MOTIONS TO REOPEN AND MOTIONS TO RECONSIDER WHERE THE BOARD OF IMMIGRATION APPEALS HAS JURISDICTION

Procedures for processing Motions to Reopen and Motions to Reconsider where the Board of Immigration Appeals has jurisdiction may be found in Chapter VIII.

CHAPTER VII
POST HEARING PROCEDURES

A. RESCHEDULED CASES

When the Immigration Judge has continued a case after a Master, Master Reset, or Individual Calendar hearing, Immigration Court personnel will:

1. Update the CASE system to reflect the information that the Immigration Judge has entered on the Immigration Judge worksheet (See CASE Training Manual, Lesson 6, Units 1-6). The following information will be updated in the CASE system as indicated on the worksheet:

a. **Alien information (name, address, telephone number)** will be updated to reflect any new information received during the hearing from the EOIR-33 Change of Address form.

b. **Alien Lead Number designations** will be updated on the lead and any riding files.

c. **Alien nationality and language** will be updated to reflect any change.

d. **Charges and findings** will be updated to reflect whether the charges were sustained, not sustained, withdrawn or other.

e. **Attorney or representative information** will be updated as filed on the Notice of Appearance as Attorney or Representative before Immigration Judge (EOIR-28)

f. **Battered Spouse/Child Information** will be updated. Entering this information is critical because once updated with a Y, the CASE system will reflect a warning when case information for a battered spouse/child is accessed. This warning will alert Immigration Court personnel to the need for confidentiality for the case.

g. **Applications for Relief** (such as 243h/Asylum, 241(b)(3), voluntary departure, 212c relief, 245 adjustment of status, EOIR 42A and EOIR 42B) will be updated as indicated on the worksheet.

h. **Adjournment Codes** will be updated as indicated on the worksheet. Entering and updating the proper code for asylum cases is critical for the tolling of the clock.

i. **Call-Up Codes** will be updated as indicated on the worksheet indicating the date and reason for a call-up to be set.

2. Process any application or motion following the procedures outlined in Chapter VI.

3. Calendar any future hearing as indicated on the Immigration Judge worksheet using the procedures outlined in Chapter III.

4. Provide the parties with notice of any future hearing using the procedures outlined in Chapter IV.

B. CLOSED CASES

When the Immigration Judge has rendered a decision, Immigration Court personnel will:

1. Record the appropriate data in the CASE system. See CASE Training Manual, Lesson 7, Units 1-10;

2. Close any riding family member cases in the CASE system;

3. Submit the CASE-generated, pre-printed, or written order for the Immigration Judge's signature;

4. Place the original signed order in the ROP;

5. Serve one copy of the order on the DHS Assistant Chief Counsel;

6. Hand serve or send by First Class Mail, one copy of the order to the respondent/applicant or their attorney. For deportation and removal cases (in person or by video teleconferencing), a copy of the Limitations on Discretionary Relief for Failure to Appear should be served with the notice. Three copies of the Notice of Appeal to the Board of Immigration Appeals of the Decision of Immigration Judge (Form EOIR-26) must be sent with the order. The order must also indicate the appeal due date;

7. File the ROP in the "Closed" Files;

8. Complete Form EOIR-10 (Tape Transmittal Record);

9. If an appeal is filed, follow the procedures outlined in Chapter VIII.

C. CLOSED CREDIBLE FEAR, REASONABLE FEAR AND CLAIMED STATUS REVIEW CASES

Records of Proceedings for Credible Fear Review cases are NOT merged with any later proceeding involving the same alien. ROPs for Credible Fear should be retired using the procedures outlined in Chapter IX. ROPs for Reasonable Fear Review and Claimed Status Review cases will be merged with the ROP created for any later removal proceeding for the same alien.

D. FILE RETIREMENT IDENTIFICATION SYSTEMS

Each court should establish a file retirement identification system to expedite file review for ROP retirement to a Federal Record Center. Systems currently in use include marking the front of the ROP with the closed date or color coding by month and year.

