



Challenges and Best Practices in Docketing and Case Managements

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2018 Executive Office for Immigration Review
Legal Training Program

6/4/2018



Learning Objectives

- Be familiar with the uniform docketing system for detained cases;
- Be familiar with recent memoranda and guidance on case priorities, performance measures, continuances, and change of venue in the detained setting;
- Be able to deliver a group rights presentation;
- Be prepared to resolve, mitigate, and manage common challenges and issues that arise in the detained setting; and
- Be prepared to implement best practices in the detained setting.

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Case Priorities

Detained cases are priority cases!!

- All cases involving individuals in detention or custody, regardless of the custodian, are priorities for completion.
- Including all aliens in the custody of DHS and aliens in the care and custody of the Department of Health and Human Services (such as unaccompanied children who do not have a sponsor identified)

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Other Case Priorities

- Expedited cases
- Cases subject to a federal court-ordered deadline
 - See Director's Memo (Jan. 17, 2018)

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Immigration Court Performance Measures

The purpose of the performance measures is “to help determine which courts are operating in a healthy and efficient manner, and which courts may be in need of more specialized attention in the form of additional resources, training, court management, creative thinking and planning, and/or other action as appropriate.” Director’s Memo (Jan. 17, 2018) at 5.

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Immigration Court Performance Measures

Detained Court Completion Goals

- **85%** of all non-status detained removal cases should be completed within 60 days of filing of the Notice to Appear (NTA), reopening or recalendar of the case, remands from the Board of Immigration Appeals (BIA), or notification of detention.
- **85%** of all motions should be adjudicated within 40 days of filing.

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Immigration Court Performance Measures

Detained Court Completion Goals cont.

- **90%** of all custody redeterminations should be completed within 14 days of the request for redetermination.
- **95%** of all hearings should be completed on the initial scheduled individual merits hearing date.

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Immigration Court Performance Measures

Detained Court Completion Goals cont.

- **100%** of all credible fear reviews should be completed within seven (7) days of the initial determination by an asylum officer that an alien does not have a credible fear of persecution.
- **100%** of all reasonable fear reviews should be completed within 10 days of the filing of the negative reasonable fear determination as reflected in Form I-863.

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Immigration Court Performance Measures

Detained Court Completion Goals cont.

- **100%** of all expedited asylum cases should be completed within the statutory deadline and consistent with established EOIR policy.
- **85%** of all Institutional Hearing Program (IHP) removal cases should be completed prior to the alien's release from detention by the IHP custodian.

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Immigration Court Performance Measures

What else is EOIR tracking?

- Clearance rate (the ratio of new cases filed to cases completed)
- Age of pending cases

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Immigration Court Performance Measures

Challenges:

- Tension between meeting these completion goals and affording the respondent sufficient due process to avoid remands.
 - Ex. When the respondent has demonstrated good cause for a continuance to find an attorney, it is difficult for the IJ to meet its completion goal in that case.

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Immigration Judges Performance Measures

Complete 700 cases per year
and
Less than 15% remand rate (including
BIA and Circuit Courts)

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Immigration Judges Performance Measures

Meet half of the following benchmarks during the rating period:

- In 85% of non-status detained removal cases, no more than 3 days elapse from merits hearing to immigration judge case completion.
- In 85% of motions matters, no more than 20 days elapse from immigration judge receipt of the motion to adjudication of the motion.

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Immigration Judges Performance Measures

Meet half of the following benchmarks during the rating period:

- In 90% of custody redetermination cases, case is completed on the initial scheduled custody redetermination hearing date.
- In 95% of all cases, individual merits hearing is completed on the initial scheduled hearing date.
- In 100% of credible fear and reasonable fear reviews, case is completed on the initial hearing date.

