

**American Immigration Lawyers Association
EOIR Stakeholder Meeting Agenda Questions
Wednesday, April 5, 2017**

IJ Details for Detained Matters

1. On January 31, 2017, Chief Immigration Judge Keller issued a memorandum, “[Case Processing Priorities](#)” (hereinafter “EOIR Priorities Memo”) announcing new case processing priorities for EOIR. The memo states that, effective immediately, the agency will “refocus the Immigration Courts’ resources on EOIR’s highest processing priority: individuals who are detained by the Department of Homeland Security (DHS) pending their removal proceedings.”
 - a. What steps has EOIR taken to implement this memo?
 - b. In light of the recent prioritization of detained cases, please provide the total number of immigration judges (IJs) that will be assigned to the detained dockets.
 - c. How many IJs currently handling non-detained dockets will be re-assigned to the detained dockets?
 - d. Please provide the number of immigration judges (IJs) that will be assigned to the non-detained dockets.
2. Section A of the February 20, 2017 DHS memorandum, “[Implementing the President’s Border Security and Immigration Enforcement Improvements Policies](#)” (hereinafter “DHS border memo”) directs a “surge” in the “deployment of immigration judges (IJs) and asylum officers to interview and adjudicate claims asserted by recent border entrants.”
 - a. EOIR recently [announced](#) that IJs would begin to serve details to the following six locations on March 20, 2017: (1) Dilley (2) Jena (3) Karnes (4) Laredo (5) Otero and (6) Polk. Please provide a list of other locations where IJs will be assigned on detail.
 - b. How does EOIR anticipate the border deployment of IJs will impact detained cases elsewhere (away from the border) with respect to scheduling of initial Master Calendar Hearings (MCHs) and bond custody re-determination hearings?

Impact of New Case Priorities on Non-Detained Dockets

3. What is the anticipated nationwide impact on non-detained cases with respect to (1) time between filing of a notice to appear (NTA) with the immigration court and initial master calendar hearing (MCH); (2) time between MCHs; and (3) time between MCH and individual merits hearing (IMH)?

4. Will IJs entertain motions to expedite in non-detained cases based on the anticipated lengthier delays between hearings?
5. Please provide the criteria IJs will rely on when determining whether to expedite such cases.
6. Will IJs entertain motions for administrative closure as a means of managing their dockets? If yes, is there a specific category of cases that IJs will consider?

Implementation of the January 31, 2017 Memorandum

7. The [EOIR Priorities Memo](#) rescinds EOIR's February 3, 2016, memorandum ("[Revised Docketing Practices Relating to Certain EOIR Priority Cases](#)") and the March 24, 2015, memorandum ("[Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of New Priorities](#)"). EOIR's current case processing priorities include (1) All detained individuals; (2) Unaccompanied children in the care and custody the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR) who do not have a sponsor identified; and (3) Individuals who are released from custody on a *Rodriguez* bond.
 - a. Despite this new guidance, AILA members report that many courts have failed to remove cases from the docket that were previously designated as a priority under the February 3, 2016 and March 24, 2015 memos. If a respondent's case should no longer be considered a priority under the new EOIR Priorities Memo, what steps should the attorney or respondent take in order to request that the case be removed from the priority docket?
 - b. Does EOIR automatically identify cases that are no longer considered priority cases, and ensure they are being de-prioritized to comply with the memo?
 - c. Are there any additional categories of cases still remaining on the priority docket that do not fall within the three categories of cases outlined in the EOIR Priorities Memo?

Immigration Judge Hiring

8. According to [Reuters](#), EOIR confirmed that IJ hiring is exempt from the federal hiring freeze outlined in the January 23, 2017 Presidential Memorandum, "[Hiring Freeze](#)."
 - a. Please provide the number of both permanent and temporary IJs that EOIR plans to hire as a result of the new administration's recent announcements.
 - b. Please provide a list of the immigration courts where new IJs will be assigned.
 - c. During AILA's spring 2016 liaison [meeting](#) with EOIR, EOIR stated that it "is interested in attracting the most qualified candidates, regardless of whether their

background is from the private sector or government sector.” EOIR explained that the recent hires then included more lawyers with a government background because it usually makes background checks faster. A year later, EOIR continues to hire an overwhelming majority of IJs with government enforcement backgrounds.

- 43 of the 54 recently sworn-in IJs previously worked for the federal government.
- Of these 43 IJs that previously worked for the federal government, 30 specifically worked for DHS.
- Only 9 of these recently sworn-in IJs previously worked at a private practice, 1 from academia, and 1 from the nonprofit sector.