CHAPTER VIII
TRANSMITTING ROPs TO THE BOARD OF IMMIGRATION APPEALS

On July 1, 1996, The Executive Office for Immigration Review's (EOIR) new motion and appeals regulation went into effect. This regulation streamlined the motions and appeals practice by requiring that appeals from Immigration Judges decisions and motions before the Board be filed directly with the Board with the appropriate fee or fee waiver form.

When an appeal or motion is filed at the Board of Immigration Appeals (BIA), the document is reviewed, date stamped and entered into the Case Access System for EOIR (CASE). This entry sends an electronic request for the ROP to CASE. A daily "ROP Requested by BIA" Report is generated at the Immigration Court listing ROPs requested by the BIA. The Immigration Court retrieves the ROP, reviews the file and organizes the documents in chronological order. Non-Priority Cases are mailed to the BIA within 5 working days by first class mail and Priority Cases (RUSH) are sent to the BIA by overnight mail.

As referenced in the BIA Administrative Directive 98-01, *"Points of Contact for Obtaining Case Information,"* the designated Point of Contact (POC) for the BIA and the POC for the Immigration Court must ensure that case information regarding ROPs are addressed in a timely and efficient manner. It is the responsibility of the Immigration Court to comply with the transmittal requirements, restructure the ROP to ensure that all documents are in chronological order and maintain communication with the BIA point of contact to ensure that ROPs are processed properly.

SECTION I

PROCEDURES FOR ORGANIZING ROPS

A. ROP REQUEST REPORT

There are currently three ROP Request Reports that should be run and reviewed daily:

1. The ROP Requested by BIA Report
2. The ROP Requested by BIA and Not Received Report
3. The OCIJ Retrieval (Daily Report) Process Report - Specifically for cases involving Dual Jurisdiction (See Section IV, Part C)

Pull each ROP listed on the daily reports ensuring that each ROP is accounted for. Any discrepancy in the report or failure to retrieve the ROP and forward to the Board must be addressed to your Court Administrator.

B. REMOVING SPECIFIC DOCUMENTS

On the administrative side of the ROP, remove all of the Immigration Judge worksheets and bond-related information. These documents should not be included in the ROP when it is forwarded to the BIA.

C. CHRONOLOGICAL ORDER

Documents must be arranged in chronological order on the Proceedings Side of the ROP placing the newest document on the top and the oldest document on the bottom. In most cases, all ROPs should contain these documents in the following order:

1. The Office of the Immigration Judge Transmittal Memorandum to the BIA

2. Bond Memorandum (if applicable)

3. All other case filings (in chronological order by date received)

4. One of the charging documents on the bottom of the Proceedings Side:

a. The Order to Show Cause and Notice of Hearing (OSC) [I-221]

b. Notice to Appear (NTA)

c. Notice to Applicant for Admission Detained for Hearing before Immigration Judge [I-122]

5. Additional Exhibits (if applicable)

D. DEPTH OF ROP

The depth of the ROP should not exceed 1" - 1 ½ " inches. If the ROP measures more than 1 ½" inches, multiple ROPS **MUST** be created. Label each ROP by volume number [i.e., (1 of 2), (2 of 2)].

SECTION II

TRANSMITTAL REQUIREMENTS

A. CASE IDENTIFIERS AND INFORMATION

The 'A' number must be uniform throughout the ROP. The CASE record address must be current and consistent with the address in the ROP.

B. FORMAT

All notices submitted to the Immigration Court must be submitted utilizing the most current form and correct format; parties cannot substitute letters for forms.

C. TRANSMITTAL MEMORANDA

The purpose of the Transmittal Memoranda is to record anything unusual that needs to be brought to the attention of the Board. The transmittal memorandum from the Immigration Court to the Board of Immigration Appeals MUST NOTE ANY SPECIAL MOTIONS, PLEADINGS AND CORRESPONDENCE. If there are documents missing from the ROP, list and explain each document. Questions regarding missing documents should be directed to the Court Administrator.