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Bond Hearings

Rules:

- Jurisdiction for bond hearing begins with custody; a charging document is not needed for the alien to request, or the IJ staff to schedule, a bond hearing
- Bond hearing request may be written or oral

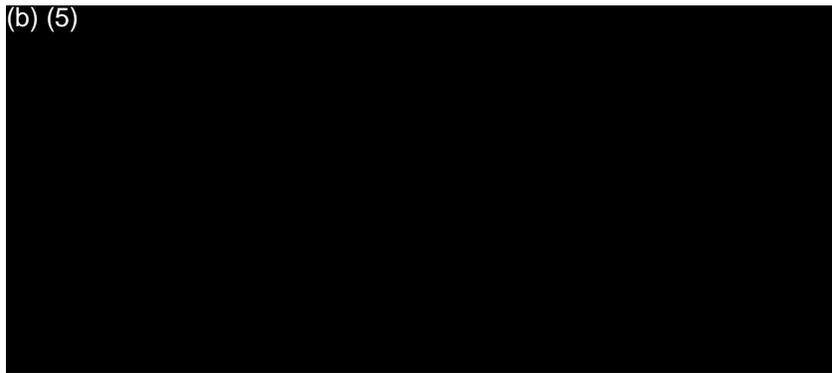
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Bond Hearings

Best Practices:

(b) (5)

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16



Credible Fear Reviews

Rules:

- The Court must conduct a credible fear review as close to **24 hours, but no later than 7 days**, after the date of the supervisory asylum officer's decision.
 - INA § 235(b)(1)(B)(iii)(III)
- The respondent has the right to consult with a person or persons of the alien's choosing prior to the review.
 - 8 C.F.R. 1003.42(c).

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Credible Fear Reviews

Challenge:

- Respondents often request a continuance prior to the credible fear review hearing in order to look for an attorney, consult with current counsel, or to ensure the attorney's presence at the credible fear review hearing.
- If the Court grants the continuance, it likely cannot conduct the review within the statutory deadline of 7 days.

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Credible Fear Reviews

Best Practice:

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Credible Fear Reviews

Challenge:

- Sometimes a respondent's attorney will try to expand the scope of the credible fear review or convert it into a full-blown asylum hearing.

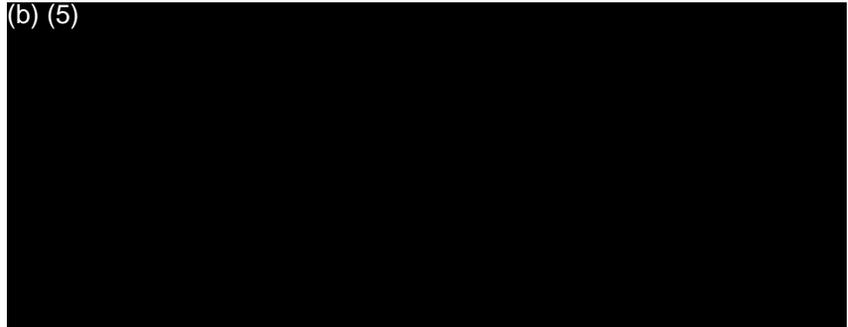
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Credible Fear Reviews

Best Practice:

(b) (5)

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Reasonable Fear Reviews

Rules:

- The Court must conduct a reasonable fear review **no later than 10 days** after the filing of the I-863 with the immigration court.
- At the reasonable fear interview, the alien can be represented by counsel, present evidence, and the alien's attorney can make a closing statement.
- Unlike credible fear reviews, the regulations provide no special procedural rules for reasonable fear reviews.

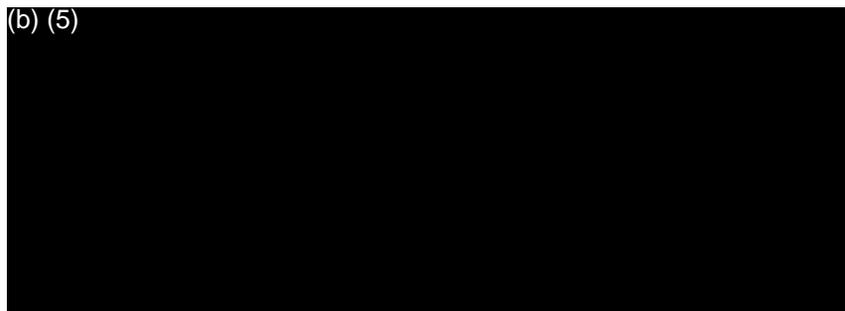
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Reasonable Fear Reviews

Best Practice:

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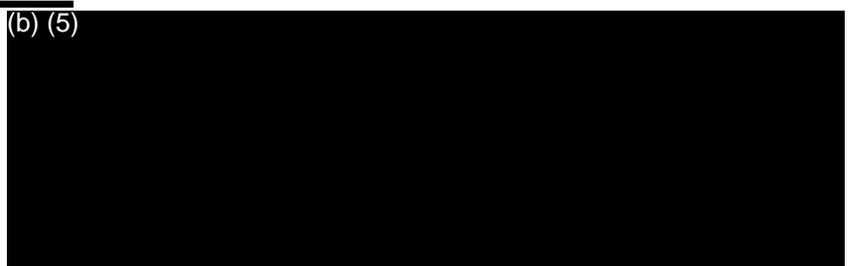
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IHP Cases

