

Exhibit D

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Peter L. Markowitz, *Director*
Professor of Law

(212) 790-0895
Fax (212) 790-0256

Lindsay Nash
Visiting Assistant Clinical Professor of Law

Jacqueline Pearce
Clinical Teaching Fellow

Hannah Robbins
Clinical Teaching Fellow

November 15, 2018

Director, Office of Information Policy (OIP)
United States Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

Re: Freedom of Information Act Appeal, EOIR FOIA Case Number 2018-40697

Dear Sir or Madam,

We write on behalf of the Kathryn O. Greenberg Immigration Justice Clinic at the Benjamin N. Cardozo School of Law (“Clinic”) and the American Immigration Council (“AIC”) (collectively “Requestors”) in connection with the above referenced Freedom of Information Act (“FOIA”) request (the “Request”) (attached hereto as Exhibit A). This letter is an appeal of Executive Office for Immigration Review (“EOIR”)’s inadequate response to the Request.

The Request seeks records related to the adjudication of motions for a stay of removal filed with the Board of Immigration Appeals (“BIA” or “the Board”), which were filed in connection with a motion to reopen with the BIA or a motion for reconsideration with the BIA. In response to the Request, EOIR produced only a small subset of records responsive to the Request: a limited set of data regarding only emergency stay motions, and no records regarding non-emergency stay motions. EOIR failed to produce entire categories of records—including data—to the request, and its response makes clear that it failed to conduct a search in a manner likely to locate responsive information. Requestors appeal EOIR’s determination in response to the Request and ask EOIR to conduct an adequate search and immediately produce all records responsive to the Request.

I. Background

Requestors' July 17, 2018 Request, sought, among other things, any and all records in the possession of the EOIR, or sub-offices thereof, that reflect the following information regarding the adjudication of motions for a stay of removal filed with the BIA which were filed in connection with a motion to reopen with the BIA or a motion for reconsideration with the BIA for fiscal years ("FY") 2015, 2016, 2017, and 2018. The requested records included:

1. For each motion for a stay of removal described above that was filed in (a) FY 2015, FY 2016, FY 2017, and FY 2018 (to date), please provide:
 - a. Whether the motion was treated as an "emergency" or "non-emergency" motion for a stay of removal (as those terms are defined in BIA Practice Manual 6.4(d));
 - b. The date that the motion for a stay of removal was decided;
 - c. The number of days that elapsed between the date that the motion for a stay of removal was filed and the date of decision on the motion for a stay of removal;
 - d. Whether the motion for a stay of removal was granted or denied;
 - e. Whether the motion to reopen associated with the motion for a stay of removal was based on changed circumstances, as described in INA § 240(c)(7)(C)(ii), 8 C.F.R. § 1003.2(c)(3)(ii);
 - f. Whether the motion to reopen or motion for reconsideration was granted or denied; and
 - g. The date that the motion to reopen or motion for reconsideration was decided.
2. Please provide the aggregate raw numbers and percentage of emergency motions for a stay of removal (filed in connection with a motion to reopen or motion for reconsideration) that were granted and denied in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by the year and month of the decision.
3. Please provide the aggregate raw numbers and percentages of non-emergency motions for a stay of removal (filed in connection with a motion to reopen or motion for reconsideration) that were granted and denied in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by the year and month of the decision.
4. Please provide the mean and average processing times (from date of filing to date of decision) for non-emergency motions for a stay of removal (filed in connection with a motion to reopen or motion for reconsideration) that were decided in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by year.
5. Please provide aggregate number of non-emergency motions for a stay of removal (filed in connection with a motion to reopen or motion for reconsideration) filed in FY 2015, FY 2016, FY 2017 and FY 2018 (to date) that remain pending, broken down by the year in which the motion for a non-emergency stay of removal was filed.

See Exhibit A.

Requestors received EOIR's acknowledgment of the Request on July 18, 2018 (attached hereto as Exhibit B). Nearly two months later, on September 7, 2018, Requestors received EOIR's formal response (attached hereto as Exhibit C).¹ That response states that "[r]ecords reflecting stay of removal data tracked by our Emergency Stay Unit is attached," and gave no indication that any other database or other records were searched.

After receiving this incomplete response, Plaintiffs diligently attempted to communicate with EOIR in an effort to obtain the missing records without the need for litigation. This effort included multiple emails and phone calls with the assigned FOIA officer. Notwithstanding these efforts, EOIR did not conduct a search of its other databases or paper files, nor did it produce the missing records.

Requestors appeal the adequacy of EOIR's search for records responsive to the Request. This appeal is being filed within 90 days of EOIR's September 7, 2018 letter, as required by 6 C.F.R. § 5.8.

II. EOIR Failed to Conduct an Adequate Search

It is well-settled that, under 5 U.S.C. § 552(a)(3), agencies must conduct "a search reasonably calculated to uncover all relevant documents" in response to a FOIA request. *ACLU v. NSA*, No. 13-cv-9198, 2017 WL 6387731, at *3 (S.D.N.Y. Aug. 17, 2017) (quoting *Morley v. CIA*, 508 F.3d 1108, 1114 (D.C. Cir. 2007)); see also *Oglesby v. Army*, 920 F.2d 57, 68 (D.C. Cir. 1990) (holding that agencies must make "a good faith effort to conduct a search for the requested records, using methods which can be reasonably expected to produce the information requested"). An adequate search requires both disclosure of responsive documents and the use of reasonable search methods to locate them. See *N.Y. Times Co. v. DOJ*, 756 F.3d 100, 124 (2d Cir. 2014). "Evidence that relevant records have not been released may shed light on whether the agency's search was indeed inadequate." *Nat'l Day Laborer Organizing Network v. ICE*, 877 F. Supp. 2d 87, 96 (S.D.N.Y. 2012) (quoting *Weisberg v. DOJ*, 705 F.2d 1344, 1351 (D.C. Cir. 1983)).

A. EOIR failed to disclose all responsive records.

The inadequacy of EOIR's search is evident first and foremost from its paltry results. Specifically, EOIR's September 7, 2018 response states "Records reflecting stay of removal data tracked by our Emergency Stay Unit is attached," Exhibit C, and indeed, the only records that EOIR produced were from its Emergency Stay Unit. This production did not include any records whatsoever that relate to non-emergency motions for stays or the associated motions to reopen or reconsider, nor did it contain large quantities of data related to emergency motions for stays.

The BIA clearly possesses responsive records it did not produce. First, it self-evidently has records regarding the date and outcome of requests for non-emergency stays and motions to reopen or reconsider because it is the agency that renders and retains the decisions on these

¹ Contrary to what is indicated in the formal response letter (Exhibit C), the Request was not amended at any time, including on September 4, 2018.

motions, but no such records were provided. Second, the BIA had tracking systems and databases that should contain the requested records. For example, the Immigration Court Practice Manual Chapter 8.3(c)(ii)(A)-(B) shows that there is a procedure for filing both Emergency and Non-Emergency stay requests filed with the BIA. OFFICE OF THE CHIEF IMMIGRATION JUDGE, IMMIGRATION COURT PRACTICE MANUAL 137-38 (Executive Office of Immigration Review December 2016, rev. Aug. 2, 2018) (excerpts attached hereto as Exhibit D). The Immigration Court Manual explicitly states that non-emergency stays will not be ruled on immediately, but instead “will be considered during the normal course of adjudication.” *Id.* Thus, in order for these motions to be adjudicated as outlined in the manual, they must be tracked by EOIR, yet no records related to tracking the motions were included in the September 7th response. The January 2018 BIA Style Manual also shows that the BIA tracks this information, and chapter 1.2(a) specifically directs that “all filings” be tracked and “all data related to cases” be entered in EOIR’s database, Case Access System for EOIR (“CASE”). BOARD OF IMMIGRATION APPEALS, STYLE MANUAL 2 (rev. Jan. 12, 2018) (excerpts attached hereto as Exhibit E). Yet EOIR failed to provide any tracking records or any records from CASE in response to the Request.

In sum, the fact that EOIR failed to produce such large categories of responsive records indicates that its search could not have been adequate.

B. EOIR’s search was not reasonably calculated to uncover all relevant documents.

The nature of EOIR’s response also makes clear that EOIR neglected to conduct a search reasonable calculated to uncover responsive records. Despite its inadequate production that omits large categories of responsive records, EOIR offered no explanation of its search methodology or execution and its response indicates that it only searched for records in the Emergency Stay Unit’s possession. As such, EOIR’s search was inadequate because it did not search all divisions likely to have responsive records. *See Nat’l Day Laborer Organizing Network*, 877 F. Supp. 2d at 97 (finding search not adequate where ICE failed to search divisions likely to contain responsive records); *see also Immigrant Defense Project v. ICE*, 208 F. Supp. 3d 520, 531-32 (S.D.N.Y. 2016). It also appears that EOIR excluded from its search several sub-offices and custodian files likely to be in possession of records sought by Requestors, such as:

- the Office of the Clerk, which is “responsible for managing appellate records and information for the Board, which includes processing all filings, entering all data related to cases properly into EOIR’s database, Case Access System for EOIR (CASE), and processing all correspondence pertaining to cases before the Board”;²
- the Priority Case Management Team, which processes “[c]ases involving detained aliens”;³
- the Motions Team, which processes “both detained and non-detained motions for the Board”;⁴

² 2018 BIA STYLE MANUAL, Exhibit E, at 2.

³ *Id.*

⁴ *Id.*

- the Paralegal Team, which “screen[s] all cases received from the Clerk’s Office for adjudication by the Screening and Merits Panels,” and “identif[ies] the general issues raised in a particular case, enter[s] the relevant information into CASE, and attach[es] an annotated ‘Issues Sheet’ to the front of the Record of Proceedings (ROP).”⁵

The foregoing are not meant to comprise an exhaustive list of additional sources likely to contain materials responsive to the Request. They are merely examples that demonstrate the inadequacy of EOIR’s search.

Accordingly, because EOIR failed to produce all responsive documents, and because EOIR’s search was not reasonably calculated to uncover all relevant documents, it is beyond dispute that EOIR did not conduct an adequate search in response to the Request.

* * *

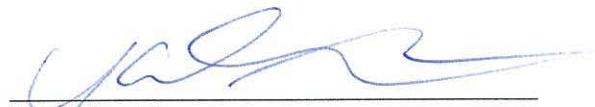
Please provide a response to this appeal within the twenty days allowed by 5 U.S.C. § 552(a)(6)(A)(2). Thank you for your attention to this matter. If you have any questions regarding this request, please contact Yael Ben Tov at bentov@law.cardozo.yu.edu or Lindsay Nash at lindsay.nash@yu.edu or (212) 790-0433. Please furnish copies of all applicable information to both:

Lindsay Nash, Esq.
Assistant Clinical Professor of Law
Benjamin N. Cardozo School of Law
55 Fifth Avenue, 11th Floor
New York, New York 10003

and

Kristin Macleod-Ball, Esq.
American Immigration Council
1331 G St. NW, Suite 200
Washington, D.C., 20005

Sincerely,



Yael Ben Tov
Lindsay Nash, Esq.
Benjamin N. Cardozo School of Law
Kathryn O. Greenberg Immigration
Justice Clinic

⁵ *Id.* at 3.

55 Fifth Avenue, 11th Floor
New York, New York 10003
Tel: (212) 790-0433
Fax: (212) 790-0256
bentov@law.cardozo.yu.edu

Kristin Macleod-Ball, Esq.
American Immigration Council
1331 G St. NW, Suite 200
Washington, D.C., 20005
Tel: (202) 507 7500
KMacleod-Ball@immcouncil.org

Exhibit A

CARDOZO LAW

BENJAMIN N. CARDOZO SCHOOL OF LAW • YESHIVA UNIVERSITY

KATHRYN O. GREENBERG IMMIGRATION JUSTICE CLINIC

Peter L. Markowitz, *Director*
Professor of Law

(212) 790-0895
Fax (212) 790-0256

Lindsay Nash
Assistant Clinical Professor of Law

Jacqueline Pearce
Clinical Teaching Fellow

Hannah Robbins
Clinical Teaching Fellow

July 17, 2018

Freedom of Information Act Request
Executive Office for Immigration Review
Office of General Counsel
5107 Leesberg Pike, Suite 1903
Falls Church, VA 20503
Email: EOIR.FOIARequests@usdoj.gov
VIA EMAIL

RE: Freedom of Information Act ("FOIA") Request

Dear Executive Office for Immigration Review FOIA Unit,

The Kathryn O. Greenberg Immigration Justice Clinic ("Clinic") and the American Immigration Council ("AIC") (collectively "Requesters") submit this letter as a request for records under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, *et seq.* We ask that this request be expedited pursuant to 5 U.S.C. § 552(a)(6)(E), and that we be granted a fee waiver pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

Records Requested

We request disclosure of any and all records in the possession of the Executive Office for Immigration Review, or sub-offices thereof, that reflect the following information regarding the adjudication of motions for a stay of removal filed with the Board of Immigration Appeals ("BIA") which were filed in connection with a motion to reopen with the BIA or a motion for reconsideration with the BIA. To be clear, we do not seek data on all motions for a stay of removal filed in the periods described below. Rather, we seek only data regarding motions for a stay of removal filed in cases where the respondent either (1) already has a pending motion to reopen or motion for reconsideration or (2) filed a motion for a stay of removal concurrently with the filing of the motion to reopen or motion for reconsideration.

JACOB BURNS INSTITUTE FOR ADVANCED LEGAL STUDIES

BROOKDALE CENTER • 55 FIFTH AVENUE • 11th Floor • NEW YORK, NY 10003-4391

1. For each motion for a stay of removal described above that was filed in (a) fiscal year (“FY”) 2015; FY 2016, FY 2017; and FY 2018 (to date), please provide:
 - a. Whether the motion was treated as an “emergency” or “non-emergency” motion for a stay of removal (as those terms are defined in BIA Practice Manual 6.4(d));
 - b. The date that the motion for a stay of removal was decided;
 - c. The number of days that elapsed between the date that the motion for a stay of removal was filed and the date of decision on the motion for a stay of removal;
 - d. Whether the motion for a stay of removal was granted or denied;
 - e. Whether the motion to reopen associated with the motion for a stay of removal was based on changed circumstances, as described in INA § 240(c)(7)(C)(ii), 8 C.F.R. § 1003.2(c)(3)(ii);
 - f. Whether the motion to reopen or motion for reconsideration was granted or denied; and
 - g. The date that the motion to reopen or motion for reconsideration was decided.
2. Please provide the aggregate raw numbers and percentage of emergency motions for a stay of removal (filed in connection with a motion to open or motion for reconsideration) that were granted and denied in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by the year and month of the decision.
3. Please provide the aggregate raw numbers and percentages of non-emergency motions for a stay of removal (filed in connection with a motion to open or motion for reconsideration) that were granted and denied in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by the year and month of the decision.
4. Please provide the mean and average processing times (from date of filing to date of decision) for non-emergency motions for a stay of removal (filed in connection with a motion to reopen or motion for reconsideration) that were decided in FY 2015, FY 2016, FY 2017, and FY 2018 (to date), broken down by year.
5. Please provide aggregate number of non-emergency motions for a stay of removal (filed in connection with a motion to open or motion for reconsideration) filed in FY 2015; FY 2016, FY 2017; and FY 2018 (to date) that remain pending, broken down by the year in which the motion for a non-emergency stay of removal was filed.