If either party *"reserves appeal"* or *"waives appeal"* at the immigration court hearing, it must be indicated on the transmittal memoranda. This information is important and **MUST** be brought to the Boards attention.

D. SUBMITTED DOCUMENTS

All submitted documents and exhibits *(including master exhibits)* must be free of all bindings *(including but not limited to ribbon, staples, plastic covers or spiral binding)* at the top, bottom or along either side of the document. All attachments or exhibits *(including master exhibits)* referred to during the course of the hearing must be included in the ROP.

E. PRIORITY CASES

Verify the custody status in the CASE system and in the ROP. The custody status in the system and in the ROP must agree. ROPS for detained cases must be identified with a **RUSH** label stapled to the front of the ROP. ROPs for the Institutional Hearing Program (**IHP)** cases must be identified with a **IHP** stamp on the front of the ROP. Questions regarding custody status should be directed to the Court Administrator.

SECTION III

TRANSCRIPTS

A. TRANSCRIPTIONS NOT REQUIRED

As directed by the Immigration Court, appealed cases may be forwarded to the BIA without obtaining a *"transcript of the proceedings."* Either party may motion the Court for this request. If the Immigration Judge granted the motion, forward the ROP to the BIA without the transcript hearing tape. Because the Immigration Judge granted the motion, the actual motion replaces the *"transcript of proceedings."* If an Order of the Immigration Judge or a Summary Order is issued, the Immigration Judge's decision must be typed and filed beneath either the Order of Immigration Judge or the Summary Order.

B. WRITTEN RESERVE DECISION - DICTATED DECISION GREEN TRANSMITTAL RECORD

Occasionally, an Immigration Judge will dictate their decision on tape. Dictated decisions must be transcribed into a Written Reserve Decision for the Immigration Judge to review *(NOTE: no appeal has been filed).* Dictated Decisions are sent to the BIA's Case Processing Team for transcribing and returned to the Immigration Judge. Complete the following sections on the Dictated Decision Transmittal Record (green tape envelope) and forward to the BIA

1. Indicate Custody Status *(Detained or Non-Detained)*
2. A #
3. Base City Code
4. Alien Name
5. Immigration Judge
6. Court Staff Contact
7. Date
8. # of Tapes

To ensure prompt return of the Written Reserve Decision, please record the Immigration Court's return address on the front of the Dictated Decision Transmittal Record.

C. COMPLETING THE TAPE TRANSMITTAL RECORD

After pulling the ROP from the daily "ROP Requested by BIA" Report, ensure that the Tape Transmittal Record [EOIR-10] is included on the left side of the ROP. If the court issues an order to send the ROP without obtaining a *"transcript of proceedings,"* the Tape Transmittal

Record [EOIR-10] is not required. If the ROP is a Detained/IHP Case, ensure that a RUSH sticker is on the Tape Transmittal Record [EOIR-10]. If the ROP is a Detained or IHP case, ensure that there is a RUSH sticker affixed to the Tape Transmittal Record [EOIR-10]. Complete the following sections on the Tape Transmittal Record:

SECTION "A" IMMIGRATION JUDGE'S OFFICE USE ONLY

Box # 1. Alien Name
Box # 2. Custody Status *(detained or priority)*
Box # 3. A #
Box # 4. Alien Atty / Rep
Box # 6. Initial Hearing Date
Box # 8. INS Trial Atty
Box # 9. # of Tapes Enclosed
Box # 10. Type of Equipment
Box # 11. Tape Speed
Box # 12. Immigration Judge
Box # 13. Court Clerk
Box # 14. Phone
Box # 15. Decision of IJ
Box # 16. Appeal Filing Date
Box # 17. Date Sent to BIA
Box # 18. Sent by

SECTION "C" VENDER USE ONLY Record the CASE BASE CITY CODE under *"IJ Office Use Only"*

NOTE: The Tape Transmittal Record [EOIR-10] April/90 is currently being revised, the proposed EOIR-10 is pending approval by the Office of Chief Immigration Judge (OCIJ).