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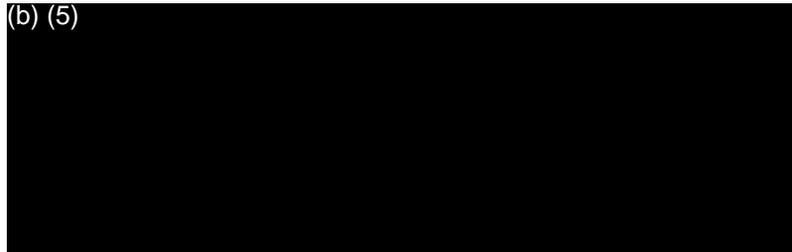
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Motions to Reopen/Reconsider

Best Practices:

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Remanded Cases

Challenge:

- Remands are now subject to completion goals

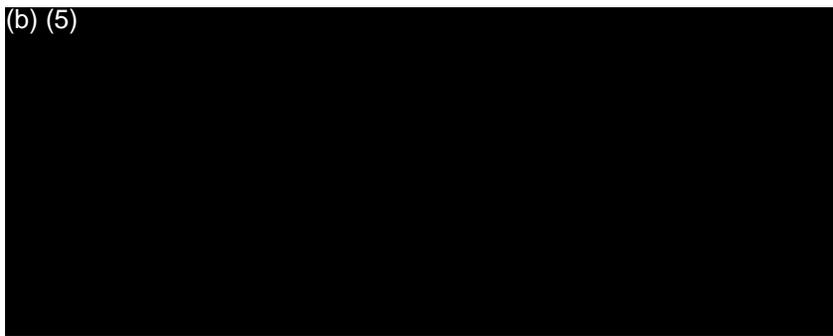
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Remanded Cases

Best Practices:

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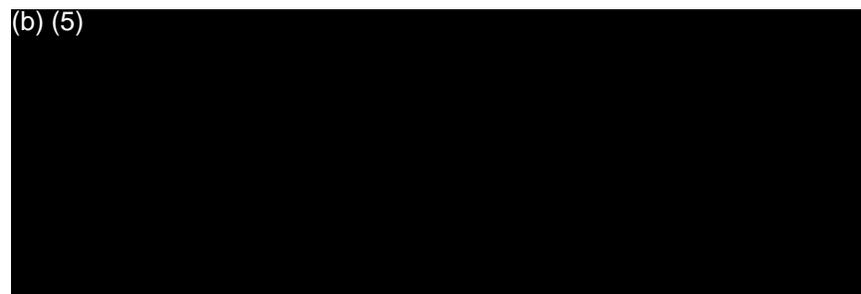
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Remanded Cases

Best Practices:

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Continuances

Rules:

- IJs must announce on the record or explain in writing their reasons to grant or deny a motion to continue.
- An IJ may grant a motion for continuance for good cause shown. 8 C.F.R. § 1003.29.

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Continuances

The Court should assess the following non-exhaustive list of factors to determine if good cause exists:

- Reason for the continuance
- Any opposition to the continuance
- Timing of the request; dilatory continuances are strongly disfavored
- The respondent's detention status
- Complexity of the case
- Number and length of an prior continuances
- Concerns for administrative efficiency and case delays

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Recurring Requests for Continuances

Requests to obtain additional evidence

- The respondent is not entitled to an automatic continuance to obtain corroborating evidence to establish his asylum claim. *Matter of L-A-C-*, 26 I&N Dec. 516 (BIA 2015).

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Recurring Requests for Continuances

Requests to obtain additional evidence

- An alien's request for a continuance to obtain additional evidence due to lack of preparation should be supported by a reasonable showing that the lack of preparation occurred despite a diligent good faith effort to be ready to proceed and that any additional evidence which the alien seeks to present is probative, noncumulative, and significantly favorable to him. *Matter of Sibrun*, 18 I&N Dec. 354, 356-57 (BIA 1983)

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Recurring Requests for Continuances

Awaiting adjudication by USCIS

The Court should evaluate the following factors to determine whether good cause exists to continue proceedings to await adjudication by the USCIS of an I-130 petition:

- (1) the DHS's response to the motion to continue;
- (2) whether the underlying visa petition is prima facie approvable;
- (3) the respondent's statutory eligibility for adjustment of status;
- (4) whether the respondent's application for adjustment merits a favorable exercise of discretion; and
- (5) the reason for the continuance and any other relevant procedural factors.