Request for Expedited Processing

This request meets two independent criteria for expedited processing under the Department of Justice’s (“DOJ”) regulations.

First, expedited processing is warranted because there is “an urgency to inform the public about an actual or alleged federal government activity” and the request is made by entities “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II). Given current circumstances, there is an urgent need to inform the public about the adjudication and disposition of motions for a stay of removal that are filed in connection with motions to reopen and motions for reconsideration. Beginning in early 2017, federal immigration enforcement practices

underwent dramatic changes. Of particular relevance for this request, Immigration and Customs Enforcement (“ICE”) suddenly began detaining and attempting to remove large numbers of people who had been ordered removed, but resided in the United States for years, often with the federal government’s permission. Given the time that elapsed between these sometimes decades-old removal orders and the changes that have occurred in immigration law and in respondents’ countries of origin, many now have bases for reopening their removal proceedings. However, because ICE generally abruptly moves to execute these old removal orders with no notice or screening for changes in the law or conditions in their countries of origin, these noncitizens must quickly file a motion to reopen or a motion for reconsideration and simultaneously seek a stay of removal so that the BIA has an opportunity to decide the motion to reopen or motion for reconsideration before they are removed to their countries of origin, where all too many face persecution. Informing the public about the BIA’s practices in this respect is critical because understanding the way that this process functions would (1) allow the public, including courts, to realistically assess the degree to which the filing of a stay motion protects respondents’ constitutional, statutory, and regulatory rights, and (2) allow noncitizens and their attorneys to make informed decisions about how to proceed in cases with extremely fast timelines and where the consequence of failing to prevent a deportation may be death.

The Requesters—both entities with the capacity, intent and demonstrated ability to disseminate the requested information to a broad cross-section of the public—are “primarily engaged in disseminating information.” 5 U.S.C. § 552(a)(6)(E)(v)(II); *see also* 28 C.F.R. § 16.5(d)(1)(ii). The Clinic has a long track record of obtaining and analyzing data from government agencies and publishing studies and evaluations to educate the public about the way that the U.S. immigration enforcement and adjudication systems function.¹ It disseminates these materials by publishing them on websites, circulating them on listservs, and sharing them with media.

AIC is a non-profit organization established to increase public understanding of immigration law and policy, advocate for the fair and just administration of our immigration laws, protect the legal rights of noncitizens, and educate the public about the enduring contributions of America’s immigrants. AIC researches issues related to immigration, and regularly provides information to leaders on Capitol Hill, the media, and the general public. AIC works with other immigrants’ rights organizations and immigration attorneys across the United States to advance the fair administration of our immigration laws. Furthermore, AIC has synthesized and disseminated information from prior FOIA requests to facilitate the sharing of this information with a broad public audience.² Finally, AIC has regular contact with national

¹ *See, e.g.*, New York Immigrant Representation Study Steering Committee (including Lindsay Nash), *Accessing Justice: The Availability and Adequacy of Counsel in Removal Proceedings – New York Immigrant Representation Study Report: Part 1*, 33 CARDOZO L. REV. 358 (2011) (analyzing and reporting on ICE and EOIR data regarding the rates of representation and success in various EOIR proceedings for noncitizens facing removal in the New York area); PETER L. MARKOWITZ, *ET AL.*, CARDOZO IMMIGRATION JUSTICE CLINIC, CONSTITUTION ON ICE (2009), available at http://www.cardozo.yu.edu/uploadedFiles/Cardozo/Profiles/immigrationlaw-741/IJC_ICEHome-Raid-Report%20Updated.pdf (reporting on documents released by the Department of Homeland Security (DHS) in response to FOIA request regarding home raids).

² *See, e.g.*, AMERICAN IMMIGRATION COUNCIL, *ET AL.*, BEHIND CLOSED DOORS: AN OVERVIEW OF DHS RESTRICTIONS ON ACCESS TO COUNSEL, available at <https://www.americanimmigrationcouncil.org/research/behind->

print and news media and plans to share information gleaned from FOIA disclosures with interested media. Upon receipt of the records requested, the Requesters will review them carefully and disseminate educational or newsworthy information through these channels.

Second, expedited processing is required when a request involves “a matter of widespread and exceptional media interest in which there exist possible questions about the government’s integrity which affect public confidence.” 28 C.F.R. § 16.5(d)(1)(iv). In the past year, there has been significant media coverage of cases involving individuals who face dire consequences in their countries of origin and seek a stay of deportation until their motions to reopen are adjudicated.³ The ongoing news coverage of these types of cases and the mechanisms—or lack thereof—to stay deportations pending adjudication of motions to reopen or motions for reconsideration demonstrates that the data requested here involves “a matter of widespread and exceptional media interest” as well as “questions about the government’s integrity [regarding the process for seeking a stay of removal] which affect public confidence,” *id.*

Request of Waiver of Fees

The Requesters ask that all fees associated with this FOIA request be waived. We are entitled to a waiver of all costs because disclosure of the information is “likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). *See* 28 C.F.R. §§ 16.10(k)(1), 701.18(d)(1)–(2) (providing that records should be furnished without charge or at a reduced rate if the information is in the public interest, and disclosure is not in the commercial interest of the institution); *see also* *Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309 (D.C. Cir. 2003).

Requesters have undertaken this work in the public interest and not for any private commercial interest. Requesters will make this information publicly available, and it will be critical to inform the public, including immigration attorneys, about the process, processing time, and success rate for motions for a stay of removal filed in connection with motions to reopen. Accordingly, disclosure in this case meets the statutory criteria, and a fee waiver would fulfill

closed-doors-overview-dhs-restrictions-access-counsel (summarizing certain key documents released by DHS agencies in response to FOIA requests regarding noncitizens’ access to counsel).

³ *See, e.g.*, Chris Fuchs, Judge grants Christian Indonesians in New Jersey time to fight deportation, NBC News, Feb. 5, 2018, <https://www.nbcnews.com/news/asian-america/judge-grants-christian-indonesians-new-jersey-time-fight-deportation-n844841> (last visited July 14, 2018); Nate Raymond, U.S. judge gives Indonesian illegal immigrants deportation reprieve, Reuters, Feb. 2, 2018, <https://www.reuters.com/article/us-usa-immigration-indonesia-new-hampshi/u-s-judge-gives-indonesian-illegal-immigrants-deportation-reprieve-idUSKBN1FL6KF> (last visited July 14, 2018); Kelly Knaub, Removal Of 50 Indonesian Christian Immigrants Put On Hold, Feb 2, 2018, <https://www.law360.com/articles/1008383/removal-of-50-indonesian-christian-immigrants-put-on-hold> (last visited July 14, 2018); Carlos Ballasteros, *Trump Wants to Deport Iraqi Christians—Even if it’s a Death Sentence*, NEWSWEEK (Dec. 6, 2017), available at <http://www.newsweek.com/trump-ice-deportations-christian-refugees-iraq-726624>; Chris Gelardi, When ICE Came for the Chaldeans, Slate, (Sept. 4, 2017), http://www.slate.com/articles/news_and_politics/politics/2017/09/michigan_s_iraqi_chaldean_community_is_fighting_to_protect_dozens_of_people.html (last visited July 14, 2018); Amanda Holpunch, *Judge halts deportation of more than 1,000 Iraqi nationals from US*, THE GUARDIAN (June 27, 2017), available at <https://www.theguardian.com/us-news/2017/jun/27/us-iraqi-deportations-halted-judge-immigration-ruling>.

Congress' legislative intent in amending FOIA. *See Judicial Watch, Inc.*, 326 F.3d at 1312 (“Congress amended FOIA to ensure that it be ‘liberally construed in favor of waivers of noncommercial requesters’”) (internal citation omitted).

In the alternative, if a full fee waiver is not granted, Requesters seek all applicable reductions in fees pursuant to 28 C.F.R. §§ 16.10(k)(2), 701.18(d)(1). Further, fees are limited to only reasonable duplication costs when the request is not for commercial purposes and “the request is made by an educational or noncommercial scientific institution.” 5 U.S.C. § 552(a)(4)(A)(ii)(II). The Clinic, which is part of an educational institution and engages in analysis and public education work, requests that if the fee waiver is not granted, fees be limited to duplication costs only. Requesters further ask that, if no fee waiver is granted and the fees exceed \$200.00, the Agency please contact Requesters, through the undersigned counsel, to obtain consent to incur additional fees.

Format

Please provide all data in a searchable, unrestricted Microsoft Excel format. Aggregate figures and keys or tools to interpret the data may be provided in a searchable Microsoft Word document.

Certification

We certify that the foregoing is true and correct to the best of our knowledge. *See* 28 C.F.R. § 16.5(e)(3).


We look forward to your response to our request for expedited processing within ten (10) business days, as required under 5 U.S.C. § 552(a)(6)(E)(ii)(I). Notwithstanding our request for expedited processing, we alternatively look forward to your reply to this request within twenty (20) business days, as required under 5 U.S.C. § 552(a)(6)(A)(I).

If you have any questions regarding this request, please contact Lindsay Nash at lindsay.nash@yu.edu or (212) 790-0433. Please furnish copies of all applicable information to:

Lindsay Nash
Assistant Clinical Professor of Law
Benjamin N. Cardozo School of Law
55 Fifth Avenue, 11th Floor
New York, New York 10003

Thank you for your timely cooperation.

Sincerely,

A handwritten signature in black ink, appearing to read "Lindsay Nash". The signature is fluid and cursive, with the first name being more prominent than the last.

Lindsay Nash
Benjamin N. Cardozo School of Law
55 Fifth Avenue, Rm. 1108
New York, New York 10003
Tel: (212) 790-0433
Fax: (212) 790-0256
lindsay.nash@yu.edu

Kristin Macleod-Ball
American Immigration Council
100 Summer St., 23rd Fl.
Boston, MA 02110
Tel: (857) 305-3722
kmacleod-ball@immcouncil.org

Exhibit B



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

5107 Leesburg Pike Suite 1903
Falls Church, Virginia 22041

July 18, 2018

Lindsay Nash
Kathryn O. Greenberg Immigration Justice Clinic
35 Fifth Avenue, 11th Floor
New York, NY 10003

RE: Freedom of Information Act Request
Statistics

Dear Lindsay Nash:

This response acknowledges receipt of your Freedom of Information Act (FOIA) request by the Executive Office for Immigration Review (EOIR). Your request has been assigned control number: 2018-40697.

If you have filed a fee waiver request, EOIR will address the fee waiver in a separate letter. Otherwise, your request constitutes an agreement to pay fees that may be chargeable up to \$25 without notice. Most requests do not require any fees; however, if the fees for processing the request are estimated to exceed \$25.00, EOIR will notify you before processing the request to determine whether you will commit to paying the fee or whether you wish to narrow the scope of your request to reduce the fee. Fees may be charged for searching records at the rate of \$4.75 (administrative)/\$10.00 (professional) per quarter hour, and for duplication of copies at the rate of \$0.05 per copy. The first 100 copies and two hours of research time are not charged, and charges must exceed \$25.00 before we will charge a fee.

The FOIA requires an agency to respond within 20 working days after receipt of the request, and EOIR endeavors to meet this standard. The FOIA permits a ten-day extension of this time period, pursuant to 5 U.S.C. § 552(a)(6)(B), based on unusual circumstances. Your request involves "unusual circumstances," and EOIR is extending the time period to respond by an additional 10 working days because your request either requires the collection of records from field offices, or involves a search for numerous records that will necessitate a thorough and wide-ranging search at headquarters.

EOIR FOIA requests are placed in one of three tracks. Track one is for those requests that seek and receive expedited processing pursuant to subsection (a)(6)(E) of the FOIA. The second track is for simple requests that do not involve voluminous records or lengthy consultations with other entities. Simple requests generally receive a response in about 28 business days. Track three is for complex requests that involve voluminous records and for which lengthy or numerous consultations are required, or those requests that may involve sensitive records. Complex requests generally receive a response in six months to one year. As a matter of default, your request has been placed in the second track for simple requests. If EOIR intends to place your request in track three for complex requests or if you have requested expedited processing, EOIR will contact you in a separate letter.

If you have any questions regarding unusual circumstances, you may contact the EOIR FOIA Service Center to discuss reformulation or an alternative time frame for the processing of your request with the analyst handling your request or the FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

Sincerely,

Mai Phung

Mai Phung

EOIR# 2018-40697

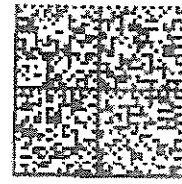
U.S. Department of Justice

Executive Office for Immigration Review
Office of the General Counsel

FOIA Service Center
5107 Leesburg Pike, Suite 1903
Falls Church, VA 22041

Official Business

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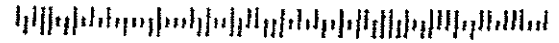


Exhibit C



U.S. Department of Justice

Executive Office for Immigration Review

Office of the General Counsel

5107 Leesburg Pike, Suite 2600
Falls Church, Virginia 22041

September 7, 2018

Via U.S. Mail

Lindsay Nash
Assistant Clinical Professor of Law
Benjamin N. Cardozo School of Law
55 Fifth Avenue, 11th Floor
New York, NY 10003

Re: FOIA 2018-40697

Dear Ms. Nash:

This letter is in response to your Freedom of Information Act (FOIA) request to the Executive Office for Immigration Review (EOIR) dated July 17, 2018, amended September 4, 2018, in which you requested information related to stays of removal before the Board of Immigration Appeals from FY2015 through FY2018.

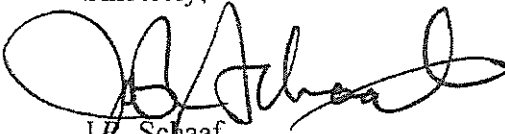
Records reflecting stay of removal data tracked by our Emergency Stay Unit is attached. Portions of the records have been redacted in accordance with 5 U.S.C. § 552(b)(6) to avoid a clearly unwarranted invasion of personal privacy. There is no charge for processing your request.

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

You may contact our FOIA Public Liaison at the telephone number 703-605-1297 for any further assistance and to discuss any aspect of your request. Additionally, you may contact the Office of Government Information Services (OGIS) at the National Archives and Records Administration to inquire about the FOIA mediation services they offer. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site <https://www.foiaonline.gov/foiaonline/action/public/home>. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

Sincerely,

A handwritten signature in black ink, appearing to read "J.K. Schaaf". The signature is fluid and cursive, with a large initial "J" and "S".

J.K. Schaaf

Chief Counsel for Administrative Law

Attachment
MS Excel Workbook

Exhibit D

Immigration Court Practice Manual



The Practice Manual has been assembled as a public service to parties appearing before the Immigration Courts. This manual is not intended, in any way, to substitute for a careful study of the pertinent laws and regulations. Readers are advised to review Chapter 1.1 before consulting any information contained herein.

The Practice Manual is updated periodically. The legend at the bottom of each page reflects the last revision date. Updates to the Practice Manual are available through the EOIR website at www.justice.gov/eoir.