D. IMMIGRATION JUDGE REVIEWS TRANSCRIPT AND ORAL DECISION

The BIA will return the Oral Decision along with an information copy of the Hearing Transcript to the Immigration Court to obtain an original signature from the Immigration Judge that presided over the case. For a Non-Detained case, the Immigration Judge has 30 calendar days to review, sign and return the signed Oral Decision to the Clerk's Office, Board of Immigration Appeals. For Detained or IHP cases, the Immigration Judge has 15 calendar days to review, sign and return the signed Oral Decision to the Clerk's Office.

The Immigration Court is required to return only the signed Oral Decision to the Clerk's Office, especially if no edits were made by the Immigration Judge. If the Immigration Judge makes any edits or corrections, the BIA strongly recommends that the Immigration Judge make two (2) photocopies of the edited Oral Decision ONLY. Returning the edited Oral Decision and two copies will expedite appellate processing.

The Immigration Court does not have to return the information copy of the Hearing Transcript. The Immigration Court may discard this information copy of the Hearing Transcript by shredding it. The Clerk's Office will retain three (3) complete copies of all transcribed Oral Decisions and Hearings subject to appeal. If the Immigration Court does not return the Oral Decision before the 30 and 15 day time line, the Clerk's Office will set the briefing schedule with the certified transcription package provided by its transcription contractor. If the Immigration Court does not make two photocopies of the edited Oral Decision, the Clerk's Office will make the necessary copies and set the briefing schedule.

SECTION IV

PROCEDURES FOR SPECIAL TYPES OF APPEALS

A. INTERLOCUTORY APPEALS

An interlocutory appeal is an issue decided during the course of a legal action and is merely temporary or provisional in nature. It does not interrupt the hearing process.

A separate ROP is created for Interlocutory Appeals. The original ROP remains at the Immigration Court and the newly created file is sent to the Board with a transmittal memorandum attached explaining that the case is interlocutory in nature. Record "Interlocutory Appeal" on the front of the ROP file. Interlocutory appeals cannot be entered in the CASE system and must be tracked through the remarks section. The separate ROP must have the following documents in chronological order:

1. The Immigration Court Transmittal Memorandum to the BIA

2. Briefs or other submissions subsequent to the filing of the appeal *(in chronological order by date received)*

3. Copy of Immigration Judge's Decision *(if applicable)*

4. One of the charging documents on the bottom of the Proceeding Side

a. The Order to Show Cause and Notice of Hearing (OSC) [I-221]

b. Notice to Appear (NTA)

c. Notice to Applicant for Admission Detained for Hearing before Immigration Judge [I-122]

5. Additional Exhibits (if applicable)

B. WRITTEN BOND MEMORANDUM

When a Notice of Appeal [EOIR-26] has been filed in a Custody Redetermination Hearing and:

1. The Custody Redetermination was heard by an Immigration Judge who is not permanently assigned to the court in which the hearing was held *[the judge may have heard the case while on detail to that court, or the judge may have held the hearing through video-telephonic connections]*; or

2. The judge may have held the custody redetermination hearing pursuant to 8CFR 3.14 (a), prior to the DHS filing the Notice to Appear; or

3. Subsequent to both the filing of the Notice to Appear and the Custody Redetermination Hearing, venue was change to another court.

In each of these circumstances, the judge who held the Custody Redetermination Hearing issued an ORDER OF THE IMMIGRATION JUDGE [EOIR-1A], as well as orally advising both the alien, and the DHS, of the reasons for their decision. Due to the fact that jurisdiction of the case was not in the court to which the judge was assigned, or has been subsequently changed by the date of the filing of the Notice of Appeal, the immigration judge was not notified that an appeal had been filed, and thus, the judge was not able to timely prepare a written memorandum of their bond decision as required in Matter of Daryoush 18I & N Dec. 352 (BIA 1982). This omission can cause unjustified delays in BIA adjudication of appeals in custody cases, unnecessary detention, and unwarranted expenses as a result.