– *Hashmi*, 24 I&N Dec. at 790.

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Recurring Requests for Continuances

Awaiting adjudication by USCIS

The Court should evaluate the following factors to determine whether good cause exists to continue proceedings to await adjudication by the USCIS of an U-Visa application:

- (1) the DHS's position with respect to the request,
- (2) whether the underlying visa petition is prima facie approvable, and
- (3) the reason for the continuance request, along with any other relevant procedural factors.

• *Matter of Sanchez Sosa*, 25 I&N Dec. 807, 813-14. (BIA 2012).

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Recurring Requests for Continuances

Collateral attacks

- An alien may not collaterally attack the legitimacy of an otherwise valid state or federal criminal conviction in immigration proceedings.
 - See generally *Matter of Ponce De Leon-Ruiz*, 21 I&N Dec. 154 (BIA 1996, 1997; AG. 1997).
- While the respondent is free to pursue his collateral attack in the proper court, the mere fact that he is doing so does not justify a continuance in his or her immigration proceedings.
 - See generally *Matter of Madrigal-Calvo*, 21 I&N Dec. 323, 327 (BIA 1996).

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Recurring Requests for Continuances

Collateral attacks

- Filing for post-conviction relief in in a state court does not render the conviction as non-final for immigration purposes.
 - See *Matter of Cardenas Abreu*, 24 I&N Dec. 795, 802 n. 8 (BIA 2009); see also *Madrigal-Calvo*, 21 I&N Dec. at 327 (Collateral attacks upon an applicant's conviction “do not operate to negate the finality of [the] conviction unless and until the conviction is overturned.”)
- The Court “cannot go behind the judicial record to determine the guilt or innocence of the alien.”
 - *Madrigal-Calvo*, 21 I&N Dec. at 327.

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Recurring Requests for Continuances

Continuances to obtain counsel

- The Court should grant at least one continuance for the respondent to find counsel.
 - See OPPM 17-01 at 4.
- For each additional request, the IJ should inquire as to the respondent's diligence in securing representation and other relevant information to determine whether good cause exists.

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Recurring Requests for Continuances

Continuances for Attorney Preparation

- The Court should grant at least one continuance for recently retained counsel to familiarize him or herself with the case.
- All subsequent requests should be reviewed carefully and consider:
 - Length of time between master and individual hearings
 - Overall complexity of the case
 - Number and length of prior continuances
- Continuances due to a practitioner's workload are disfavored.

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Recurring Requests for Continuances

Continuances of Merits Hearings

- The IJ should closely review all requests to continue an already scheduled individual merits hearing, especially if made close in time to the actual hearing.
- The IJ should generally not continue individual merits hearings absent a genuine showing of good cause or a clear case law basis.
 - If granted, IJ should make best efforts to fill that hearing slot with another individual merits hearing after providing sufficient notice.

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Recurring Requests for Continuances

Continuances Requested by DHS

- If DHS requests a continuance to complete background checks or obtain the ROP, the IJ should inquire on the record about the ongoing process to complete these tasks.
 - OPPM 17-01 at 5-6.

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Motions to Change Venue

Rules:

- Motion to change venue can be made orally or in writing.
 - Oral motions must be recorded (DAR), and the IJ must issue a written order using either the long or standardized form.
- Once a party files a motion to change venue, the other party must be given notice and an opportunity to respond, and the IJ must rule on the motion in a written order.

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Motions to Change Venue

Rules:

- Standard for granting a motion for COV is “good cause” 8 C.F.R. § 1003.20(b).
 - Motions for COV for dilatory purposes are disfavored
 - Motions for COV after an individual merits hearing has been scheduled or commenced are strongly disfavored.

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Motions to Change Venue

Rules:

- Venue in Detained Cases
 - The Court does not automatically change venue when DHS relocates detained aliens.
 - The DHS filing a Form I-830, by itself, does not constitute a motion for COV.

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Motions to Change Venue

Venue in Detained Cases cont.