The Office of the Chief Immigration Judge

MaryBeth Keller, Chief Immigration Judge
Christopher Santoro, Deputy Chief Immigration Judge
Mary Cheng, Deputy Chief Immigration Judge
Print Maggard, Deputy Chief Immigration Judge

Rico J. Bartolomei	F. James Loprest, Jr.	Rodin Rooyani
Daniel J. Daugherty	H. Kevin Mart	Theresa M. Scala
Irene Feldman	Clay N. Martin	Elisa M. Sukkar
James K. Grim	Sheila McNulty	Jack H. Weil
Amy Hoogasian	Deepali Nadkarni	Daniel H. Weiss
Scott D. Laurent	Nancy J. Paul	

Assistant Chief Immigration Judges

The Office of the Chief Immigration Judge expresses its gratitude to the many Immigration Judges, Court Administrators, and other individuals who provided comments and suggestions during the preparation of the Immigration Court Practice Manual. The Office of the Chief Immigration Judge also expresses its appreciation to former Chief Immigration Judge David L. Neal for his leadership in creating the Practice Manual. In addition, the Office of the Chief Immigration Judge recognizes the original members of the Practice Manual Committee for their dedication in creating this publication:

Judge John F. Gossart, Jr.	Scott M. Rosen, Chief Counsel, OCIJ
Judge Stephen S. Griswold	Gary M. Somerville, Court Administrator
Jean C. King, Senior Legal Advisor, BIA	Emmett D. Soper, Attorney Advisor, OCIJ



U.S. Department of Justice

Executive Office for Immigration
Review

Office of the Chief Immigration Judge

December 2016

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

Immigration Court Practice Manual

In 2006, the Attorney General instructed the Director of the Executive Office for Immigration Review, in consultation with the Immigration Judges, to issue a practice manual for the parties who appear before the Immigration Courts. This directive arose out of the public's desire for greater uniformity in Immigration Court procedures and a call for Immigration Courts to implement their "best practices" nationwide.

Accordingly, the Office of the Chief Immigration Judge published the Immigration Court Practice Manual in February 2008. The Practice Manual is a comprehensive guide that sets forth uniform procedures, recommendations, and requirements for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case. The Practice Manual does not limit the discretion of Immigration Judges to act in accordance with law and regulation.

The Practice Manual is intended to be a "living document," and the Office of the Chief Immigration Judge updates it in response to changes in law and policy, as well as in response to comments by the parties using it. We welcome suggestions and encourage the public to provide comments, to identify errors or ambiguities in the text, and to propose revisions. Information regarding where to send your correspondence is included in Chapter 13 of the Practice Manual.

The Office of the Chief Immigration Judge has made the Immigration Court Practice Manual available through the EOIR website at www.justice.gov/eoir. We encourage you to share the Practice Manual with any individuals or organizations that may benefit from it.

A handwritten signature in black ink that reads "MaryBeth Keller".

MaryBeth Keller
Chief Immigration Judge

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Immigration Court
Practice Manual

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Chapter 1 The Immigration Court

1.1 Scope of the Practice Manual

(a) Authority. — The Executive Office for Immigration Review (EOIR) is charged with administering the Immigration Courts nationwide. The Attorney General has directed the Director of EOIR, in consultation with the Immigration Judges, to issue an Immigration Court Practice Manual.

(b) Purpose. — This manual is provided for the information and convenience of the general public and for parties that appear before the Immigration Courts. The manual describes procedures, requirements, and recommendations for practice before the Immigration Courts. The requirements set forth in this manual are binding on the parties who appear before the Immigration Courts, unless the Immigration Judge directs otherwise in a particular case.

(c) Disclaimer. — This manual is not intended, nor should it be construed in any way, as legal advice. The manual does not extend or limit the jurisdiction of the Immigration Courts as established by law and regulation. Nothing in this manual shall limit the discretion of Immigration Judges to act in accordance with law and regulation.

(d) Revisions. — The Office of the Chief Immigration Judge reserves the right to amend, suspend, or revoke the text of this manual at any time at its discretion. For information on how to obtain the most current version of this manual, see Chapter 13.3 (Updates to the Practice Manual). For information on how to provide comments regarding this manual, see Chapter 13.4 (Public Input).

1.2 Function of the Office of the Chief Immigration Judge

(a) Role. — The Office of the Chief Immigration Judge oversees the administration of the Immigration Courts nationwide and exercises administrative supervision over Immigration Judges. Immigration Judges are responsible for conducting Immigration Court proceedings and act independently in deciding matters before them. Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts.

(b) Location within the federal government. — The Office of the Chief Immigration Judge (OCIJ) is a component of the Executive Office for Immigration Review (EOIR). Along with the Board of Immigration Appeals and the Office of the Chief Administrative Hearing Officer, OCIJ operates under the supervision of the Director of EOIR. See 8 C.F.R. § 1003.0(a). In turn, EOIR is a component of the Department of Justice and operates under the authority and supervision of the Attorney General. See Appendix C (Organizational Chart).

(c) Relationship to the Board of Immigration Appeals. — The Board of Immigration Appeals is the highest administrative tribunal adjudicating immigration and nationality matters. The Board is responsible for applying the immigration and nationality laws uniformly throughout the United States. Accordingly, the Board has been given nationwide jurisdiction to review decisions of Immigration Judges and certain decisions made by the Department of Homeland Security (DHS). The Board is tasked with resolving the questions before it in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act (INA) and federal regulations. The Board is also tasked with providing clear and uniform guidance to Immigration Judges, DHS, and the general public on the proper interpretation and administration of the INA and the federal regulations. See 8 C.F.R. § 1003.1(d)(1). See also Appendix C (Organizational Chart). Finally, the Board has authority over the disciplining and sanctioning of representatives appearing before the Immigration Courts, DHS, and the Board. See Chapter 10 (Discipline of Practitioners).

For detailed guidance on practice before the Board, parties should consult the Board of Immigration Appeals Practice Manual, which is available at www.justice.gov/eoir.

(d) Relationship to the Department of Homeland Security. — The Department of Homeland Security (DHS) was created in 2003 and assumed most of the functions of the now-abolished Immigration and Naturalization Service. DHS is responsible for enforcing immigration laws and administering immigration and naturalization benefits. By contrast, the Immigration Courts and the Board of Immigration Appeals are responsible for independently adjudicating cases under the immigration laws. Thus, DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. In proceedings before the Immigration Court or the Board, DHS is deemed to be a party and is represented by its component, U.S. Immigration and Customs Enforcement (ICE). See Chapters 1.5(a) (Jurisdiction), 1.5(c) (Immigration Judge decisions), 1.5(e) (Department of Homeland Security).

(e) Relationship to the Immigration and Naturalization Service. — Prior to the creation of the Department of Homeland Security (DHS), the Immigration and Naturalization Service (INS) was responsible for enforcing immigration laws and administering immigration and naturalization benefits. INS was a component of the Department of Justice. INS has been abolished and its role has been assumed by DHS, which is entirely separate from the Department of Justice. See subsection (d), above.

(f) Relationship to the Office of the Chief Administrative Hearing Officer. — The Office of the Chief Administrative Hearing Officer (OCAHO) is an independent entity within the Executive Office for Immigration Review. OCAHO is responsible for hearings involving employer sanctions, anti-discrimination provisions, and document fraud under the Immigration and Nationality Act. OCAHO's Administrative Law Judges are not affiliated with the Office of the Chief Immigration Judge. The Board of Immigration Appeals does not review OCAHO decisions. See Appendix C (Organizational Chart).

(g) Relationship to the Administrative Appeals Office. — The Administrative Appeals Office (AAO), sometimes referred to as the Administrative Appeals Unit (AAU), was a component of the former Immigration and Naturalization Service and is now a component of the Department of Homeland Security (DHS). The AAO adjudicates appeals from DHS denials of certain kinds of applications and petitions, including employment-based immigrant petitions and most nonimmigrant visa petitions. See 8 C.F.R. §§ 103.2, 103.3. The AAO is not a component of the Department of Justice. The AAO should not be confused with the Executive Office for Immigration Review, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

(h) Relationship to the Office of Immigration Litigation (OIL). — The Office of Immigration Litigation (OIL) represents the United States government in immigration-related civil trial litigation and appellate litigation in the federal courts. OIL is a component of the Department of Justice, located in the Civil Division. OIL is separate and distinct from the Executive Office for Immigration Review (EOIR). OIL should not be confused with EOIR, the Office of the Chief Immigration Judge, or the Board of Immigration Appeals. See Appendix C (Organizational Chart).

1.3 Composition of the Office of the Chief Immigration Judge

(a) General. — The Office of the Chief Immigration Judge (OCIJ) supervises and directs the activities of the Immigration Courts. OCIJ operates under the supervision of the Director of the Executive Office for Immigration Review (EOIR). OCIJ develops operating policies for the Immigration Courts, oversees policy implementation, evaluates

the performance of the Immigration Courts, and provides overall supervision of the Immigration Judges.

(i) Chief Immigration Judge. — The Chief Immigration Judge oversees the administration of the Immigration Courts nationwide.

(ii) Deputy Chief Immigration Judges. — The Deputy Chief Immigration Judges assist the Chief Immigration Judge in carrying out his or her responsibilities.

(iii) Assistant Chief Immigration Judges. — The Assistant Chief Immigration Judges oversee the operations of specific Immigration Courts. A listing of the Immigration Courts overseen by each Assistant Chief Immigration Judge is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(iv) Legal staff. — OCIJ's legal staff supports the Chief Immigration Judge, Deputy Chief Immigration Judges, and Assistant Chief Immigration Judges, as well as the Immigration Judges and Immigration Court law clerks nationwide.

(v) Language Services Unit. — The Language Services Unit oversees staff interpreters and contract interpreters at the Immigration Courts. The Language Services Unit conducts quality assurance programs for all interpreters.

(vi) Court Evaluation Team. — The Court Evaluation Team coordinates periodic comprehensive evaluations of the operations of each Immigration Court and makes recommendations for improvements.

(vii) Court Analysis Unit. — The Court Analysis Unit monitors Immigration Court operations and assists the courts by analyzing caseloads and developing systems to collect caseload data.

(b) Immigration Courts. — There are more than 200 Immigration Judges in more than 50 Immigration Courts nationwide. As a general matter, Immigration Judges determine removability and adjudicate applications for relief from removal. For the specific duties of Immigration Judges, see Chapter 1.5 (Jurisdiction and Authority). The decisions of Immigration Judges are final unless timely appealed or certified to the Board of Immigration Appeals. See Chapter 6 (Appeals of Immigration Judge Decisions).

Court Administrators are assigned to the local office of each Immigration Court. Under the supervision of an Assistant Chief Immigration Judge, the Court Administrator manages the daily activities of the Immigration Court and supervises staff interpreters, legal assistants, and clerical and technical employees.

In each Immigration Court, the Court Administrator serves as the liaison with the local office of the Department of Homeland Security, the private bar, and non-profit organizations that represent aliens. In some Immigration Courts, a Liaison Judge also participates as a liaison with these groups.

A listing of the Immigration Courts is available on the Executive Office for Immigration Review website at www.justice.gov/eoir.

(c) Immigration Judge conduct and professionalism. — Immigration Judges strive to act honorably, fairly, and in accordance with the highest ethical standards, thereby ensuring public confidence in the integrity and impartiality of Immigration Court proceedings. Alleged misconduct by Immigration Judges is taken seriously by the Department of Justice and the Executive Office for Immigration Review (EOIR), especially if it impugns the integrity of the hearing process.

Usually, when a disagreement arises with an Immigration Judge's ruling, the disagreement is properly raised in a motion to the Immigration Judge or an appeal to the Board of Immigration Appeals. When a party has an immediate concern regarding an Immigration Judge's conduct that is not appropriate for a motion or appeal, the concern may be raised with the Assistant Chief Immigration Judge (ACIJ) responsible for the court or the ACIJ for Conduct and Professionalism. Contact information for ACIJs is available on the EOIR website at www.justice.gov/eoir.

In the alternative, parties may raise concerns regarding an Immigration Judge's conduct directly with the Office of the Chief Immigration (OCIJ) by following the procedures outlined on the EOIR website at www.justice.gov/eoir or by sending an e-mail to OCIJ at: EOIR.IJConduct@usdoj.gov. Where appropriate, concerns may also be raised with the Department of Justice, Office of Professional Responsibility. All concerns, and any actions taken, may be considered confidential and not subject to disclosure.

1.4 Other EOIR Components

(a) Office of the General Counsel. — The Office of the General Counsel (OGC) provides legal advice to the Executive Office for Immigration Review. OGC also functions as a resource and point of contact for the public in certain instances. In particular, OGC

responds to Freedom of Information Act requests related to immigration proceedings. See Chapter 12 (Freedom of Information Act). OGC receives complaints of misconduct involving immigration practitioners, and initiates disciplinary proceedings where appropriate. See Chapter 10 (Discipline of Practitioners).

(b) EOIR Fraud and Abuse Prevention Program. — The Executive Office for Immigration Review (EOIR) Fraud and Abuse Prevention Program was created to protect the integrity of immigration proceedings by reducing immigration fraud and abuse. The EOIR Fraud and Abuse Prevention Program assists Immigration Judges and EOIR staff in identifying fraud. In addition, the program shares information with law enforcement and investigative authorities. The program is an initiative of the EOIR Office of the General Counsel, as directed by the Attorney General.

Immigration fraud and abuse can take many forms. Fraud is sometimes committed during Immigration Court proceedings by individuals in proceedings and by their attorneys. In addition, aliens are often victimized by fraud committed by individuals not authorized to practice law, who are frequently referred to as “immigration specialists,” “visa consultants,” “travel agents,” and “notarios.”

Where a person suspects that immigration fraud has been committed, he or she may report this to the EOIR Fraud and Abuse Prevention Program. Where appropriate, the EOIR Fraud and Abuse Prevention Program refers cases to other authorities for further investigation.

Individuals wishing to report immigration fraud or abuse, or other irregular activity, should contact the EOIR Fraud and Abuse Prevention Program. For contact information, see Appendix B (EOIR Directory).

(c) Office of Legal Access Programs (OLAP). — The Office of Legal Access Programs (OLAP) is responsible for improving access to legal information and to representation for persons appearing before the Immigration Courts and the Board. OLAP is also responsible for the Recognition and Accreditation Program, including the recognition of organizations and the accreditation of their representatives wishing to practice before the Immigration Courts, the Board, and DHS. For contact information, see Appendix B (EOIR Directory).

(i) Legal Orientation Program. — The Legal Orientation Program (LOP) was created to provide detained aliens with essential and easy-to-understand information regarding the Immigration Court process, including their rights, responsibilities, and options for relief from removal. The LOP is a program of the

Office of Legal Access Programs within the Executive Office for Immigration Review.

The LOP is carried out locally through subcontracts with nonprofit legal agencies in cooperation with a number of local Immigration Courts and detention facilities.

The LOP providers conduct “group orientations,” which are general rights presentations given to detained aliens prior to their first Immigration Court hearing. “Individual orientations” and “self-help workshops” are then provided to unrepresented detainees to assist them with understanding their cases and identifying potential claims for relief from removal. While the LOP does not pay for legal representation, all detained aliens at LOP sites are provided access to program services, which may also include assistance with either locating pro bono counsel or representing themselves before the court.

More information about the LOP is available on the EOIR website at www.justice.gov/eoir.

(d) Office of Communications and Legislative Affairs. — The Office of Communications and Legislative Affairs (OCLA) is responsible for the public relations of the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge. Because the Department of Justice policy prohibits interviews with Immigration Judges, OCLA serves as EOIR’s liaison with the press.