When the Immigration Court receives the daily "ROP Requested by the BIA" Report from the Board of Immigration Appeals, it is the responsibility of the support staff in that court to assure that for all cases in which the Appeal Type is BOND

APPEAL, that a written Memorandum of Decision relating to the Custody Determination Hearing, is served on all parties and the original is included in the ROP.

Once the daily "ROP Requested by BIA" Report is received, the responsible support staff should notify the judge who heard the Custody Redetermination both orally and in writing, that a request has been made for the Bond ROP, and therefore there is a need to prepare a written decision; and the support staff must enter verification of that request in the CASE Comments tab. This request, and verification of Screen 5, must be the same for judges in that court as well as judges covered in the circumstances described in paragraph one.

IT IS THE COURT'S RESPONSIBILITY TO SERVE THE WRITTEN BOND MEMORANDUM TO THE OPPOSING PARTIES AND, IN TURN, TO ENSURE THAT THE ORIGINAL BOND MEMORANDUM IS INCLUDED IN THE ROP BEFORE IT IS SENT TO THE BOARD.

A separate ROP file must be created and constructed in accordance with Section 1.0. and Section 2.0. The separated ROP will contain all **ORIGINAL** bond-related documents. The documents must be arranged in chronological order by date received. The original ROP which was used during the immigration hearing will contain **COPIES** of the bond-related documents. Update the CASE system to reflect that the separate ROP *(containing the original bond-related documents)* was sent to the BIA. The immigration hearing will continue while the BIA determines the outcome of the bond appeal.

If the Board of Immigration Appeals receives the ROP without the written Bond Memorandum, the Board cannot proceed with the case. If the BIA Clerk's Office does not receive the written Bond Memorandum within 7 business days after the initial request, then the Board will issue a short order remand for inclusion of the written Memorandum of Decision relating to the Custody Determination Hearing and return the ROP to the Immigration Court.

C. HOW A CASE APPEAL CAN AFFECT A MOTION TO REOPEN/RECONSIDER FILED WITH THE IMMIGRATION COURT

1. Motion Received After Appeal Was Filed at the Board

When a motion is received after an appeal is filed at the Board of Immigration Appeals, once the motion is entered into the CASE system, CASE will automatically complete the motion with a decision code of "J," which indicates that jurisdiction has transferred to the BIA.

The Immigration Judge order informing both parties that the motion has been forwarded to the BIA (code J7) should be prepared. After receiving the signed IJ order, it should be placed in the ROP with the motion and forwarded along with the Transmittal Memorandum to the BIA.

2. Motion Received BEFORE Appeal Was Filed at the Board

a. Motion Received but NOT Decided Before the Appeal Was Filed at the Board

When an appeal is filed at the Board of Immigration Appeals, the CASE system will automatically determine if a motion to reopen was filed at the Immigration Court. If the motion has not been granted or denied, the CASE system will automatically complete the motion with a decision code of "J," which indicates that jurisdiction has transferred to the BIA.

When these instances occur, these cases will appear on the OCIJ Retrieval (Daily Report) Process Report. If a hearing has been scheduled, it must be adjourned with adjournment code "52" indicating that jurisdiction now rests with the BIA.

The Immigration Judge order informing both parties that the motion has been forwarded to the BIA (code J8) should be prepared. After receiving the signed IJ order, it should be placed in the ROP with the motion and forwarded along with the Transmittal Memorandum to the BIA.

b. Motion is GRANTED Before the Appeal Was Filed at the Board

When a motion is received and granted by the Immigration Court before an appeal is filed at the Board of Immigration Appeals, jurisdiction remains with the Immigration Court.

c. Motion Is DENIED Before the Appeal Is Filed at the Board

When a motion is received and denied by the Immigration Court before an appeal is filed at the Board of Immigration Appeals, the request for the ROP will appear on the daily "ROP Requested by BIA" Report.

D. HOW A BIA MOTION TO RECONSIDER CAN EFFECT A REMANDED CASE

When a remanded case has been scheduled before a motion to reconsider is filed at the Board of Immigration Appeals, jurisdiction shifts to the BIA. When this occurs, the CASE system will automatically complete the Immigration Court proceeding with a decision code of "J," which indicates that jurisdiction has transferred to the BIA.