- If DHS fails to produce a detainee because that alien has been moved to another location, the Immigration Court retains venue and administrative control over the case.
- If DHS produces the alien at another location, absent a valid order changing venue or a new charging document, venue and administrative control does not reside at that location, except for bond redetermination requests.
 - See *Matter of Reyes*, 26 I&N Dec. 528, 530–31 (BIA 2015)

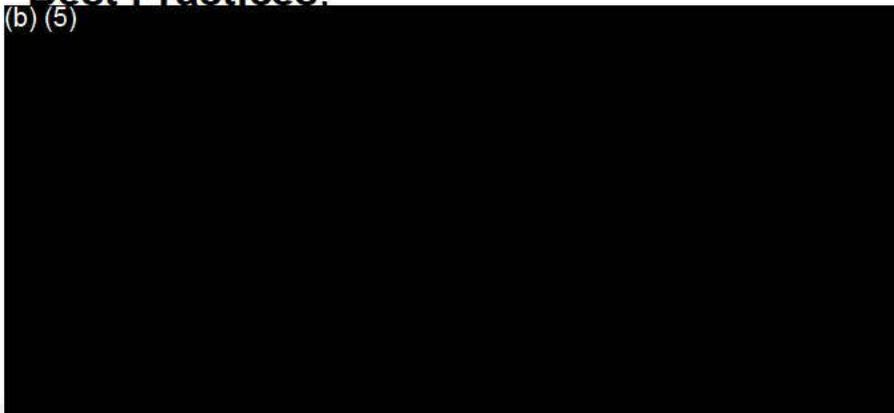
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Motions to Change Venue

Best Practices:

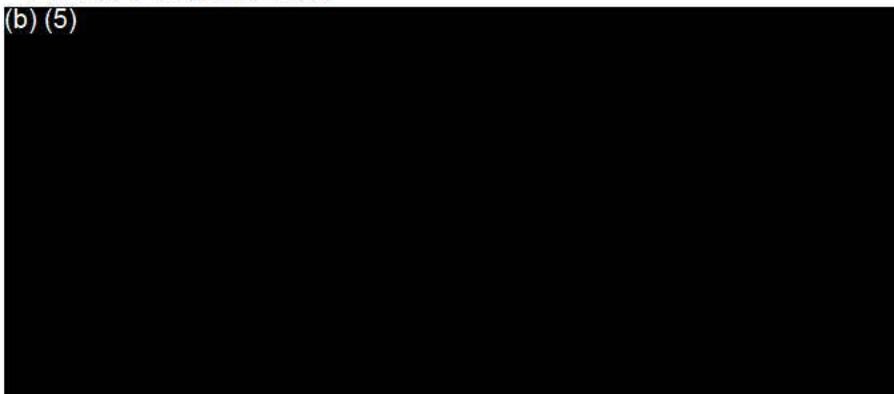
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Motions to Change Venue

Best Practices:

(b) (5)

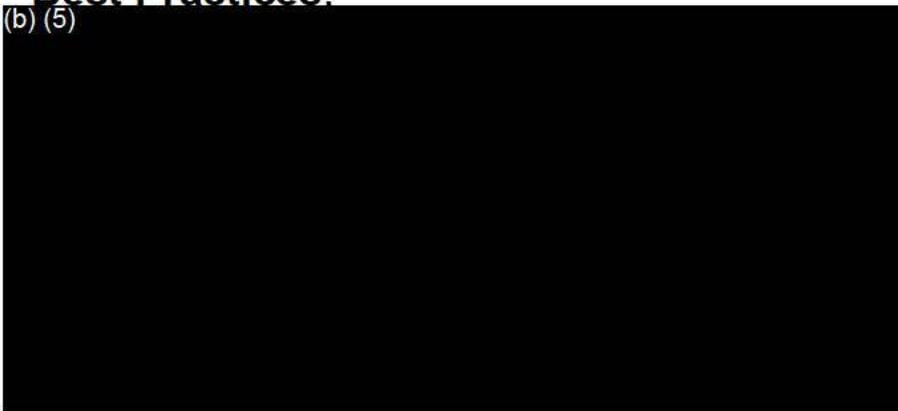




Motions to Change Venue

Best Practices:

(b) (5)