(e) Law Library and Immigration Research Center. — The Law Library and Immigration Research Center (LLIRC) is maintained by the Executive Office for Immigration Review (EOIR) for use by EOIR staff and the general public. The LLIRC maintains a “Virtual Law Library” accessible on the EOIR website at www.justice.gov/eoir. See Chapter 1.6(b) (Library and online resources).

1.5 Jurisdiction and Authority

(a) Jurisdiction. — Immigration Judges generally have the authority to:

- make determinations of removability, deportability, and excludability
- adjudicate applications for relief from removal or deportation, including, but not limited to, asylum, withholding of removal (“restriction on

removal”), protection under the Convention Against Torture, cancellation of removal, adjustment of status, registry, and certain waivers

- review credible fear and reasonable fear determinations made by the Department of Homeland Security (DHS)
- conduct claimed status review proceedings
- conduct custody hearings and bond redetermination proceedings
- make determinations in rescission of adjustment of status and departure control cases
- take any other action consistent with applicable law and regulation as may be appropriate, including such actions as ruling on motions, issuing subpoenas, and ordering pre-hearing conferences and statements

See 8 C.F.R. §§ 1240.1(a), 1240.31, 1240.41.

Immigration Judges also have the authority to:

- conduct disciplinary proceedings pertaining to attorneys and accredited representatives, as discussed in Chapter 10 (Discipline of Practitioners)
- administer the oath of citizenship in administrative naturalization ceremonies conducted by DHS
- conduct removal proceedings initiated by the Office of Special Investigations

(b) No jurisdiction. — Although Immigration Judges exercise broad authority over matters brought before the Immigration Courts, there are certain immigration-related matters over which Immigration Judges do not have authority, such as:

- visa petitions
- employment authorization
- certain waivers

- naturalization applications
- revocation of naturalization
- parole into the United States under INA § 212(d)(5)
- applications for advance parole
- employer sanctions
- administrative fines and penalties under 8 C.F.R. parts 280 and 1280
- determinations by the Department of Homeland Security involving safe third country agreements

See 8 C.F.R. §§ 103.2, 1003.42(h), 28 C.F.R. § 68.26.

(c) Immigration Judge decisions. — Immigration Judges render oral and written decisions at the end of Immigration Court proceedings. See Chapter 4.16(g) (Decision). A decision of an Immigration Judge is final unless a party timely appeals the decision to the Board of Immigration Appeals or the case is certified to the Board. Parties should note that the certification of a case is separate from any appeal in the case. See Chapter 6 (Appeals of Immigration Judge Decisions).

(d) Board of Immigration Appeals. — The Board of Immigration Appeals has broad authority to review the decisions of Immigration Judges. See 8 C.F.R. § 1003.1(b). See also Chapter 6 (Appeals of Immigration Judge Decisions). Although the Immigration Courts and the Board are both components of the Executive Office for Immigration Review, the two are separate and distinct entities. Thus, administrative supervision of Board Members is vested in the Chairman of the Board, not the Office of the Chief Immigration Judge. See Chapter 1.2(c) (Relationship to the Board of Immigration Appeals). See Appendix C (Organizational Chart).

(e) Department of Homeland Security. — The Department of Homeland Security (DHS) enforces the immigration and nationality laws and represents the United States government's interests in immigration proceedings. DHS also adjudicates visa petitions and applications for immigration benefits. See, e.g., 8 C.F.R. § 1003.1(b)(4), (5). DHS is entirely separate from the Department of Justice and the Executive Office for Immigration Review. When appearing before an Immigration Court, DHS is deemed a party to the proceedings and is represented by its component, U.S. Immigration and

Customs Enforcement (ICE). See Chapter 1.2(d) (Relationship to the Department of Homeland Security (DHS)).

(f) Attorney General. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. The Board's decisions may be referred to the Attorney General for review. Referral may occur at the Attorney General's request, or at the request of the Department of Homeland Security or the Board. The Attorney General may vacate any decision of the Board and issue his or her own decision in its place. See 8 C.F.R. § 1003.1(d)(1)(i), (h). Decisions of the Attorney General may be published as precedent decisions. The Attorney General's precedent decisions appear with the Board's precedent decisions in Administrative Decisions Under Immigration and Nationality Law of the United States ("I&N Decisions").

(g) Federal courts. — Decisions of Immigration Judges are reviewable by the Board of Immigration Appeals. In turn, decisions of the Board are reviewable in certain federal courts, depending on the nature of the appeal. When a decision of the Board is reviewed by a federal court, the Board provides that court with a certified copy of the record before the Board. This record includes the Record of Proceedings before the Immigration Judge.

1.6 Public Access

(a) Court locations. —

(i) Office of the Chief Immigration Judge. — The Office of the Chief Immigration Judge, which oversees the administration of the Immigration Courts nationwide, is located at the Executive Office for Immigration Review headquarters in Falls Church, Virginia. See Appendix B (EOIR Directory).

(ii) Hearing locations. — There are more than 200 Immigration Judges in more than 50 Immigration Courts in the United States. A list of Immigration Courts is available in Appendix A (Immigration Court Addresses), as well as on the Executive Office for Immigration Review website at www.justice.gov/eoir.

Immigration Judges sometimes hold hearings in alternate locations, such as designated detail cities where the caseload is significant but inadequate to warrant the establishment of a permanent Immigration Court. Immigration Judges also conduct hearings in Department of Homeland Security detention centers nationwide, as well as many federal, state, and local correctional facilities. Documents pertaining to hearings held in these locations are filed at the

appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Court).

In addition, hearings before Immigration Judges are sometimes conducted by video conference or, under certain conditions, by telephone conference. See Chapter 4.7 (Hearings by Video or Telephone Conference).

With certain exceptions, hearings before Immigration Judges are open to the public. See Chapter 4.9 (Public Access). The public's access to immigration hearings is discussed in Chapter 4.14 (Access to Court). For additional information on the conduct of hearings, see Chapters 4.12 (Courtroom Decorum), 4.13 (Electronic Devices).

(b) Library and online resources. —

(i) Law Library and Immigration Research Center. — The Board of Immigration Appeals maintains a Law Library and Immigration Research Center (LLIRC) at 5201 Leesburg Pike, Suite 1200, Falls Church, Virginia. The LLIRC maintains select sources of immigration law, including Board decisions, federal statutes and regulations, federal case reporters, immigration law treatises, and various secondary sources. The LLIRC serves the Executive Office for Immigration Review (EOIR), including the Office of the Chief Immigration Judge and the Immigration Courts, as well as the general public. For hours of operation, directions, and collection information, contact the LLIRC at (703) 506-1103 or visit the EOIR website at www.justice.gov/eoir. See Appendix B (EOIR Directory).

The LLIRC is not a lending library, and all printed materials must be reviewed on the premises. LLIRC staff may assist patrons in locating materials, but are not available for research assistance. LLIRC staff do not provide legal advice or guidance regarding filing or procedures for matters before the Immigration Courts. LLIRC staff may, however, provide guidance in locating published decisions of the Board.

Limited self-service copying is available in the LLIRC.

(ii) Virtual Law Library. — The LLIRC maintains a "Virtual Law Library," accessible on the Executive Office for Immigration Review website at www.justice.gov/eoir. The Virtual Law Library serves as a comprehensive repository of immigration-related law and information for use by the general public.

(c) Records. —

(i) Inspection by parties. — Parties to a proceeding, and their representatives, may inspect the official record, except for classified information, by prior arrangement with the Immigration Court having control over the record. See Chapters 3.1(a)(i) (Administrative Control Court), 4.10(c) (Record of Proceedings). Removal of records by parties or other unauthorized persons is prohibited.

(ii) Inspection by non-parties. — Persons or entities who are not a party to a proceeding must file a request for information pursuant to the Freedom of Information Act (FOIA) to inspect the Record of Proceedings. See Chapter 12 (Freedom of Information Act).

(iii) Copies for parties. — The Immigration Court has the discretion to provide parties or their legal representatives with a copy of the hearing recordings and up to 25 pages of the record without charge, subject to the availability of court resources. Self-service copying is not available. However, parties may be required to file a request under FOIA to obtain these items. See Chapter 12 (Freedom of Information Act).

(A) Digital audio recordings. — Immigration Court hearings are recorded digitally. If a party is requesting a copy of a hearing that was recorded digitally, the court will provide the compact disc.

(B) Cassette recordings. — Previously, Immigration Court hearings were recorded on cassette tapes. If a party is requesting a copy of a hearing that was recorded on cassette tapes, the party must provide a sufficient number of 90-minute cassette tapes.

(iv) Copies for non-parties. — The Immigration Court does not provide non-parties with copies of any official record, whether in whole or in part. To obtain an official record, non-parties must file a request for information under FOIA. See Chapter 12 (Freedom of Information Act).

(v) Confidentiality. — The Immigration Courts take special precautions to ensure the confidentiality of cases involving aliens in exclusion proceedings, asylum applicants, battered alien spouses and children, classified information, and information subject to a protective order. See Chapter 4.9 (Public Access).

1.7 Inquiries

(a) Generally. — All inquiries to an Immigration Court must contain or provide the following information for each alien:

- complete name (as it appears on the charging document)
- alien registration number (“A number”)
- type of proceeding (removal, deportation, exclusion, bond, etc.)
- date of the upcoming master calendar or individual calendar hearing
- the completion date, if the court proceedings have been completed

See also Chapter 3.3(c)(vi) (Cover page and caption), Appendix F (Sample Cover Page).

(b) Press inquiries. — All inquiries from the press should be directed to the Executive Office for Immigration Review, Office of Communications and Legislative Affairs. For contact information, see Appendix B (EOIR Directory).

(c) Automated Case Information Hotline. — The Automated Case Information Hotline provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. See Appendix B (EOIR Directory), Appendix I (Telephonic Information). The Automated Case Information Hotline contains a telephone menu (in English and Spanish) covering most kinds of cases. The caller must enter the alien registration number (“A number”) of the alien involved. A numbers have nine digits (e.g., A 234 567 890). Formerly, A numbers had eight digits (e.g., A 12 345 678). In the case of an eight-digit A number, the caller should enter a “0” before the A number (e.g., A 012 345 678).

For cases before the Immigration Court, the Automated Case Information Hotline contains information regarding:

- the next hearing date, time, and location
- in asylum cases, the elapsed time and status of the asylum clock
- Immigration Judge decisions

The Automated Case Information Hotline does not contain information regarding:

- bond proceedings
- motions

Inquiries that cannot be answered by the Automated Case Information Hotline may be directed to the Immigration Court in which the proceedings are pending or to the appropriate Administrative Control Court. See Chapter 3.1(a)(i) (Administrative Control Courts). Callers must be aware that Court Administrators and other staff members are prohibited from providing any legal advice and that no information provided by Court Administrators or other staff members may be construed as legal advice.

(d) Inquiries to Immigration Court staff. — Most questions regarding Immigration Court proceedings can be answered through the automated telephone number, known as the Automated Case Information Hotline. See subsection (c), above. For other questions, telephone inquiries may be made to Immigration Court staff. Collect calls are not accepted.

If a telephone inquiry cannot be answered by Immigration Court staff, the caller may be advised to submit an inquiry in writing, with a copy served on the opposing party. See Appendix A (Immigration Court Addresses).

In addition, Court Administrators and other staff members cannot provide legal advice to parties.

(e) Inquiries to specific Immigration Judges. — Callers must bear in mind that Immigration Judges cannot engage in ex parte communications. A party cannot speak about a case with the Immigration Judge when the other party is not present, and all written communications about a case must be served on the opposing party.

(f) Faxes. — Immigration Courts generally do not accept inquiries by fax. See Chapter 3.1(a)(vii) (Faxes and e-mail).

(g) Electronic communications. —

(i) Internet. — The Executive Office for Immigration Review (EOIR) maintains a website at www.justice.gov/eoir. See Appendix A (Directory). The website contains information about the Immigration Courts, the Office of the Chief Immigration Judge, the Board of Immigration Appeals, and the other components

of EOIR. It also contains newly published regulations, the Board's precedent decisions, and a copy of this manual. See Chapters 1.4(e) (Law Library and Immigration Research Center), 1.6(b) (Library and online resources).

(ii) E-mail. — Immigration Courts generally do not accept inquiries by e-mail.

(iii) Internet Immigration Information (I³). — The Internet Immigration Information (I³, pronounced "I-cubed") is a suite of EOIR web-based products that includes eRegistry, eFiling, and eInfo. Access to these online electronic products is available on EOIR's website at <http://www.justice.gov/eoir/internet-immigration-info>.

(A) Electronic Registry (eRegistry). — Attorneys and fully accredited representatives who are accredited to appear before EOIR must electronically register with EOIR in order to practice before the Immigration Courts. eRegistry is the online process that is used to electronically register with EOIR. See Chapter 2.3(b)(i) (eRegistry).

(B) Electronic filing (eFiling). — The Immigration Court accepts electronic submission of the Notice of Entry of Appearance as an Attorney or Representative Before the Immigration Court (Form EOIR-28) except in certain situations. See Chapter 2.3(c) (Appearances).

(C) Electronic Case Information (eInfo). — The Electronic Case Information System or "eInfo" provides information about the status of cases before an Immigration Court or the Board of Immigration Appeals. The information provided by eInfo is similar to that which is available by telephone via the Automated Case Information Hotline. See Chapter 1.7(c) (Automated Case Information Hotline). eInfo is available only to registered attorneys and fully accredited representatives who electronically register with EOIR. See subsection (A), above.

(h) Emergencies and requests to advance hearing dates. — If circumstances require urgent action by an Immigration Judge, parties should follow the procedures set forth in Chapters 5.10(b) (Motion to advance) or 8 (Stays), as appropriate.

Chapter 8 Stays

8.1 In General

A stay prevents the Department of Homeland Security (DHS) from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. This chapter provides general guidance regarding the procedures to follow when filing for a stay before the immigration court or the Board of Immigration Appeals (BIA). For particular cases, parties should note that the procedures are not the same before the immigration court and the BIA and should consult the controlling law and regulations. See INA §§ 240(b)(5)(C), 240(c)(7)(C)(iv); 8 C.F.R. §§ 1003.2(f), 1003.6, 1003.23(b)(1)(v), and 1003.23(b)(4)(ii),(iii)(C).

An alien under a final order of deportation or removal may seek a stay of deportation or removal from DHS. A denial of the stay by DHS does not preclude an immigration judge or the BIA from granting a stay in connection with a previously filed motion to reopen or motion to reconsider. DHS shall take all reasonable steps to comply with a stay granted by an immigration judge or the BIA, but such a stay shall cease to have effect if granted or communicated after the alien has been placed aboard an aircraft or other conveyance for removal and the normal boarding has been completed. 8 C.F.R. §§ 241.6, 1241.6.

In the context of bond proceedings, the BIA has the authority to grant a stay of the execution of an immigration judge's decision when DHS has appealed or provided notice of intent to appeal by filing the Notice of Service Intent to Appeal Custody Redetermination (Form EOIR-43) with the Immigration Court within one business day of the Immigration Judge's bond order, and file the appeal within 10 business days. The BIA may also entertain motions to reconsider discretionary stays it has granted. See 8 C.F.R. § 1003.19(i)(1)-(2); see also Chapter 9.3(f) (Appeals).