These cases will appear on the OCIJ Retrieval (Daily Report) Process Report. If a hearing has been scheduled, it must be adjourned with adjournment code "52" indicating that jurisdiction now rests with the BIA.

The Immigration Judge order informing both parties that the motion to reconsider filed with the BIA has shifted jurisdiction from the Immigration Court to the Board (code J9) should be prepared. After receiving the signed IJ order, it should be placed in the ROP and forwarded along with the Transmittal Memorandum to the BIA.

E. CERTIFICATION OF ROP

The BIA routinely receives request from the Department of Justice's Civil Division of the Office of Immigration Litigation (OIL) to certify a case. The BIA Point of Contact will send an electronic request for the ROP to the Immigration Court via E-mail. Pull the ROP, make an entry in the CASE Comments tab and forward to the BIA. The BIA Clerk's Office will photocopy the ROP, certify that it is a true copy and forward the copy to OIL. The original ROP will be returned to the Immigration Court.

F. CIRCUIT COURT REMANDS

If the Federal Court issues a decision remanding the case back to the Board of Immigration Appeals, the BIA Point of Contact will send an electronic request for the ROP to the Immigration Court via E-mail. Pull the ROP and forward to the Board by overnight mail. The case cannot be entered in the CASE system and must be tracked through the Comments tab. After the Board renders a decision, the ROP will be returned to the Immigration Court.

SECTION V

SENDING THE ROP

A. DISTRIBUTION REQUIREMENTS

The Immigration Court has five days in which to put the ROP in proper order and forward to the BIA. This will be shown as the "Due Date" on the "ROP Requested by BIA" Report. Update the CASE system to reflect that the ROP has been sent to the BIA according to the CASE Training Manual, Lesson 8, Unit 1. If the Immigration Court cannot comply with the five day limit, send an E-mail to the BIA Point of Contact stating the reason for the delay, and the day the ROP will be forwarded to the BIA. Forward the ROP to the BIA in the following manner:

1. Priority Cases

Detained and CAP cases must be sent to the Board of Immigration Appeals by overnight mail.

2. Non-Priority Cases

Non-detained cases must be sent to the Board of Immigration Appeals by first class mail.

BOARD OF IMMIGRATION APPEALS ADDRESS

Board of Immigration Appeals, Clerk's Office
Post Office Box 8530
Falls Church, Virginia 22041-8530

Overnight Mail:

Board of Immigration Appeals, Clerk's Office
5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

SECTION VI

PROCESSING DECISIONS BY THE BIA

A. RETURNED DECISIONS

The Board of Immigration Appeals will return copies of its decision along with the ROP to the Immigration Court. When a BIA decision and ROP is returned to the Immigration Court, the decision should be reviewed by the Immigration Judge who was assigned to the case in order to determine if further action is required.

CHAPTER IX

RETIRING THE RECORD OF PROCEEDING

The Executive Office for Immigration Review has received approval to retire closed-status Records of Proceeding (ROP) to Federal Record Centers (FRCs) six months after closing. This approval will allow Immigration Courts to ship closed-case files to local FRCs where they will be retained for fifty-one years.

A. IDENTIFYING RECORD FILES FOR TRANSFER TO THE FRC

ROPs for completed cases must be maintained in a separate closed-status file. This status must be reflected in the CASE system. Immigration Court's ROP retirement schedule requires each office to:

1. Review, identify, and pull all ROPs on cases that have been in closed-status for six months or more after final order. Cases on appeal (at the Board of Immigration Appeals or federal court) must be maintained until six months after a final order from the higher court is issued.

2. Prepare an original and one copy of a "Record's Retirement List" which lists all selected ROPs being transferred to the FRC listing ROPs in "A" number sequence (last three digits, first three, and middle three).