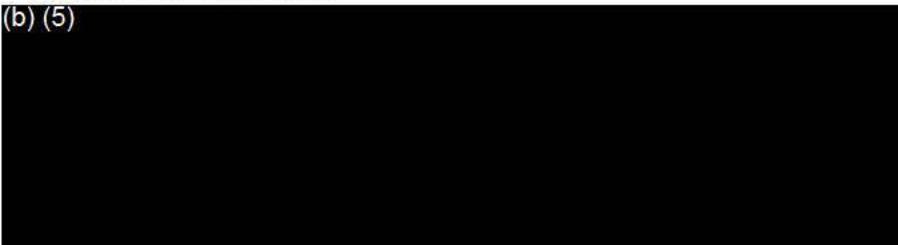
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Motions to Change Venue

Best Practices:

(b) (5)



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Adjournment Codes

Best Practices:

- The IJ is responsible for making the reason(s) for the adjournment or call-up date clear on the record.
 - See OPPM 17-02

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Adjournment Codes

Best Practices:

(b) (5)

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Example of Not Using a Worksheet

Case Type is Removal

(b) (6)

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Sample Worksheet

IMMIGRATION JUDGE WORKSHEET
TACOMA IMMIGRATION COURT

Immigration Judge Port of Embark

Name: _____ Attorney: <input type="checkbox"/> EOIR 28 to ROP	DOB: _____	Language: _____ Nationality: _____																																								
Rights & Other Matters: <input type="checkbox"/> Date: _____ <input type="checkbox"/> Date of Complete Status: _____ Pro Se: _____ <input type="checkbox"/> Registered with USCIS <input type="checkbox"/> Exceeded legal stay for & appeal rights § CFR (1240.100)(2) (3) <input type="checkbox"/> Right to attorney at own expense § CFR (1240.100)(2) <input type="checkbox"/> Entry to MC at: _____ <input type="checkbox"/> Waiver of Consent? _____ <input type="checkbox"/> Evidence examine & object, present ones, & cross-examine § 50.100(a)(4) <input type="checkbox"/> Flight history of removal & Actions, WA, CAT (1 year bar) <input type="checkbox"/> Appeal to higher court <input type="checkbox"/> Conditional Rights? _____ <input type="checkbox"/> NTA Exhibit I § CFR (1240.100)(7)	Findings: Reg: _____ <input type="checkbox"/> Acknowledge App? _____ <input type="checkbox"/> NTA Canada Service _____ <input type="checkbox"/> Where landing of NTA & registration of flight? _____ (Date) <input type="checkbox"/> NTA Exhibit I § CFR (1240.100)(7) <input type="checkbox"/> Read & explain factual allegations & charges in NTA § CFR (1240.100)(6) § 121(a): Y W X I § 121(b): Y X X I <input type="checkbox"/> Factual Allegations: <input type="checkbox"/> Adm <input type="checkbox"/> Desin <input type="checkbox"/> Inadmissibility <input type="checkbox"/> Criminal <input type="checkbox"/> Deport <input type="checkbox"/> Fraud <input type="checkbox"/> Sustained <input type="checkbox"/> Country dependent <input type="checkbox"/> None <input type="checkbox"/> DHS <input type="checkbox"/> Fee Status: <input type="checkbox"/> Fee Waived <input type="checkbox"/> Yes/No																																									
Relief Questions: <input type="checkbox"/> Form of First Entry? _____ <input type="checkbox"/> Present or past/present USC? _____ <input type="checkbox"/> PTP? _____ <input type="checkbox"/> Visa Petition? _____ <input type="checkbox"/> Status: <input type="checkbox"/> IIR § 1502 <input type="checkbox"/> Adm in U.S. § 1135? _____ <input type="checkbox"/> Present: <input type="checkbox"/> IIR § 1502 <input type="checkbox"/> Adm in U.S. § 1135? _____ <input type="checkbox"/> Child: <input type="checkbox"/> IIR § 1502 <input type="checkbox"/> Adm in U.S. § 1135? _____ <input type="checkbox"/> Common Status? _____ <input type="checkbox"/> Immigration Status? _____ <input type="checkbox"/> Summary Stat? _____ <input type="checkbox"/> Act of Violent Crime _____ <input type="checkbox"/> Medical Condition _____ Adjudicate Date: _____ <input type="checkbox"/> Division Waiver? _____ Domestic: _____ NTA: _____ Address: _____ City: _____ County: _____ Application Form & Fee: _____	Relief Applications: <input type="checkbox"/> VOWB (120) <input type="checkbox"/> VOWB (80) <input type="checkbox"/> 2A8(A) E-4(A) <input type="checkbox"/> 2A8(A)(2) <input type="checkbox"/> 2A8(A)(3) E-4(B) <input type="checkbox"/> Anytime Withholding (1) year <input type="checkbox"/> Real ID <input type="checkbox"/> CAT <input type="checkbox"/> 241-481 (2) 2500-1-195 (2) 2500-1-190 (2) 2500-1-200(1) <input type="checkbox"/> Suspension E-4 <input type="checkbox"/> 2A8(A)(A) <input type="checkbox"/> TPS <input type="checkbox"/> ABR <input type="checkbox"/> Refugee 1-810 Other: _____ <input type="checkbox"/> Application Fee <input type="checkbox"/> Paid <input type="checkbox"/> Fee Waived																																									
Exhibits: _____ NTA: _____																																										
<table border="1" style="width: 100%; border-collapse: collapse; font-size: x-small;"> <thead> <tr> <th>M&B</th> <th>Date</th> <th>DHS/Attorney</th> <th>Interpreter/Other</th> <th>Adjustment to</th> <th>Reason</th> <th>Code</th> <th>Call Up</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table>			M&B	Date	DHS/Attorney	Interpreter/Other	Adjustment to	Reason	Code	Call Up																																
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IMMIGRATION JUDGE WORKSHEET
PLEASE KEEP THIS WORKSHEET ON TOP LEFT SIDE OF ROP I-36-B TLF