There are important differences between the automatic stay provisions in deportation and exclusion proceedings and the automatic stay provisions in removal proceedings. Other than a motion to reopen in absentia deportation proceedings, those differences are not covered in this Practice Manual. Accordingly, parties in deportation or exclusion proceedings should carefully review the controlling law and regulations.

8.2 Automatic Stays

There are certain circumstances when an immigration judge's order of removal is automatically stayed pending further action on an appeal or motion. When a stay is automatic, the immigration courts and the BIA do not issue a written order on the stay.

(a) During the Appeal Period. — After an immigration judge issues a final decision on the merits of a case (not including bond or custody, credible fear, claimed status review, or reasonable fear determinations), the order is automatically stayed for the 30-day period for filing an appeal with the BIA. However, the order is not stayed if the losing party waived the right to appeal. 8 C.F.R. § 1003.6(a).

(b) During the Adjudication of an Appeal. — If a party appeals an immigration judge's decision on the merits of the case (not including bond and custody determinations) to the BIA during the appeal period, the order of removal is automatically stayed during the BIA's adjudication of the appeal. 8 C.F.R. § 1003.6(a). The stay remains in effect until the BIA renders a final decision in the case.

(c) During the Adjudication of Case Certified to the BIA. — A removal order is stayed while the BIA adjudicates a case that is before that appellate body by certification. 8 C.F.R. § 1003.6(a); see also Chapter 6.5 (Certification). The stay remains in effect until the BIA renders a final decision in the case or declines to accept certification of the case.

(d) Motions to Reopen. —

(i) Removal Proceedings. — An immigration judge's removal order is stayed during the period between the filing of a motion to reopen removal proceedings conducted in absentia and the immigration judge's ruling on that motion. 8 C.F.R. § 1003.23(b)(4)(ii).

An immigration judge's removal order is automatically stayed during the BIA's adjudication of an appeal of the immigration judge's ruling in certain motions to reopen filed by battered spouses, children, and parents. INA § 240(c)(7)(C)(iv).

An immigration judge's order is not automatically stayed in appeals to the BIA from an immigration judge's denial of a motion to reopen removal proceedings

conducted in absentia, and motions to reopen or reconsider a prior BIA decision are not automatically stayed.

(ii) Deportation Proceedings. — An immigration judge's deportation order is stayed during the period between the filing of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B and the immigration judge's ruling on that motion, as well as during the adjudication by the BIA of any subsequent appeal of that motion. 8 C.F.R. § 1003.23(b)(4)(iii)(C).

Automatic stays only attach to the original appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B. See 8 C.F.R. § 1003.23(b)(4)(iii)(C). Additionally, there is no automatic stay to a motion to reopen or reconsider the BIA's prior dismissal of an appeal from an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

(e) Federal Court Remands. — A federal court remand to the BIA results in an automatic stay of an order of removal if:

1. The BIA's decision before the federal court involved a direct appeal of an immigration judge's decision on the merits of the case (excluding bond and custody determinations); or
2. The BIA's decision before the federal court involved an appeal of an immigration judge's denial of a motion to reopen deportation proceedings conducted in absentia under prior INA § 242B.

8.3 Discretionary Stays

(a) Jurisdiction. — Both immigration judges and the BIA have authority to grant and reconsider stays as a matter of discretion but only for matters within the judges' or the BIA's respective jurisdiction. See Chapters 1.5 (Jurisdiction and Authority), 9.3(b) (Jurisdiction). Immigration judges consider requests for discretionary stays only when a motion to reopen or a motion to reconsider is pending before the immigration court.

In most cases, the BIA entertains stays only when there is an appeal from an immigration judge's denial of a motion to reopen removal proceedings or a motion to

reopen or reconsider a prior BIA decision pending before the BIA. The BIA may also consider a stay of an immigration judge's bond decision while a bond appeal is pending in order to prevent the alien's release from detention. See Chapter 9.3(f) (Appeals).

(b) Motion to Reopen to Apply for Asylum, Withholding of Removal under the Act, or Protection under the Convention Against Torture. — Time and numerical limitations do not apply to motions to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture if the motion is based on changed country conditions arising in the country of nationality or the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding. The filing of a motion to reopen in such circumstances does not automatically stay an alien's removal. The alien may request a stay and if granted by the immigration court shall not be removed pending disposition of the motion. If the original asylum application was denied based on a finding that it was frivolous, the alien is ineligible to file a motion to reopen or reconsider or for a stay of removal. 8 C.F.R. § 1003.23(b)(4)(i).

When filing a motion to reopen to apply for asylum, withholding of removal under the Act, or protection under the Convention Against Torture based on changed country conditions, the alien does not need to file a copy of his or her record of proceedings or A-file.

(c) Motion Required. — Parties should submit a request for a discretionary stay by filing a written motion. The motion should comply with all the requirements for filing, including formatting, inclusion of a proof of service, and submission of possible fees. See Chapter 3 (Filing with the Immigration Court), Appendix F: Sample Cover Page.

(i) Contents. — A party requesting a discretionary stay of removal before the immigration court should submit a motion stating the complete case history and all relevant facts. It should also include a copy of the order that the party wants stayed, if available. If the moving party does not have a copy of the order, that party should provide the date of the order and a detailed description of the immigration judge's ruling and reasoning, as articulated by the immigration judge. If the facts are in dispute, the moving party should provide appropriate evidence. See Chapter 5.2(e) (Evidence). A discretionary request to stay removal, deportation, or exclusion may be submitted at any time after an alien becomes

subject to a final order of removal, deportation, or exclusion if a motion to reopen or reconsider is pending before the immigration court.

A party requesting a discretionary stay of removal, deportation, or exclusion before BIA should follow the procedures described below:

(A) Who May Request. — An alien (or an alien’s representative) may request a discretionary stay of removal, deportation, or exclusion only if the alien’s case is currently before the BIA and the alien is subject to a removal, deportation, or exclusion order.

(B) Timing of Request. — A request to stay removal, deportation, or exclusion may be submitted at any time during the pendency of a case before the BIA.

(C) Form of Request. — Requests to stay removal, deportation, or exclusion must be made in writing. The BIA prefers that stay requests be submitted in the form of a “MOTION TO STAY REMOVAL.” See Appendix F: Sample Cover Page.

(D) Contents. — The motion should contain a complete recitation of the relevant facts and case history and indicate the current status of the case. The motion must also contain a specific statement of the time exigencies involved. Motions containing vague or general statements of urgency are not persuasive.

A copy of the existing immigration judge or BIA order should be included, when available. When the moving party does not have a copy of the order, the moving party should provide the date of the immigration judge’s decision and a detailed description of both the ruling and the basis of that ruling, as articulated by the immigration judge. If the facts are in dispute, the moving party should furnish evidence supporting the motion to stay.

(E) Format. — The motion should comply with the general rules for filing motions. See Chapter 5.2 (Filing a Motion). The motion must include

a Proof of Service. See Chapter 3.2 (Service on the Opposing Party), Appendix G: Sample Proof of Service.

(F) Fee. — A motion to stay removal, deportation, or exclusion does not, by itself, require a filing fee. The underlying appeal or motion, however, may still require a fee. See Chapter 3:4 (Filing Fees).

(ii) Emergency v. Non-Emergency. — The immigration courts and the BIA categorize stay requests into two categories: emergency and non-emergency. When filing a stay request with the immigration court, the parties should submit their motion with a cover page either labeled “MOTION TO STAY REMOVAL” or “EMERGENCY MOTION TO STAY REMOVAL,” as relevant.

(A) Emergency. — The immigration courts and the BIA may rule immediately on an “emergency” stay request. The immigration court and the BIA only consider a stay request to be an emergency when an alien is:

1. in DHS’s physical custody and removal, deportation, or exclusion is imminent;
2. turning himself or herself in to DHS custody in order to be removed, deported, or excluded and removal, deportation, or exclusion is expected to occur within the next 3 business days; or
3. scheduled to self-execute an order of removal, deportation, or exclusion within the next 3 business days.

The motion should contain a specific statement of the time exigencies involved.

If a party is seeking an emergency stay from the BIA, the party must contact the BIA’s Emergency Stay Unit by calling 703-306-0093. If a party is seeking an emergency stay from an immigration court, he or she must call the immigration court from which the removal order was issued. EOIR otherwise will not be able to properly process the request as an emergency stay. The BIA’s Emergency Stay Unit is closed on federal holidays. It will consider an emergency stay request only on non-holiday weekdays from

9:00 a.m. to 5:30 p.m. (Eastern Time). Immigration courts will consider stay requests during posted operating hours.

An alien may supplement a non-emergency stay request with an emergency stay request if qualifying circumstances, such as when an alien reports to DHS custody for imminent removal, arise.

Parties can obtain instructions for filing an emergency stay motion with the BIA by calling the same numbers. For a list of immigration court numbers, see Appendix A or visit EOIR's website at www.justice.gov/eoir/eoir-immigration-court-listing.

When circumstances require immediate attention from the BIA or immigration courts, EOIR may, at the adjudicator's discretion, entertain a telephonic stay request.

EOIR promptly notifies the parties of its decision.

(B) Non-Emergency. — The immigration courts and the BIA do not rule immediately on a "non-emergency" stay request. Instead, the request is considered during the normal course of adjudication. Non-emergency stay requests include those from aliens who are not facing removal within the next 3 business days, and who are either:

1. not in detention; or
2. in detention but not facing imminent removal, deportation, or exclusion.

(d) Pending Motions. — Neither the immigration judges nor the BIA automatically grant discretionary stays. The mere filing of a motion for a discretionary stay of an order does not prevent the execution of the order. Therefore, DHS may execute the underlying removal, deportation, or exclusion order unless and until the immigration judge or the BIA grants the motion for a stay.

(e) Adjudication and Notice. — When an immigration judge or the BIA grants a discretionary stay of removal, deportation, or exclusion, the immigration judge or the BIA issues a written order. When a discretionary stay is granted, the parties are promptly notified about the decision.

(f) Duration. — A discretionary stay of removal, deportation, or exclusion lasts until the immigration judge adjudicates the motion to reopen or motion to reconsider or until the BIA renders a final decision on the merits of the appeal, motion to reopen, or the motion to reconsider.

Exhibit E

Board of Immigration Appeals

Style Manual

A Guide to Drafting Board Decisions

The guidance contained in this manual is updated periodically. Readers should check the BIA Web Page for the most current version.

The guidance contained within this manual is for internal BIA use only as part of the deliberative process of drafting Board decisions. This manual is not intended, in any way, to substitute for a careful study of the pertinent laws and regulations.

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1 Case Processing

1.1 Types of Decisions

The Board is comprised of 17 Board Members, including a Chairman and up to two Vice Chairmen. 8 C.F.R. § 1003.1(a). When authorized, the Board may also have temporary Board Members, who have all the authorities of a permanent Board Member, except the ability to vote on en banc matters. 8 C.F.R. § 1003.1(a)(4). Under the direction of the Chairman, the Board uses a case management system to screen all cases and manage its caseload. 8 C.F.R. § 1003.1(e). Under this system, the Board adjudicates cases in one of three ways:

(a) *Single Board Member decisions.* – The majority of cases at the Board are adjudicated by a single Board Member. In general, a single Board Member will decide a case, unless the case falls into one of six categories listed in 8 C.F.R. § 1003.1(e)(6):

- the need to settle inconsistencies among the rulings of different immigration judges
- the need to establish a precedent construing the meaning of laws, regulations, or procedures
- the need to review a decision by an Immigration Judge or DHS that is not in conformity with the law or with applicable precedents
- the need to resolve a case or controversy of major national import
- the need to review a clearly erroneous factual determination by an Immigration Judge
- reverse the decision of an Immigration Judge, other than for an intervening law, regulation or precedent.

(b) *Panel decisions.* – Cases not suitable for adjudication by a single Board Member are adjudicated by a panel consisting of three Board Members. Panels may be comprised of three members of either a fixed panel or an ad hoc panel. See Chapter 1.3 (Case Screening Process). Cases requiring three member review are decided by majority vote and may include dissenting and/or concurring opinions. Cases are assigned to specific panels pursuant to the Chairman's administrative plan. The Chairman may change the composition of the sitting panels and may reassign Board Members at his or her discretion.

(c) **En Banc decisions.** – The Board may, by majority vote or by direction of the Chairman, assign a case or group of cases for full en banc consideration. 8 C.F.R. § 1003.1(a)(5). Temporary Board Members participate in en banc discussions, but may not vote. 8 C.F.R. § 1003.1(a)(4). By regulation, en banc proceedings are not favored.

1.2 Clerk's Office Role

(a) **Generally.** – The Office of the Clerk (Clerk's Office) is responsible for managing appellate records and information for the Board, which includes processing all filings, entering all data related to cases properly into EOIR's database, Case Access System for EOIR (CASE), and processing all correspondence pertaining to cases before the Board.

The Clerk's Office is headed by the Chief Clerk of the Board. Cases in which an alien is not detained are processed by two regional teams (East and West), depending on the location of the Immigration Court. Cases involving detained aliens are processed by the Priority Case Management team. The Motions team processes both detained and non-detained motions for the Board. The Docket team processes adjudicated cases and serves decisions on the parties. Various other teams provide management and administrative support to all operations.

(b) **Processing.** – When a properly filed appeal or motion arrives at the Board, it is date-stamped and entered as soon as practicable into CASE, and a receipt is sent to both parties. The Board will then obtain the record of proceedings (ROP) from the Immigration Court. In appropriate cases, a briefing schedule is provided to both parties. Also, in appropriate cases, a transcript is prepared, and copies are sent to the parties along with the briefing schedule. After the briefs are received or the briefing schedule expires, the case is forwarded to the Screening Panel for screening by the paralegals. See Appendix B (Board Workflow).

With respect to visa petitions, once an appeal or motion has been properly filed with DHS and the petition record is complete, DHS forwards the petition record to the Board for adjudication of the appeal or motion. Briefing schedules, if any, are issued by DHS and are completed prior to the forwarding of the record to the Board. After the Board receives the record from DHS, the Board issues a notice to the parties acknowledging it has the record and the appeal.

(c) **Paralegal referral.** – Appeals and motions that are time or number-barred are routed to the paralegal team for the preparation of a Board decision. Waived appeals and direct appeals from most *in absentia* decisions are also routed to the paralegals. If the paralegal determines that the case should be adjudicated on the merits instead of being dismissed or denied on jurisdictional grounds, the case is

returned to the Clerk's Office for continued file preparation and processing for adjudication. Motions to withdraw the appeal or motion are also routed to the paralegals for preparation of a Board decision.

1.3 Case Screening Process

(a) **Paralegal screening.** – The paralegals screen all cases received from the Clerk's Office for adjudication by the Screening and Merits Panels.

(i) **Issue identification.** – During the screening process, the paralegals identify the general issues raised in a particular case, enter the relevant information into CASE, and attach an annotated "Issues Sheet" to the front of the Record of Proceedings (ROP). See BIA Webpage (Forms Book). The paralegals then forward the cases to the Screening Panel support staff for attorney assignment.

(ii) **Adjudication readiness.** –

(A) **Not ready.** – If a determination is made that the ROP is not ready for adjudication, the ROP is sent back to the Clerk's Office for further processing as identified on the Quality Problem Correction Form. See BIA Webpage (Forms Book). The Supervisory Case Management Specialist (SCMS) for the Panel or designated supported staff will enter a notation in the Comments section in CASE that the case has been sent back to the Clerk's Office.