B. REQUIRED SHIPPING CARTONS AND FORMS

FRC approved shipping cartons should be obtained by the court from normal sources of supply (GSA-Advantage or CASU/Office Depot). Standard shipping cartons will accommodate both letter and legal size files. Exhibits or other oversized files/document will need special packing instructions. Should this occur, request assistance from your servicing FRC to determine appropriate storage containers.

C. PACKING ROPS FOR SHIPMENT

The packing instructions below must be followed so that the appropriate disposition will take place; however, you should contact the FRC for your office to see if there are any special shipping/packaging instructions prior to preparing the boxes for shipment.

1. Send only full cartons to the FRC. When filled to capacity (leave one inch at top of carton), the standard shipping carton described in B above will hold one cubic foot of records. Smaller quantities of ROPs (usually less than one cubic foot) should be kept at your office until the next shipment.

2. Leave all cassette tapes in the ROP's Tape Transmittal Record.

3. Place the selected ROPs in shipping cartons in "A" number sequence.

D. PREPARING THE SF-135

First consult your servicing FRC to determine their procedures for fax or electronic submissions, if permitted. Prepare SF-135, Records Transmittal and Receipt Form. Be advised that for some FRCs, the SF-135 can only be used to ship up to 50 cartons. If this is the case for your servicing FRC, a separate SF-135 must be prepared for each shipment of 50 cartons or less. The SF-135 should contain the following items:

Item#	Entry
1	Address of designated FRC
2	Signature of Immigration Court clerk or Court Administrator
3	Local contact person
5	Court address
6(d)	Total number of cartons being shipped
6(e)	1-XXX (XXX = total number of cartons
6(f)	"^32, ROP Case Files Retired in (year)"
6(g)	"R"
6(h)	"NCI-60-84-7, Item #1"
7(I)	Add 51 years to year closed in item 6(f). (Entry for cases closed in 2008 would be "1-2059")

E. REQUESTING AUTHORIZATION TO SHIP ROPS

If the request is done on paper, the original and two copies are forwarded to the FRC to arrive at least 90 days before the desired date of ROP shipment. Less time may be necessary for electronic or faxed requests. The FRC will review the SF-135 for completeness and to determine the propriety of the transfer. If any of the above items are not completed, the form will be returned for correction. If the transfer is approved, the FRC will assign an accession number in item 6(a), (b), and ©, and will annotate item 6(j) of the SF-135 with the shelf location in the FRC where each record series will be stored. The FRC will return the approved SF-135 to the requesting office indicating that the records may be transferred.

F. SHIPPING THE ROPS TO THE FRC

The physical transfer of ROPs to the FRC should be accomplished as soon as possible after receipt of the annotated copies of the SF-135. A delay in shipment of more than 90 days will result in the return of the SF-135 requiring re submission of the accessioning paperwork.

Retired ROPs should be shipped by the least expensive method. The court should solicit at least 3 bids for the shipment. Be certain to provide shipping specifications (copies of your FRC's shipping instructions, such as cartons to be delivered palletized, shrink wrapped, in numerical order, etc) when soliciting bids. If the cost of transportation service for the ROPs to the FRC is more than $2500, do the following. **If the cost of transportation is $2,500 or less, skip to step #2.**

1. Prepare a Form OBD-186, Requisition for Equipment, Supplies and Services and submit to:

   Property Management Group
   Justice Management Division, Room 1070
   1311 Pennsylvania Avenue
   Washington, DC 20530

   Include your Immigration Court's Accounting Class Code in Block 8 of the Form OBD-186.

   NOTE: This form eliminates the need to complete and submit an EOIR-32 to the Contracts and Procurement Staff to arrange for an ROP pick-up.

2. Prior to shipment, the requesting office must write with a black felt marker the assigned accession number and total number of cartons on the front of the shipping carton (non stapled end). Do not cover this information with the packing tape.

3. Update the information in the CASE system(see CASE Training Manual, Lesson 8, Unit 5).

4. Place one copy of the approved SF-135 in the first carton (i.e., 1/25) of each accession along with a photocopy of the Records Retirement List. The second copy of the SF-135 with the original Records of Retirement List should be retained until such time as all ROPs listed thereon have become eligible for authorized disposal (51 years from retirement).