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Common Scheduling Issues

Expedited Hearings

- **Challenge:**
 - Complying with the statutory and regulatory deadlines
- **Best Practices:**
 - Put expedited hearings cases in regular master calendar hearings. Court cannot wait for full hearing of expedited cases only.
 - Assign one member of court staff to track and schedule expedited hearings as they are received by the court.

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Common Scheduling Issues

Hybrid dockets

- **Challenges:** Managing a dual calendar to ensure hearing openings for detained cases that cannot be set out as far as non-detained cases
- **Best Practices:** Work with your Court Administrator to set aside specific dates each month for detained cases

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Common Scheduling Issues

Pro se litigants

- **Challenges:**

- Request for continuances to find counsel and evidence
- Not prepared to testify
- Need for additional hearing time

- **Best Practices:**

- Work with the respondents to narrow the issue.
 - Ex. If the respondent requests a continuance to get evidence, inquire as to the nature of the evidence, purpose of the evidence, when does the respondent expects to receive the evidence, etc.

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Common Scheduling Issues

Practitioner-related issues

- Judge shopping/TA shopping
- Not following practice manual
 - No E-28
 - No proposed orders
- Continuances for attorney preparation and collateral attacks on convictions
- Change of Venue

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Group Rights Hearings

Rule: The IJ has the obligation to advise all respondents in an initial master calendar hearing of their rights. 8 C.F.R. § 1240.10

- Right to representation
- Availability of pro bono legal services and ascertain that the respondent has in fact received
- Ascertain that the respondent has received a copy of appeal rights
- Right to examine and object to the evidence against him or her, to present evidence in his or her own behalf and to cross-examine witnesses presented by the government.

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Group Rights Hearings

Challenges:

- Avoiding due process violation claims
 - After a respondent is called individually, the IJ should immediately ask the respondent whether he or she understood the rights explained to him or her.
 - See Sample IJ Script

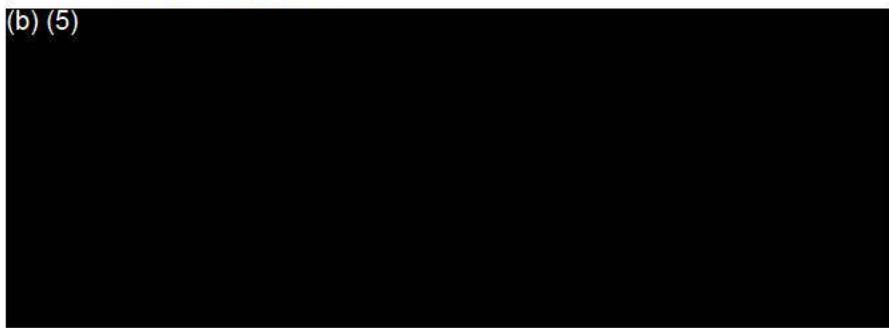
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Group Rights Hearings

Best Practices:

(b) (5)



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Remember this??