(B) **Ready.** – On the "Issues Sheet," the paralegals also note the alien's country of origin, identify oral argument requests that must be acted upon, and note any particular issues of which the attorney assigned to the case should be aware. They may also complete certain informational memoranda or checklists, when warranted, which are placed inside the left front cover of the ROP. The ROPs are then forwarded to the Screening Panel's support staff, who assign the cases to the attorneys and start the case completion goal clock in the CASE system. See Appendix B (Board Workflow).

(b) **Screening Panel.** – The Screening Panel is comprised of two fixed panels: Panel 3 and Panel 4. Each panel is led by a Senior Panel Attorney (SPA) and is comprised of Team Leaders (TLs), attorneys, and paralegals. Both panels are supported by a Supervisory Case Management Specialist (SCMS) and support staff.

(i) **Paralegals.** – The paralegals not only screen cases for adjudication by attorneys, but also draft decisions in cases involving straightforward

jurisdictional issues (including case appeals, motions, IJ-MTRs and visa petitions). Paralegals forward cases with more complex jurisdictional issues to the Paralegal TL for review by or assignment to a Panel 4 attorney.

(ii) **Attorneys.** – The attorneys assigned to either fixed panel of the Screening Panel screen designated cases to determine whether they should be referred to the Merits Panel. If a case is not referred, the attorney drafts a proposed decision for consideration by a panel Board Member.

(c) **Merits Panel.** – The Merits Panel is comprised of two fixed panels: Panel 1 and Panel 2. Each Panel is led by a SPA, and consists of TLs and attorneys. Both panels are supported by a SCMS and support staff.

Cases that are referred from the Screening Panel are sent to the Merits SCMS for assignment to attorneys who prepare a proposed decision for consideration by a panel Board Member.

(d) **Circulation.** –

(i) **Proposed decisions.** – Decisions drafted by attorneys and paralegals are scanned to “circulation” and placed in an area for review by the support staff before being circulated to Board Members. The support staff makes any necessary corrections to proposed decisions, enters the circulation date in CASE, scans reviewed cases to a central Board Member location, and delivers the cases to the Board Member Legal Assistants to distribute among the Board Members. See Appendix B (Board Workflow).

(ii) **Board Member review.** – Circulated proposed decisions are reviewed and adjudicated by either a single Board Member or three Board Members in accordance with the regulations. See Chapter 1.1 (Types of Decisions). At the direction of a Board Member, the Board Member Legal Assistants make any necessary changes to the proposed decision, or return the case to the attorney or paralegal to revise and recirculate the revised proposed decision for consideration. A Board Member signs the final approved decision. Signed decision cases are scanned to and processed by the Clerk’s Office Docket team. See Chapter 1.2 (Clerk’s Office role).

(iii) **Three Board Member referral.** – By regulatory default, all cases are assumed to be single Board Member decisions. Cases are converted to a three Board Member decision when either the attorney drafting the proposed decision recommends that the case be converted at time of circulation (via a three Board Member referral sheet attached to the circulation sheet), or a Board Member decides that the case should be converted. See Chapter 1.9(a) (Three Board Member referral sheet); BIA Web Page, Forms Book.

1.4 Case Completion Deadlines and Goals

Case completion deadlines and goals have been established by the Department of Justice, Director, and Chairman for certain categories of cases adjudicated by the Board. Some of those deadlines and goals are set by regulation, other by agency determination. This section discusses the major case completion deadlines and goal types. In addition to these established priorities, temporary priorities may be established from time to time in response to special directive or exigent circumstances and not captured in this listing.

(a) *Detained/RUSH cases.* – In general, cases involving detained aliens are the Board's highest priority.

(i) *GPRA cases.* – The acronym GPRA (Government Performance and Results Act of 1993 and Government Performance and Results Modernization Act of 2010) is used herein to refer to the Board's goal to complete appeals filed by detained aliens within 150-days from receipt of the Notice of Appeal. The Board's GPRA goal for processing detained alien case appeals is a performance measure reported by EOIR, through the Department, to Congress.

(ii) *Other detained case types.* – Although outside the ambit of the GPRA goal, bond appeals involving detained aliens are treated by the Board as detained case appeals and are to be completed within the 150 day goal.

(b) *Priority cases.* – (b)(5) DP



(c) *Federal court remands (FCRs).* – Detained cases returned to the Board by a federal court are treated the same as other detained cases. Non-detained cases returned to the Board are given priority over other non-detained cases.

(d) *Non-detained appeals.* – By regulation, all appeals (including visa petition appeals) have a 90-day deadline for single Board Member decisions and a 180-day deadline for three Board Member decisions. All non-detained appeals are therefore subject to these deadlines. See 8 C.F.R. § 1003.1(e)(8).

(e) *Motions.* – Motions filed by detained aliens are outside the ambit of the Board's reporting GPRA goal, but nevertheless are treated as such. Although motions

filed by non-detained aliens are outside of the regulatory 90-day/180-day adjudication clocks, these cases are to be completed within those timeframes.

(f) **CASE Information on the 90-day/180-day clock.** – More information on CASE is provided later in this Chapter, but the image below is a snapshot from CASE showing where the “Dec. Due” field (highlighted for illustrative purposes only) is located on the component bar of the Appeals Tab.

REPS	APPEAL	ACTIONS	DISPOSITION	COMMENTS	COMPETENCE
<p>Recd at EOR: 06/20/14 Logged at EOR</p> <p>Case Type: Removal Custody: Released ROP Location: BIA BOARD MEMBER/MINIA-OFFICE</p> <p>App Mot. Filed: 02/08/2016 by Allen BIA Proc. Type: Case Appeals Decision Date: n/a Ably Assigned</p> <p>Dec. Due: 01/17/2017</p>					

(g) **Extension and suspension of 90-day/180-day clock.** – The regulations provide the Chairman with the authority, in exigent or rare circumstances, to extend or suspend a regulatory adjudication clock. See 8 C.F.R. § 1003.1(e)(8)(ii) and (iii).

(i) **Extension.** – Where there are exigent circumstances, the Chairman may extend the time to complete the adjudication of a case past the 90-day or 180-day deadline, but only up to an additional 60 days. Requests for an extension must be initiated by either a Board Member or a SPA when there is a compelling need. Also, the request must explain why this specific case needs an extension and cannot be based on general workload considerations.

(ii) **Hold.** – The Chairman may authorize the temporary suspension of the 90-day or 180-day deadline for an individual case or group of cases where the Board is awaiting upcoming case law, statute, regulation, or publication of a Board decision.

(A) **Individual case.** – Requests to place an individual case on “hold” must be initiated by a Board Member, the Director of Operations, a SPA, or a Senior Legal Advisor (SLA). The request must articulate why there is no alternative basis for adjudication.

(B) **En banc case.** – Cases referred by a panel for en banc consideration are eligible for temporary suspension of the adjudication deadlines. Cases not selected for an en banc conference resume normal processing.

(C) Board-wide hold. – Where a group of cases may be substantially impacted by impending case law, statute, or regulation, the Chairman may issue a memorandum to Board legal staff announcing a Board-wide “hold.” Information regarding which categories of cases have been placed on “hold” is posted on the BIA Web Page. See BIA Web Page, Chairman’s Memos Book.

For any case that warrants a hold as described in the issuing Chairman’s Memorandum, an attorney must attach a brief statement for the TL explaining why there is no alternative basis for adjudication. The statement should be attached the Board Wide Holds Routing Sheet. See BIA Web Page, Forms Book.

(h) Work prioritization. – Attorneys and paralegals are expected to prioritize their caseload and should consult a supervisor whenever there is uncertainty about a priority, confusion over a due date, or the possible need to digress from general practice. When a case is subject to more than one priority, the earlier goal or deadline controls when the case should be completed.

Attorneys and paralegals are also responsible, when prioritizing and circulating cases, for ensuring that Board Members have sufficient time to review their research and the proposed decisions. Supervisors use the processing deadlines and priorities in making case assignments, and expect that attorneys and paralegals will identify applicable deadlines and priorities and circulate cases to the Board Members in accordance with them, so that the cases may be completed in a timely fashion. Questions that arise regarding case deadlines and priorities should be directed to a TL or SPA.

1.5 Case Identification Tags

To assist the Board in completing cases in a timely fashion, the Clerk’s Office and the support staff place tags on the categories of cases listed above. These tags help the legal staff determine the level of priority to give to a particular case.

(a) Yellow tag (*RUSH detained cases*). – A yellow tag usually indicates that the alien is being detained at government expense. The 150-day GPRA deadline is hand-written on the tag. In addition, the word “AUTOSTAY” along with the 90-day automatic stay deadline is hand-written on the tag in applicable DHS bond appeal cases.

(b) Green tag (*regulatory deadline*). – A green tag is used to identify the regulatory deadline for a case. This tag has spaces for two dates: one for the 90-day regulatory adjudication deadline (single Board Member) and another for the 180-day

deadline (three Board Member). See 8 C.F.R. § 1003.1(e)(8). The 90-day due date is identified on the tag unless and until the case is converted to a three Board Member case.

(c) Pink tag (federal court remand). – A pink tag indicates a federal court remand case, i.e., a U.S. District Court or a U.S. Court of Appeals has remanded the case to the Board for further action.

(d) Blue tag (Congressional Interest) – A blue tag indicates that a member of Congress has expressed an interest in the resolution of a particular matter. The tag is for informational purposes only and may not influence the adjudication. The tag serves only to remind staff to be extra vigilant about timely completion of that case.

(e) Dual tags. – Some cases may have more than one tag. For example, a detained, single Board Member case would have two tags: Yellow (150-day GPRA goal date) and Green (90-day regulatory deadline). In such cases, the due date would be the earlier of the due dates listed on the tags.

(f) Other tags. – Other color tags may sometimes be used to reflect that the case needs to be expedited, sent to the Certification Unit, or is subject to some other special deadline or action to be taken. Attention should therefore be paid to any and all tags appearing on an ROP.

1.6 High Profile Cases

(a) Generally. – (b)(5) DP

(b)(5) DP

(b) Effect on adjudication. – The fact that a case is or may be high profile is not relevant to how that case is adjudicated and should not influence drafting or the result in a decision. The purpose behind designating a case as high profile is to allow the Chairman to alert the Director of the issuance of decisions of potential public attention.

(c) Procedures for High Profile cases. –

(i) Identification. – When an attorney assigned to a case determines that the case is or could be high profile, the attorney should promptly notify his or her supervisor. If the supervisor agrees, the SCMS for the Panel will enter a notation in the Comments section in CASE that the case is an “HPC” and include a notation requesting that the Docket team send a copy of the signed decision to the attorney, TL, and SPA immediately after its issuance.

(ii) Proposed decision. – When the proposed Board decision is ready for circulation, the drafting attorney must include the instruction below the “Special Instructions to Docket” section of the applicable circulation sheet:

“Send a copy of the signed decision to the [attorney], [TL], and [SPA] immediately after issuance.”

(iii) Memo to the SPA. – In a short memo, the attorney should identify the reason the case is deemed or could become high profile, provide a succinct summary of the facts and proposed holding of the case. The short memo should be provided to the SPA, with a copy to the attorney’s TL (but *not* to the Board Members), when the case is ready to be circulated, under the assumption that the proposed decision will be approved and issued as drafted. Thus, the memo should refer to the Board “decision,” and not “draft” or “proposed decision.” If the decision is materially changed, the attorney should provide the SPA and TL with a revised memo when the case is recirculated.

(iv) High Profile case cover sheet. – A High Profile Case cover sheet *must* be stapled on top of the circulation sheet. See BIA Webpage, Forms Book.

(v) Bring the case to SCMS to circulate. – The attorney should not put the case directly on the circulation table but hand-deliver it to the SCMS as a safeguard against delay or misplacement.

(vi) Monitor circulation. – The attorney should monitor that case’s circulation through CASE/ROP Location as a safeguard against delay or misplacement.

(d) Board Member procedures for High Profile cases. – In most instances, the potential for a case to become a high profile will be spotted first by the drafting attorney. When a Board Member is the first to spot a possible high profile case, the Board Member should advise the Panel’s SPA.

(e) Notice to the Chairman. – When the decision for the case is signed, the SPA will deliver the ROP and decision to the Chairman or Vice Chairman. In turn, the Chairman or Vice Chairman will assess only whether the Office of the Director needs to be notified of a possible high profile case before the case is routed to the Clerk’s Office Docket team for issuance of the decision.

1.7 Vulnerable Population Cases

Cases involving vulnerable populations, such as unaccompanied children (UC) and mental competency cases are currently being handled by specific attorneys. If an attorney is assigned a case involving a vulnerable population issue, he or she should bring it to the immediate attention of his or her TL or SPA.

1.8 Issue Identification

While reviewing the record, the attorney and paralegal should make note of the issues that must be addressed by the Board to resolve the case.

(a) Jurisdictional issues. – As a general rule, the Panel 4 will already have screened out all cases involving jurisdictional issues. Check for notations on the “Issue Sheet” or memos attached inside the left front cover of the ROP to see if Panel 4 has identified any potential jurisdictional issues, or whether a determination was made with regard to a jurisdictional question.

Most commonly, jurisdictional issues arise where:

- the appeal is untimely
- the motion is untimely or number-barred (esp. where the alien claims an exception)
- the appeal has been waived (especially where the alien claims waiver was not “knowing and intelligent”)
- the appeal or motion was withdrawn
- the case is appropriate for summary dismissal under 8 C.F.R. § 1003.1(d)(2)

In addition, the "Panel 4 Case" sheet lists types of cases that are considered to involve jurisdictional issues. See BIA Webpage, Forms Book (Panel 4 Cover Sheet).

(b) Board-wide holds. – Cases may be placed on "hold" by the Chairman. 8 C.F.R. § 1003.1(e)(8). See Chapter 1.4(g) (Extension and suspension of 90-day/180-day clock). Attorneys and paralegals should stay current on which categories of cases have been placed on "hold." Whenever a new "hold" category is added or a "hold" is lifted, it is announced to the Board legal staff by e-mail, and the information is posted on the BIA Webpage. See BIA Webpage, Chairman's Memos Book.

(c) Mental competency issues. – See section 1.7 of this Chapter.

(d) High profile case. – See section 1.6 of this Chapter.

(e) Dispositive issues on appeal. – Attorneys and paralegals must carefully review the record and appellate filings to identify issues on appeal. The building blocks of review are:

- the proceeding type (removal, deportation, exclusion, etc.)
- the procedural posture of the case (appeal, motion, etc.)
- the Immigration Judge's decision (especially the issues expressly decided by the Immigration Judge)
- the Notice of Appeal (in particular, the allegations of error specified by the appealing party)
- appellate briefs (the issues specifically argued and the challenges to the Immigration Judge's decision, including due process arguments, etc.)
- a motion to remand (and the basis for the motion)

1.9 Referral Sheets

The Board utilizes a variety of internal referral sheets to advise staff of information critical to case processing.

