AILA National Office
Suite 300
1331 G Street, NW
Washington, DC 20005

Tel: 202.507.7600
Fax: 202.783.7853

www.aila.org

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Thomas G. Snow, Esq.
Acting Director
U.S. Department of Justice
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

Re: New Requirement in Automated Case Information System

Dear Director Snow:

On behalf of the American Immigration Lawyers Association (AILA), I write to express our grave concern over the Executive Office of Immigration Review's (EOIR) decision to require both the charging document date and the alien registration number to access information through EOIR's case information system.

AILA is a voluntary bar association of more than 11,000 attorneys and law professors practicing, researching, and teaching in the field of immigration and nationality law. AILA members regularly represent respondents in proceedings before EOIR and advise and counsel their families and loved ones. We believe that our members' collective expertise provides experience that makes us particularly well-qualified to offer views that we believe will benefit the public and the government.

The case information system is an invaluable resource for respondents appearing before the immigration courts and their counsel. This change in policy severely limits its usefulness, and impairs the ability of respondents to receive and counsel to provide effective representation before EOIR. Moreover, the imposition of the new requirement to provide the charging document date will result in additional burdens on EOIR and DHS as attorneys and respondents attempt to access the same information through other, more resource-intense means. We also recognize the need to protect respondents' privacy—the stated rationale for adopting this new policy; however, mechanisms already exist to close respondents' hearings and protect their information.

We also object to the process by which the decision to change access to the case information system was reached. Neither AILA nor any other organization was consulted on this significant change. Had EOIR done so, it would have learned of the serious problems accessing essential case status information that will result from the new system

requirements. Further, EOIR announced the new requirement less than a week before its implementation. As outlined below, this change in policy will have far-reaching, negative consequences for respondents and their attorneys, consequences that EOIR presumably did not fully explore. Therefore, it is requested that the implementation of this system be suspended until the concerns of AILA and other stakeholders can be addressed.

The case information system is often an attorney's only tool to determine whether a client has been or currently is in removal proceedings, where those proceedings took place, whether an appeal was taken or a motion filed, and the outcome of the proceedings. The new EOIR policy is based on the faulty assumption that respondents have access to the charging document or can easily obtain a new copy from the issuing authority. This is simply not the case. In the wake of increased interior and border enforcement, increased referrals from USCIS to the immigration court, and the transfer of detained individuals to remote locations, this fundamental change in an already flawed system will prove to be a serious detriment to our ability to effectively represent our clients.

As EOIR is well aware, many individuals taken into ICE custody do not receive or retain a copy of the Notice to Appear (NTA). Transfers from one detention center to another further complicate matters, as NTAs are often lost or stored with a detainee's personal property following the transfer. Frequently, the only information a family member has to give to an attorney is the detainee's alien registration number. Immigrants detained due to an outstanding removal order present an even more complicated scenario. Their charging documents may have been lost years before, and ICE does not provide new copies of old documents to detainees or counsel without a FOIA request. For individuals who must seek reopening—especially those who are detained—the ability to immediately access even the basic information available through the system is critical. The new requirement erects a barrier to accessing that information.

For immigrants who are not detained, the new system is also burdensome. Those represented by notarios or immigration consultants do not always receive originals, or even copies, of important documents, and such unauthorized practitioners rarely have adequate file retention policies. Many NTAs—served via regular mail—never actually make it to the intended recipient, or are not timely filed with the EOIR. In other cases, for example derivative family members or abuse victims, the NTA may have been received and retained by the principal applicant or even the abuser. Others affected are respondents who were placed in proceedings years ago but do not know what happened with their cases. It is a rare occurrence when a respondent still has the original charging document from years before. Those who do not have their charging document will not be able to use the case information system to check for a hearing date, the most efficient way for respondents and their attorneys to monitor their immigration case.

Significantly, those most adversely affected by this new requirement are individuals who are unaware that they were ever in proceedings. This often is the case when an individual

has applied for a benefit that was subsequently denied by USCIS and unbeknownst to the applicant, the case was referred to the immigration court.

Practitioners routinely check the EOIR case information system during an initial consultation to determine whether the individual was ever placed in proceedings. If an attorney cannot properly assess whether a proceeding has been commenced or completed, we run the risk of applying for a benefit for which our clients do not qualify or providing advice based on incomplete information.

Although there are other means to obtain information about removal proceedings, none is remotely as efficient or immediate as the EOIR case information system. EOIR should anticipate that for the vast majority of respondents who do not have access to the charging document, the first line of inquiry will be a phone call to their local immigration court or the BIA clerk's office. Secondarily, requests will fall on DHS agencies (both ICE and USCIS), whether via walk-in visits, through the USCIS Customer Service number, or by written requests. Many respondents will be forced to file FOIA requests for such basic information; the resulting dramatic increase in requests will further burden and delay processing (EOIR already has a delay of over a month, and DHS several months processing). Such delays will adversely impact case completion and could easily result in a respondent missing an upcoming hearing date. For individuals facing imminent removal, the delay could be fatal to their ability to challenge prior orders.

Our members rely on the EOIR case information system daily to provide ethical, competent, and timely legal advice to immigrants. Adding the additional requirement of the charging document date to access the information on the system will greatly diminish the usefulness of this invaluable tool. Instead, counsel will be forced to burden the immigration court clerks and the FOIA staff to obtain the information that can now be accessed almost instantaneously. Moreover, the most severely impacted by this change are pro se respondents, many of whom lack the knowledge and language skills to access the new system and are unaware of the other, though slower means, for obtaining this information.

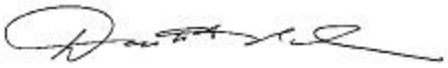
EOIR already has mechanisms in place to ensure the privacy of those respondents who need such protections. Abused spouses and children have the option of removing themselves from the EOIR system. *See 8 C.F.R. § 1003.27.* Others who have similar concerns can also ask that information about their proceedings be kept confidential as well.

We request that EOIR suspend implementation of the new system and open a dialogue with AILA and other stakeholders to determine the nature and extent of the problems the proposed changes seek to resolve, to identify solutions that provide the desired protections without the barriers inherent in the "charging document date" requirement, and only implement a new system after receiving and acting on input from the affected community.

Should you need further information, and to arrange a meeting to discuss these issues, please contact Robert P. Deasy, AILA Director of Liaison and Information, at 202-507-7612, or by e-mail at rdeasy@aila.org.

Thank you for your attention to this matter.

Sincerely,



David W. Leopold, Esq.
President
American Immigration Lawyers Association

cc: Robin Stutman, Esq., General Counsel
Juan P. Osuna, Esq., Associate Deputy Attorney General