5. Seal shipping cartons with nylon filament tape or follow special packing instructions from your FRC.

G. RETRIEVING ROPS FROM THE FRC

Only Immigration Court personnel may request ROPs from the FRC. Record files can be retrieved by completing Optional Form 11 (OF-11), Reference Request - Federal Records Centers, or by filing an electronic request through the FRC's CIP system. Estimated RETRIEVAL time will be three to five working days for non urgent requests. A separate OF-11 must be used for each ROP requested unless an entire carton is called for. For expedited service on urgent requests, mark each OF-11 and the envelope "Urgent" and provide your FedEx account number (if making an electronic request indicate priority and FedEx information). The accession number, box number and location must be entered on the OF-11. This information can be obtained either from the SF-135 file copy or CASE system. It is important that the "permanent withdrawal" block is checked, to notify the FRC that the retrieved ROP will not be returned for re-filing.

H. RETURNING FILES TO FRC

ROPs which have been requested from the FRC should be considered "new cases" for ROP retention/retirement purposes and should be processed as such. Update the original Records Retirement List to reflect the ROP retrieval, create a new one reflecting the action taken (follow the appropriate CASE procedures found in the CASE Training Manual, Lesson 8, Unit 5), and maintain, the ROP in the appropriate file category until closed and retired six months after final order.

GLOSSARY OF ACRONYMS AND TERMS USED BY THE IMMIGRATION COURTS

ACIJ	Assistant Chief Immigration Judge. Exercise supervisory authority over Immigration Courts as delegated by the Chief Immigration Judge.
AILA	American Immigration Lawyers Association.
A-NUMBER	Alien Number. The identifying case number for respondents/applicants as provided by the DHS.
BIA	Board of Immigration Appeals.
CA	Court Administrator.
CASE	Case Access System for EOIR. The database used by the Immigration Court for case record data.
CAP/IHP	Criminal Alien Program / Institutional Hearing Program.
COV	Change of Venue.
DHS	Department of Homeland Security.
DOE	Date of Entry.
EOIR	Executive Office for Immigration Review.
EPRD	Earliest Possible Release Date. The earliest possible parole date for a respondent/applicant for the Criminal Alien/Institutional Hearing Program.
EWI	Entry without Inspection.
FRC	Federal Record Center.
FTA	Failure to Appear. The completion for cases in which the alien fails to appear for the scheduled hearing.
FTP	Failure to Prosecute. The completion for cases that have been scheduled by the DHS on the Interactive Scheduling System in which no charging document has been filed at the time of the initial Master Calendar hearing.
IA	Individual Asylum. The designation for Court agendas that are designated for post reform initiative asylum merits hearings.

I.C.	Individual Calendar. The hearing on the merits of a case in an Immigration Court.
IJ	Immigration Judge.
INA	Immigration and Nationality Act.
ISS	Interactive Scheduling System. The automated system that gives DHS access to the CASE system and allows DHS personnel to schedule hearings on Immigration Court dockets.
I-122	Notice to Applicant for Admission Detained for Hearing Before Immigration Judge. The charging document that initiates an exclusion hearing before an Immigration Court.
I-589	Application for Asylum and for Withholding of Deportation.
MA	Master Asylum. The designation for Court agendas for initial hearings for post reform asylum cases.
M.C.	Master Calendar. The initial hearing in an Immigration Court.
MTR	Motion to Reopen.
OCIJ	Office of the Chief Immigration Judge.
OPPM	Operating Policies and Procedures Memorandum. Issued by the Chief Immigration Judge to provide guidance to the Immigration Courts on administrative and case management issues.
OSC	Order to Show Cause. The charging document that initiates a deportation case before and Immigration Court.
ROP	Record of Proceeding. The official case record in an Immigration Court.
UDSM	Uniform Docketing System Manual. The case docketing system for Immigration Courts.