(a) Three Board Member referral sheet. – This referral sheet must be completed whenever cases are to be converted from a single Board Member decision

to a three Board Member decision. See Chapter 1.1 (Types of Decisions); Chapter 1.3(d) (Circulation). The case must fall within one of the six categories listed below:

- settle inconsistencies among the rulings of different Immigration Judges
- establish a precedent construing the meaning of laws, regulations, or procedures
- review an Immigration Judge or DHS decision that is not in conformity with the law or applicable precedents
- resolve a case or controversy of major national importance
- review a clearly erroneous factual determination by an Immigration Judge
- reverse the decision of an Immigration Judge, other than for an intervening law, regulation, or precedent

In addition to identifying the reasons for the referral, the attorney should provide a summary of the case.

Fillable Three Board Member Referral sheets are available on the BIA Webpage, Forms Book.

(b) Panel 4 Motions referral sheet. – This form is used when a motion is referred to a Board Member or panel that adjudicated the underlying decision (usually on account of the complexity of that prior decision). An attorney must consult with their TL before referring a motion back to the original adjudicating Board Member or panel.

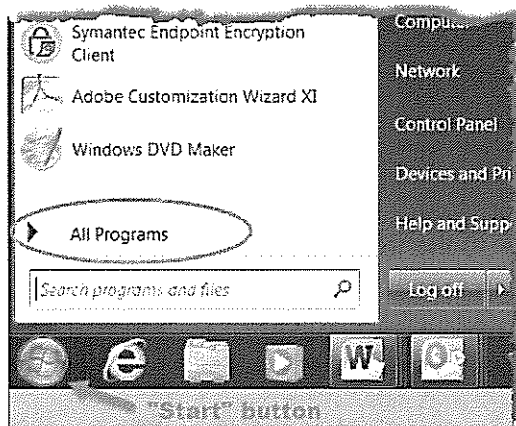
A fillable Panel 4 Motions referral sheet is available on the BIA Webpage, Forms Book.

2 Record of Proceedings

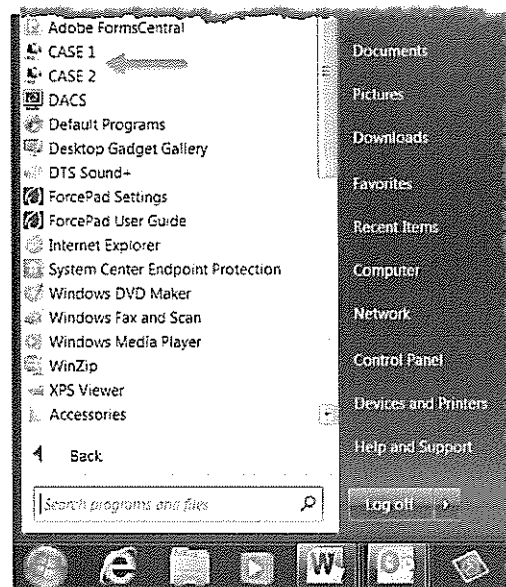
2.1 CASE

EOIR's database for case processing is the CASE system. Information about Immigration Court proceedings below is recorded in this database by court staff, and by the time legal staff receive a case, the Clerk's Office will have entered the relevant Board information into the system. All new attorneys and paralegals receive training on CASE. The following introduction is provided here as a quick reference.

(a) Access. – CASE can be accessed through the “start” button on the taskbar (lower left-hand side of the computer screen). Select “All Programs.” From the “All Programs” list, select either “CASE 1” or “CASE 2.”

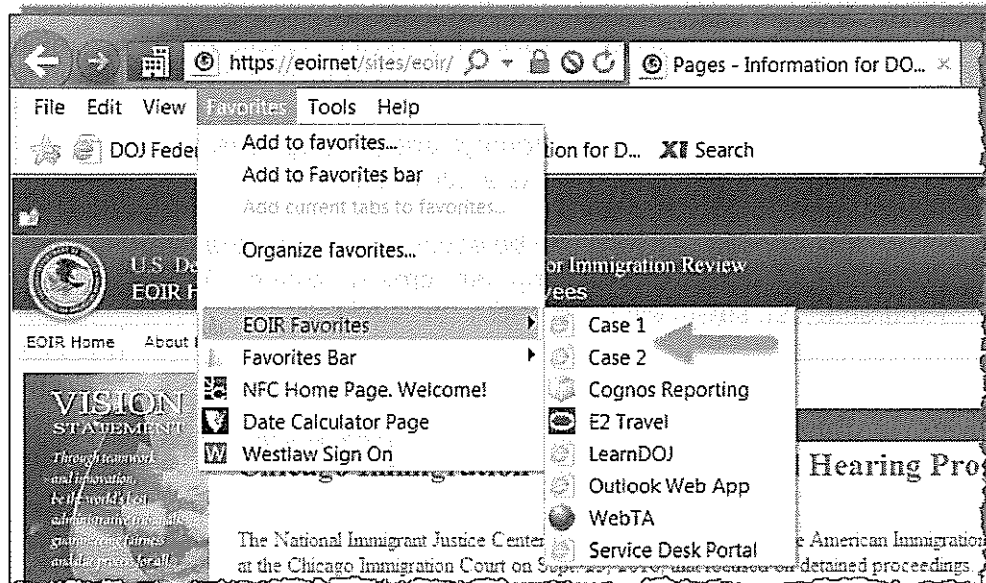


Step 1

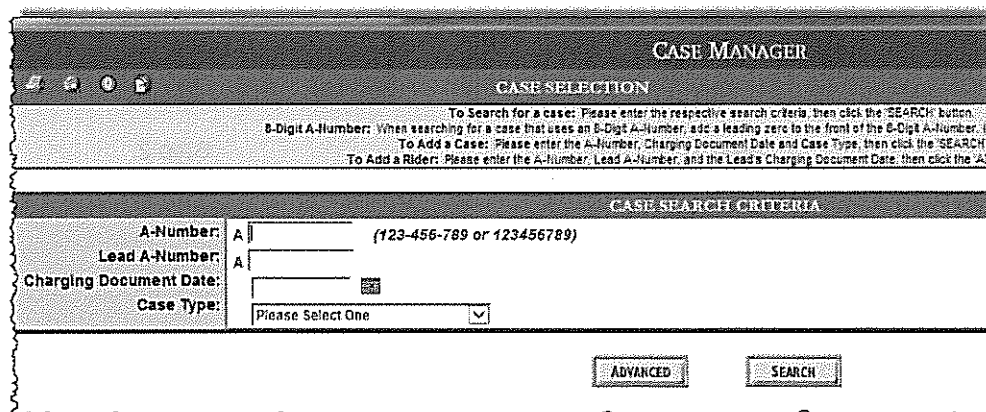


Step 2

Alternatively, CASE can be accessed through the Internet Explorer icon and taskbar. Select "Favorites," then "EOIR Favorites" from the dropdown menu. Select either "CASE 1" or "CASE 2" to open a session.

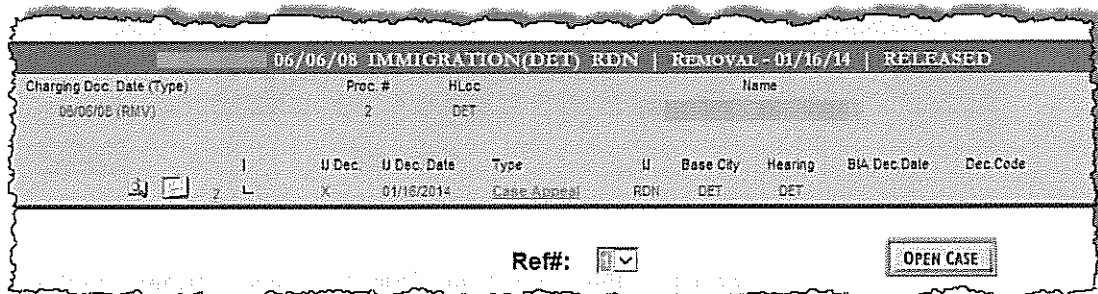


(b) Login. – Use your Windows "UserName" and password to log into CASE. Once logged into CASE, click on "Case Manager," toolbar button then type the Alien Registration Number (A#) in the space provided. CASE requires a 9-digit number. When working with an 8-digit A#, add a "0" to the front number. For example: 12-345-678 becomes 012-345-678.

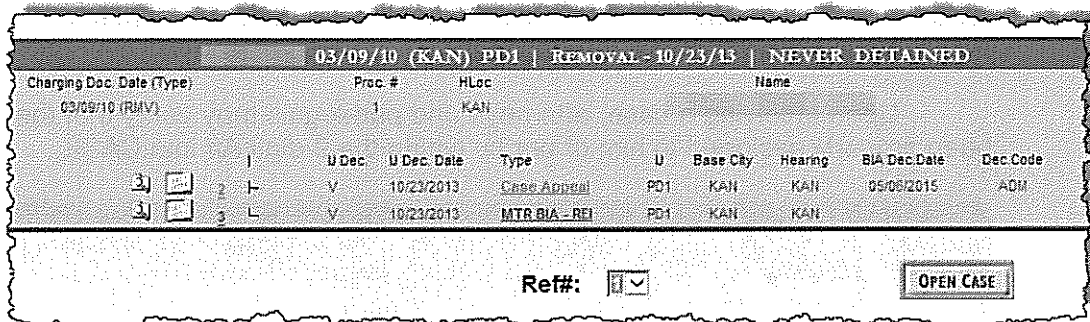


(c) **Immigration Judge decisions.** – Generally, once an A# is entered, a screen will appear showing all Immigration Judge proceedings that are pending and/or completed for that particular alien. For most cases, the only entry will be a “Case Appeal” or “IJ-MTR appeal,” but where there are multiple types of proceedings, be certain to select the proper one.

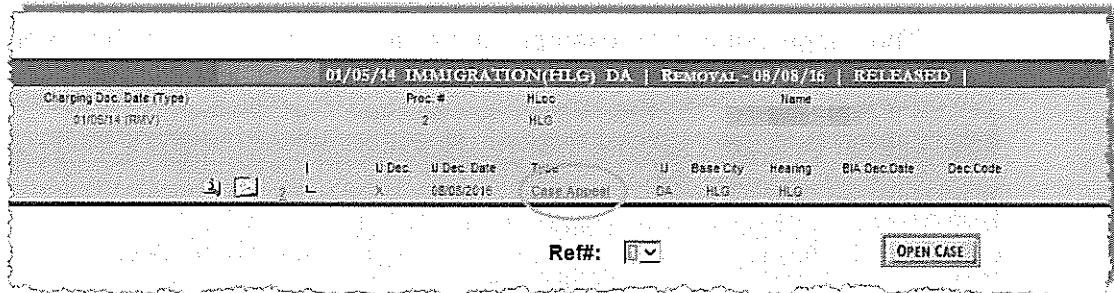
The image below is an example of a case with one entry - a Case Appeal:



The image below is an example of a case with multiple entries - a Case Appeal and an MTR BIA-REI (motion requesting the Board to reinstate proceedings or reissue a prior decision):



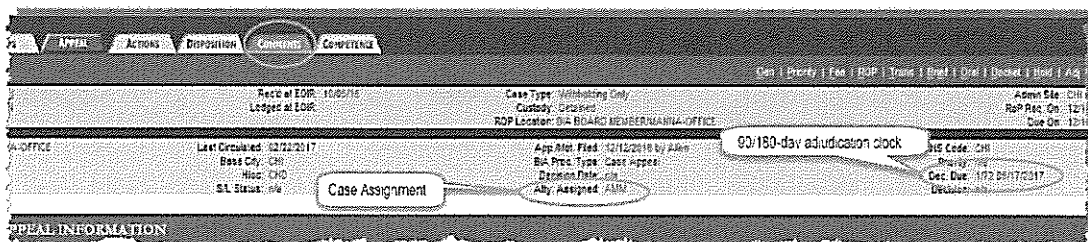
In this instance, selecting “Case Appeal,” will open the “Appeal” tab screen where attorney/paralegal case assignment can be verified, the completion date can be checked, receipts or non-receipt of documents can be confirmed, and case processing information can be obtained.



Under the Appeal tab, there is a “Dec. Due” field which shows whether the case is a single Board Member case or three Board Member case, and how many days remain to adjudicate the case before the due date.

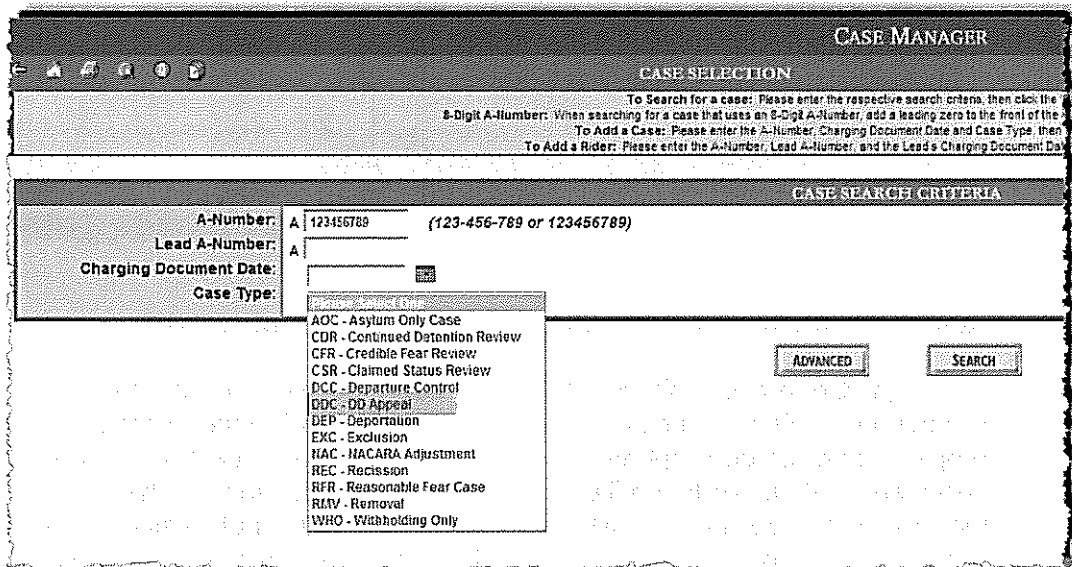
The “Comments” tab contains notations regarding filings that may have been received since the case was assigned, and need to be retrieved and added to the ROP. Attorneys and paralegals should always check this tab both upon receiving the case and before circulating. The “Comments” tab will generally appear red if there are notes, but it is wise to check it regardless.

Upon receiving a case, attorneys and paralegals may verify that the case has been properly assigned to him or her by typing the 9-digit A# into CASE.

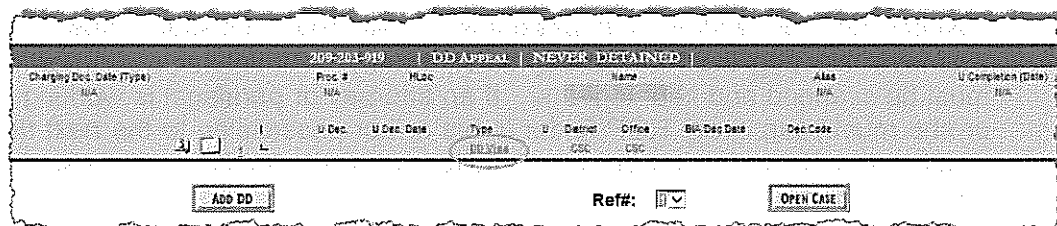


(d) DHS decisions. – The Board has appellate jurisdiction over a select number of DHS decisions, but the vast majority of DHS decisions reviewed by the Board are family-based visa petition appeals (historically referred to as District Director

or “DD” appeals). After the A# is entered, select “DDC – DD Appeal” from the Case Type drop down menu, as shown in the image below.