Case Type is Removal

(b) (6)



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Sample Worksheet

Rights & Other Matters:

Oath: Swear/Affirm § CFR, §1240.10(a)(5) _____ (date)

True & Complete Name

Pro Se

Purpose: Removed from U.S.

NTA Received?

Received legal notice and appeal rights § CFR, §1240.10(a)(2), (3)

Right to attorney at own expense § CFR, §1240.10(a)(1)

Reat to MC or _____ (date)

Waiver of Counsel? _____ (date)

Evidence: examine & object, present own, & cross-examine §1240.10(a)(1)(4)

Designate country of removal & Asylum, WHL, CAT (1 year bar)

Appeal to higher court

Understand Rights?

NTA Exhibit 1 § CFR, §1240.10(a)(7)

Pleadings:

Rep.

Acknowledge Atty? _____

NTA Concede Service

Waive Reading of NTA & explanation of Rights? _____ (date)

NTA Exhibit 1 § CFR, §1240.10(a)(7)

Read & explain factual allegations & charges in NTA § CFR, §1240.10(a)(6)

§212(a) (X X X) §237) (X X X)
 §212(a) (X X X) §237) (X X X)

Factual Allegations: Admit Denies

Renewability: Concedes Denies Found Sustained

Country designated Alien DHS

Fee Return No-Date Waived Yes/Basis:



(Red circles and arrows highlight specific sections of the form)



Group Rights Hearings

Best Practices: (b) (5)

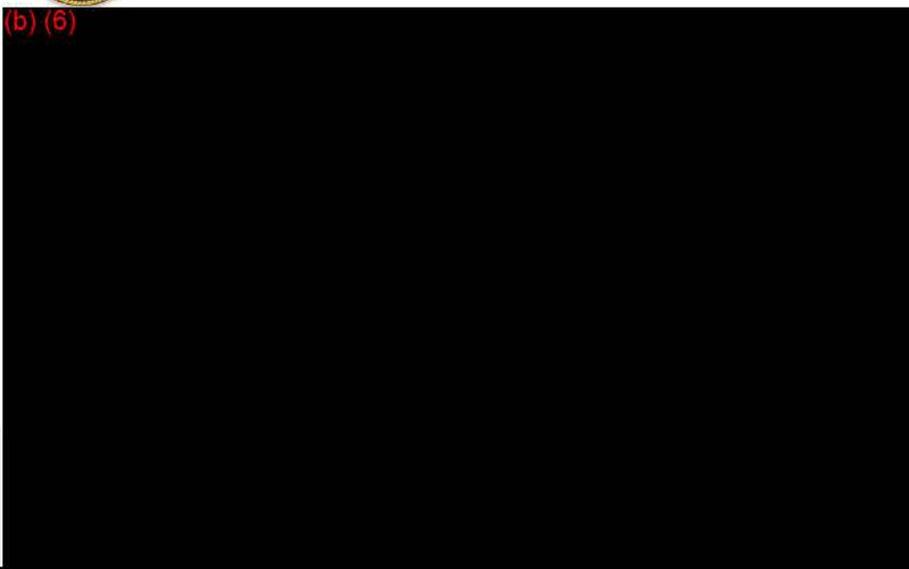
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Bond Hearings

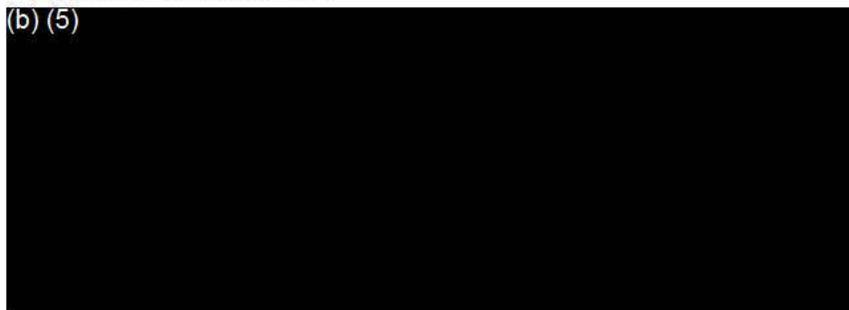
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Group Rights Hearings

Best Practices:

(b) (5)





QUESTIONS

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