What steps has EOIR taken to ensure that it hires a more diverse group of IJs with backgrounds not only in the public sector, but also in private practice, academia, and the nonprofit sectors?

Request for Equal Access to Technology in Immigration Courts

9. During AILA’s spring 2016 liaison [meeting](#), AILA requested that EOIR take steps to provide internet access to all parties appearing in immigration courts. This lack of equal internet access in immigration courts nationwide is a fundamental breach of fairness and due process. In order to facilitate EOIR’s review of this issue and to work collaboratively towards resolution, AILA surveyed its members regarding use of electronic devices in EOIR spaces. An overview of this survey is attached as Exhibit A, and demonstrates the following:

- AILA members collectively reported on their experiences at 42 immigration courts.
- Members reported that they were able to obtain WiFi access at only 2 of the 42 courts.
- Members reported that they were able to obtain cellular data access in 12 of the 42 courts. However, access to cellular data varied based on the cellular carrier.
- **DHS counsel had internet access at *all* 42 immigration courts.**

AILA’s survey reveals a crippling lack of internet access for attorneys in immigration courtrooms nationwide and approximately 90% of AILA’s membership reported that this lack of internet access disadvantaged their clients’ cases. The survey also demonstrates other problems, such as inability to use electronics in all EOIR spaces, contrary to [EOIR Directive](#). AILA again respectfully requests that EOIR take immediate steps to provide equal internet access to all parties appearing in immigration court. While our members would prefer to have internet and use of technology available for all parties in all courts, due process requires parity. In areas where internet access is unavailable to one party, no party should have internet access.

Departures from the EOIR Practice Manual

10. EOIR Headquarters reaffirmed its position during the fall 2016 stakeholder meeting that while IJs retain discretion to deviate from the Immigration Court Practice Manual (ICPM) on individual cases, IJs should not be adopting “local rules” that affect all respondents pending before them or particular classes of respondents. AILA has alerted its membership to raise specific case examples to the appropriate Assistant Chief Immigration Judge (ACIJ) when these “local rules” are being imposed in this manner. However, the following are representative examples of blanket local rules members have reported:

- Requiring that written pleadings be filed at master hearings for all respondents (multiple courts including Los Angeles, CA and Miami, FL);
- Blanket denials of motions to appear by telephone for attorneys at MCHs (multiple Courts including El Paso, TX and Atlanta, GA);
- Requiring relief applications and/or handwritten declarations from all respondents prior to granting a change of venue motion (multiple courts including Los Angeles, CA and El Paso, TX);
- Requiring a specific bond hearing worksheet to be completed by all respondents prior to accepting a request for bond re-consideration (Miami, FL);
- Requiring asylum seekers to brief their "particular social group" at the time of filing their Form I-589 application (Los Angeles, CA); and
- Requiring asylum seekers to submit a written declaration prior to being allowed to file a Form I-589 Application in court (Charlotte, NC).

These are just a few examples that have been submitted by membership. As such, AILA respectfully requests the Office of the Chief Immigration Judge (OCIJ) to address these departures from the ICPM and request that EOIR Headquarters make this issue a point of emphasis for future IJ training.

Location of Immigration Courts

11. There are several courts where it is very difficult for respondents in removal proceedings to obtain counsel based on the location of the immigration court.
- a. During the previous administration, both detained and non-detained respondents that had initially been assigned to the Oklahoma City hearing location were merged into the existing Dallas dockets. Is EOIR considering re-opening an immigration court in Oklahoma based on the change in enforcement priorities issued by the new administration?
 - b. When determining immigration court jurisdiction, does EOIR consider a detention facility's willingness to allow counsel to appear in-person with their client at the facility, especially when the immigration court with jurisdiction is very far from the detained facility? For example, beginning in January of 2017, the Kansas City, MO immigration court began hearing detained cases from the Northeast Ohio Correctional

Center in Youngstown, Ohio. The Kansas City Immigration Court is over 800 miles away from this facility, whereas the Cleveland, OH Immigration Court is approximately 70 miles away and already has multiple detained hearing locations at various county jails within the State of Ohio. Attorneys have reported the Northeast Ohio Correctional Center will not allow attorneys to appear with Respondents at the Correctional Center. Instead, attorneys must appear by phone or travel a great distance to the Kansas City, MO immigration court to attend the hearing at that location. This imposes an unnecessary hardship on counsel and raises the client's expense. Attorneys are appreciative of the Kansas City immigration court's willingness to let them appear by telephone at master hearings. However, respondents and their counsel are at a major disadvantage during merits hearings given the distance to the Kansas City, MO Immigration Court and the inability to work with clients in-person during the merits hearing.