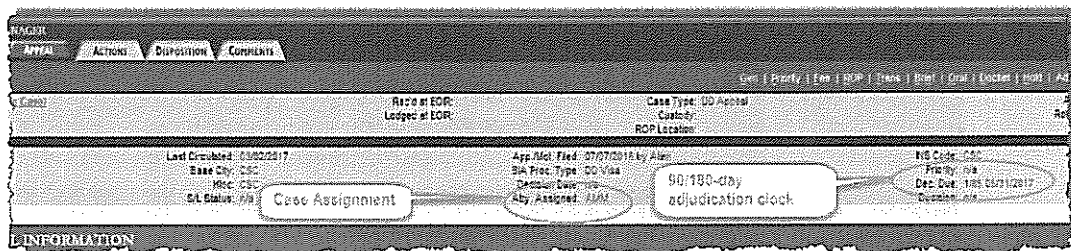


The image below is an example of a DHS decision, which is entered in CASE as a DD Visa case type, with only one entry:



Click on “DD Visa” under Type links to view the “Appeal” tab screen.

Case assignment and other information can be found under the Appeal tab, as depicted below.



2.2 Responsibility for Tracking (Scanning) and Maintaining ROPs

(a) Generally. – Once a ROP has been received by an attorney or paralegal, it is that person’s responsibility to ensure that the ROP in their possession is handled properly, and stored properly. Every ROP at the Board (with rare exception) has a bar-code label affixed to the file tab. This label provides the A#, the name of the alien, the type of proceeding, and which volume of the ROP that particular file is (e.g., the second volume of a case where a motion has been filed with the Board will reflect “MTR BIA – ROP”). Every attorney and paralegal workstation should have a bar-code scanner and each person is responsible for scanning each ROP in his or her office and/or possession.

(b) Scanning. – It is mandatory that an ROP be scanned whenever it changes physical location and/or staff assignment. An ROP therefore must be scanned whenever sending the ROP to any other location. All volumes of a particular ROP must be scanned and kept together. If an attorney or paralegal is working offsite, he or she must scan every ROP folder in his or her possession to the next destination, whether the file is moving between offsite and onsite locations or between different onsite locations.

(i) Scanning Procedures for the movement of ROPs. – ROPs should be scanned according to the following procedure. (This section covers only general guidance regarding scanning from one location to another.)

1. Log into CASE, and access the “Other Programs” module.
2. Find the row for “Barcode Search,” and click on “Click to Launch.”
3. Once “Barcode Search” loads, click the “View My Cart” button.

4. Verify that the cursor is located in the box labeled "Scan Barcode or RFID." If not, click in the box to move the cursor before beginning scanning.
5. Scan all the barcodes in the file. Verify that all barcodes appear in the cart scan window.
6. Click the "Check Out" button.
7. From the "Check Out" window, select the "Location." All attorneys and paralegals are located under their Attorney or Paralegal Team.
8. Select the "Check Out To" field. The "Check Out To" field is filtered by Location (e.g., Attorneys show up on their Team). When selecting a destination in the drop down menu, take careful note whether it is a Home or Office location.
9. After verifying that all files are there, click on the "Check Out" button to complete the move. The screen will then close, and the file location will be moved.

(ii) **Scanning tips.** – Below are some scanning tips:

- On the "Check Out" screen, unchecking "Remove from Cart" before clicking the "Check Out" button will display the details of the move. Click the "Remove" button before scanning another set of files. (Otherwise, the original set of ROPs may be assigned to the wrong location.)
- On the "Check Out" screen, the red "R" means required. Do not use the "Due Back Date" field.
- EOIR does not use the "Check In" functionality.

(c) **Locating a Scanned ROP.** – It is possible to locate a case in CASE through "Case Manager." Log into CASE, and access the "Case Manager" module.

1. From "Case Manager," search for the A#.
2. Click on the A# hyperlink.

3. Once opened, the file location is displayed in the grey areas at the top of the screen under “BIA ROP Location,” as depicted below.

The screenshot shows the BIA Case Manager interface with a menu bar (RIPS, APPEAL, ACTIONS, DISPOSITION, COMMENTS, COMPETENCE) and a case information section. The case information is displayed in a grid-like format with the following data:

Case ID	Rec'd at EOIR	Case Type
10025/2018	12/19/12	Removal
	Logged at EOIR	Custody: Releases
		ROP Location: BI-33A/MINTONA-OFFICE
YONA OFFICE	Last Circulated	App./Met. Filed
	n/a	06/27/2018 by Other
	Base City: TAG	BIA Proc. Type: Circuit Court Remand
	Hloc: AR	Decision Date: n/a
	S/L Status: n/a	Ally Assigned: AMM

(d) ROPs taken offsite. – The “Employee Agreement Governing Removal of Records of Proceeding from BIA Offices” specifies when and how ROPs may be removed from the workplace. See BIA Webpage, Executive Officer (Flexiplace ROP Removal Agreement and Flexiplace Article 32). Certain ROPs may *never* be removed from BIA workspace, including, but not limited to, a case that involves a high profile person or matter, or is associated with classified information. For example, a case that has been identified as a Secure Access Case (i.e., case involves classified documents or information) or is subject to a Protective Order issued by an Immigration Judge may not be removed from BIA workspace.

(e) ROP Routing Slip. – Whenever an ROP is to be forwarded to other Board or EOIR staff, the person who has possession of the ROP must scan the ROP to the receiving person, complete a ROP Routing Slip, and place it on the ROP. See BIA Web Page, Forms Book (ROP Routing Slip).

(f) Incoming correspondence. –

(i) Cases pending before the Board. – When correspondence or a filing is received by the Clerk’s Office relating to a case pending before the Board, the document is forwarded to the attorney or paralegal assigned to the case, with a pink Document Routing Sheet advising whether to file the correspondence in the record or to return the ROP to an individual designated on the pink sheet for further action. A notation should be made in the “Comments” section of CASE when this is done. Occasionally, the correspondence may need to be reviewed or handled by a SLA or other member of Board staff, in which case the ROP and correspondence must travel together. If the attorney or paralegal has been instructed to deliver the ROP to another individual, it should be properly scanned and forwarded to that person via hand-delivery or intra-office mail. See subsection (d) above. The ROP will

be returned to the attorney or paralegal assigned to the case as soon as the correspondence has been addressed.

(ii) Cases not pending before the Board. – There are times when correspondence or a filing is received by the Clerk’s Office that is related to a case that has been completed, i.e., Board decision issued. Depending on when correspondence/filing is received, or the nature of the document, the Clerk’s Office will take one of the following actions:

1. If the document is received before a case is completed but it not associated with the case prior to completion, the Clerk’s Office will route to the J&M Panel for non-associated review and processing.
2. If the document is received after a case is completed, the Clerk’s Office will return it to the sender with the appropriate response and annotate CASE accordingly.
3. If a motion is received after a case is completed, the Clerk’s Office motion team will process.

(iii) Cases never pending before the Board. – There are also times when the Clerk’s Office receives correspondence or a filing related to a case that has never been before the Board. Depending on the nature of the correspondence or filing and/or the status of the case, the Clerk’s Office will either forward the material to the appropriate Immigration Court or USCIS, or return it to the sender with an appropriate response.

(g) Monitoring CASE. – Because correspondence and filings do come in after a case has been assigned, attorneys and paralegals should always re-check the “Comments” tab in CASE before circulating any proposed decision. It is the responsibility of the person assigned to the case to ensure that the record is complete and that all correspondence received to date has been reviewed and addressed, for so long as the ROP remains in his or her possession.

2.3 Review of the ROP

(a) Generally. – One of the most important tasks facing Board attorneys and paralegals is to ensure that the Board has a complete and accurate record in any given case. This involves reviewing both the physical ROP and checking CASE to ensure both that the information the Clerk’s Office has entered is correct and that everything received by the Board has been connected to the record. There is an Attorney Case Processing Checklist to assist attorneys in conducting a complete and thorough review of the record. See BIA Web Page, Forms Book.

(b) What to expect in the ROP. – The ROP contains everything that has been submitted pertaining to the proceeding before the Immigration Court and the Board. The Clerk’s Office identifies essential correspondence received with marked colored tabs in the ROP. See Appendix C, Clerk’s Office Color Tab Guide. For removal proceedings, the following will generally be found in the ROP:

- Notice to Appear (Form I-862) [red tab]
- Notices of Hearing generated by the Immigration Court
- Any motions filed before the Immigration Court (e.g., for reopening, change of venue, termination, etc.)
- Evidence submitted by the DHS relating to the removability charges (e.g., Form I-213, evidence pertaining to criminal convictions, etc.)
- Any applications for relief filed by the alien and supporting documentation
- Background information regarding country conditions in asylum cases
- Transcript of the hearings below
- Written Immigration Judge decision or transcript of oral decision
- Summary of oral decision [yellow tab]
- Notice of Appeal (Form EOIR-26) [green tab]
- Appearance by attorney/representative (Form EOIR-27), if alien not acting pro se [blue tab]
- Briefing Schedule
- Briefs filed by alien/the DHS [purple tabs]
- Motion [orange tab]

For deportation and exclusion proceedings, the charging document differs, but otherwise the same documents will generally be found. Different documents will be

found in ROPs coming from the DHS, such as visa petitions, fines, or section 212(d)(3)(A)(ii) applications.

(c) *What to do if there are problems with ROP.* – If there are problems with the record, the ROP will generally need to be returned to the Clerk’s Office for further preparation of the record for adjudication. The more typical problems will be: erroneous information in CASE, improper service of documents, missing documents, missing ROP folder, and transcription problems. Bring the problem to the attention of a SCMS, TL or SPA. Most problems will be handled by a SCMS, TL or SPA, who will complete a Quality Problem Correction form to request that the Clerk’s Office address the problem with the ROP. See BIA Web Page, Forms Book (Quality Problem Correction form).

2.4 Discovery of possible classified documents/information (involving WikiLeaks)

(a) *Generally.* – On occasion, the Board may receive a case from an Immigration Court or DHS that contains a classified document or information. No employee may handle or review classified information without the requisite level of clearance. (In recent history, the Board has encountered a number of ROPs containing classified information that a party obtained through the website “WikiLeaks.”) The fact that classified information may or has been leaked to the public does *not* change the fact that the information is classified. Public disclosure does not relieve a government employee or contractor of the obligation to treat the information as classified whenever it is encountered.

For detailed information regarding the Board’s directives for the receipt and processing of case-related classified National Security Information (NSI), consult Chairman’s Memorandum BIA 17-02 – “Classified National Security Information Document Control,” available on the BIA Web Page, Chairman’s Memo Book.

(b) *How classified information reaches the ROP.* – As a practical matter, classified information comes before the Board only when a party submits it for the record. This usually happens at the Immigration Court level, where the Immigration Judge is supposed to handle the submission in accordance with classified information protocols (which are applicable to both the courts and the Board). Occasionally, the Immigration Court may not discover or recognize the classified information (which often times is a small portion of a voluminous filing) or a party may submit the classified information directly to the Board through a filing. It is incumbent on Board staff to spot and then properly handle such information.

(c) *Steps to take if classified information is found or suspected.* – If a Board employee or contractor discovers, or even suspects, that he or she has

encountered classified information, the following steps should be taken immediately to ensure that information is handled properly.

1. Secure the information *immediately*. Do *not* examine it. Do *not* attempt to verify that the information is classified or assess its level of classification.
2. Then notify a supervisor immediately, who will in turn notify the Board's Classified Case Coordinator and/or designated SLA. If your supervisor or another supervisor is not available, contact the Classified Case Coordinator and/or designated SLA directly. The EOIR Office of Security should be contacted only if neither the Classified Case Coordinator and/or designated SLA are available.
3. Keep a written record of how the document was handled prior and up to the point that the classified information was discovered or suspected. Record each step taken (how the discovery was made, what was seen and not seen, what actions were taken to secure the record, who was consulted for guidance and next steps, etc.). Be sure to record the date and time of each step. All of this information is vital to assessing the damage of disclosed information and to protecting Board staff from blame for mishandling classified information.

Be mindful that EOIR-issued laptops, computers, and fax machines are not certified to process classified information and may not be used to process classified information.

(d) Steps to take if working offsite. – The process and the steps to be taken, are the same.

(e) Classification markings (indicator of classified information). – In general, classified information is marked or labeled by the classifying agency. Entire documents or just portions may be classified; and a given document may have different levels of classification in different parts of the document, with each part annotated for its particular level. If any portion of a document has markings at the Top Secret, Secret, or Confidential level, then the entire document is treated as classified. The following classification levels and/or symbols for information that is classified may be seen in the document:

- Top Secret "(TS)"
- Secret "(S)"
- Confidential "(C)"

In addition, a document may have non-classified marking and/or symbols that reflect that information is not classified. The following non-classified markings and/or symbols may be seen in the document:

- Unclassified “(U)”
- Sensitive but Unclassified “(SBU)”
- Controlled Unclassified Information “(CUI)”
- For Official Use Only “(FOUO)”
- Limited Official Use “(LOU)”

The fact that a document containing classified information also contains unclassified information does not change the overall classification of the document. The entire document is still considered classified at the highest level of the classified information within it, until declassified by an appropriate U.S. Government authority.

With immigration proceedings, State Department cables seem to be the most common form of leaked information that makes its way into the record, usually as supporting evidence of country condition evidence or documentation of an alien’s collaboration with law enforcement. Be especially vigilant about classified information whenever a State Department cable appears in the record (and watch for *any* indication it was obtained through WikiLeaks).

(f) Cases subject to a Protective Order. –

(i) Generally. – An Immigration Judge has the authority to issue protective orders and to seal related records in immigration or bond proceedings to ensure that sensitive but unclassified information is protected from general disclosure. See 8 C.F.R. § 1003.46. *Only* the DHS may file a motion to protect specific information that it intends to submit or is submitting under seal and may do so at any time. The Immigration Judge may issue a protective order barring disclosure of such information upon a showing by the DHS of a substantial likelihood that the information, if disclosed, would harm national security or law enforcement interests of the United States.

Unlike classified information, the information subject to the protective order may be reviewed by the alien and his or her representative. Also, although information subject to a protective order does not require Board employees to have a special clearance for handling or reviewing the sensitive information subject to the protective order, all Board employees must make

every effort to prevent inadvertent disclosure to anyone in the public. For detailed information regarding the Board's directives for the receipt and processing of cases involving protective orders, consult Chairman's Memorandum BIA 10-05 - Processing Cases Subject to a Protective Order. See BIA Webpage, Chairman's Memo Book.

2.5 Tabbing the ROP

Tabbing is an art, and staff should aim for a balance between too little and too much. Tabbing the relevant portions of the ROP is very helpful for the Board Members, but an overabundance of tabs defeats the purpose. Tabs are most useful when they identify:

- critical testimony of the respondent or key witnesses
- where cross examination begins
- dispositive exhibits such as criminal records of conviction and related documents
- documents relied upon by the Immigration Judge for credibility findings or burden of proof.