Administrative Closure to Pursue I-601A Provisional Waivers of Inadmissibility

12. Under 8 CFR §212.7(e)(4)(v), an applicant in removal proceedings is ineligible to file a provisional unlawful presence waiver, unless proceedings are administratively closed and have not been recalendared at the time of filing Form I-601A. In light of the recent executive orders, it may be that DHS counsel are more reluctant to joining in administrative closure of cases to allow respondents to seek I-601A waivers. *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), allows an IJ to administratively close removal proceedings even over DHS objection. Does EOIR anticipate issuing additional guidance as to how IJs should adjudicate unilateral requests to administratively close cases when the respondent establishes they have an approved visa petition and will seek to file for a provisional unlawful presence waiver?

Institutional Hearing Program

13. Section B of the February 20, 2017 [DHS interior memo](#) provides for the expansion of the Institutional Hearing Program (IHP), which facilitates the initiation of deportation proceedings against individuals who are serving criminal sentences during their period of incarceration.
 - a. Please share any information regarding proposed sites for this IHP expansion.
 - b. AILA is concerned that there are unique impediments to access to counsel for indigent respondents on IHP dockets. Please explain what measures are in place to ensure that (1) IHP dockets will be placed in courts that are proximate to free legal service providers and (2) Judges IJs assigned to the IHP docket are trained on facilitating pro bono representation.

Cancellation of Removal for Nonpermanent Residents

14. EOIR's [Operating Policies and Procedures Memorandum \(OPPM\) 12-01](#), sets forth the procedures for applications for suspension of deportation/cancellation of removal in non-detained cases when numbers are no longer available in a fiscal year. Cases in which

decisions are reserved pending the availability of a number are placed in a queue according to the date and time of the decision.

- a. Please provide an update on the current backlog.
- b. During the spring 2016 liaison [meeting](#), EOIR stated that its goal was provide the filing dates of cases that are in the queue by summer of 2016. Please provide an update on this initiative.
- c. On November 30, 2016, EOIR issued a [proposed rule](#) that would allow IJs and the BIA to issue final denials of suspension of deportation and cancellation of removal applications regardless of whether the annual cap has been reached. AILA submitted [comments](#) in response to this proposed rule on January 30, 2017. What is the status of this proposed rule?

BIA Amicus Solicitations

15. AILA greatly appreciates the BIA's initiative to solicit amicus curiae briefs from interested parties. However, we are concerned that some of the program's procedures may inadvertently limit the efficiency and overall effectiveness of the program.

Currently, the BIA posts amicus invitations to its [website](#) and provides interested parties with limited time to respond. Although EOIR will often eventually grant extensions of approximately 60 days, it generally agrees to do so only after multiple requests. For example, EOIR will initially grant a 30-day extension after receiving a request for a 60-day extension, even though the first request provides compelling reasons why an extension of more than 30 days is needed (as previously requested in the April 2016 AILA liaison [meeting](#) with EOIR). Then, EOIR will grant an additional 30-day extension after receiving a second extension request, even when the second request contains the same rationale for an extension as the first request.

This staggered process has made it extremely challenging for potential amici to respond to the amicus solicitation, particularly since there is only one individual at the BIA who is able to communicate with potential amici regarding the status of extension requests. Would the BIA consider providing interested parties with a longer initial period of time to respond to amicus invitations; for example, 90 days?

National Qualified Representatives Program (NQRP)

16. During the fall 2016 EOIR stakeholder, EOIR confirmed that qualified representatives who participate in the NQRP are selected by the Vera Institute of Justice, a GSA contractor who has contracts with NGOs and a small number of law firms. EOIR informed stakeholders that it was working to implement the NQRP program in all required jurisdictions. Have there been any updates regarding the administration of this program?

Window/Mail Filing of Form I-589

17. On September 14, 2016, EOIR issued the [memorandum](#), “Operating Policies and Procedures Memorandum 16-01: *Filing Applications for Asylum*,” announcing that all Form I-589 applications may be filed at the immigration court window or by mail, for purposes of fulfilling the one-year filing deadline and the asylum clock. Does EOIR plan on incorporating these updated procedures in the ICPM? If so, when might this update occur?

Staffing/Organizational Updates

18. Please provide an overview of any key staffing changes or other organizational/structural updates that have been implemented since EOIR’s last stakeholder [meeting](#) on November 17, 2016.
19. EOIR previously announced that it was hiring Public Information Officers at various locations nationwide.
 - a. Please provide an update on this initiative.
 - b. When is the anticipated start date for the various initial locations?
 - c. What is the scope of the role of Public Information Officers?
 - d. How will EOIR oversee Public Information Officers at the various locations?