OOD
PM 20-07

Effective: January 31, 2020

To: All of EOIR
From: Sirce E. Owen, Acting Deputy Director
Date: January 31, 2020

# CASE MANAGEMENT AND DOCKETING PRACTICES

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| PURPOSE: | Implementation of Efficient Docketing Practices |
| OWNER: | Office of the Director |
| AUTHORITY: | Pub. L. 103-62 and 111-352; 8 U.S.C. § 1225(b)(1)(B)(iii)(III); 8 C.F.R. §§ 1003.0(b) and (d), 1003.19(e), and 1208.31(g) |
| CANCELLATION: | None |

The primary mission of the Executive Office for Immigration Review (EOIR) is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. "In all cases, immigration judges shall seek to resolve the questions before them in a timely and impartial manner consistent with the Act and regulations." 8 C.F.R. § 1003.10(b). Through its corps of dedicated, impartial, and professional immigration judges and immigration court support staff, EOIR has made marked improvements in the past three years in ensuring that cases are completed fairly and expeditiously consistent with due process. In Fiscal Year (FY) 2019, EOIR completed the largest number of cases at the immigration court level in its history. Moreover, though there have been significant increases in the past three years in the number of immigration judges adjudicating cases, the number of hearings held, and the number of cases completed, the number of complaints against immigration judges fell in FY 2019 for the second consecutive fiscal year. These results are a testament to the integrity and competence of our immigration judges and our immigration court staff, and their combined ability to fulfill EOIR's mission.

As EOIR moves forward, however, it is important to consolidate and institutionalize the progress made in the past three years. In particular, it is important for our immigration court leaders in the field, the Assistant Chief Immigration Judges (ACIJs) and the Court Administrators (CAs), to ensure that inefficient case management and docketing practices do not undermine EOIR's ability to complete cases in a timely and impartial manner or otherwise delay justice and impede due process, especially for aliens who are detained. Efficient docketing practices ensure the prompt review of all claims by an immigration judge to provide resolution to all parties, and good governance requires an efficient immigration court case processing system. Unnecessary delays benefit no one—not the alien, not the Department of Homeland Security (DHS), and not EOIR. Accordingly, this Policy Memorandum (PM) reiterates and

clarifies EOIR policy regarding certain case management and docketing practices in support of its mission.

## I. Detained Cases

EOIR continues to maintain its longstanding policy of prioritizing the timely completion of cases involving detained aliens. That policy, which was first memorialized in 1984, predates EOIR's creation in 1983:

> As previously established by INS policy before the establishment of EOIR and by continuation of that policy during the past year, detained cases and detained bond redetermination hearings should be calendared at the earliest possible date consistent with the uniform Docketing System and all efforts shall be made to complete these cases expeditiously. The calendaring of detained cases and detained bond redetermination hearings shall be of the highest priority relative to the calendaring of all other types of cases.

Operating Policies and Procedures Memorandum (OPPM) 84-1, *Case Priorities and Processing* (Feb. 6, 1984) at 1 (emphasis in original).

EOIR has repeatedly reiterated this policy, and it remains clear and unequivocal EOIR policy that, regardless of custodian, all detained cases should be prioritized for docketing and adjudication. Accordingly, employees who fail to ensure that detained cases are docketed and processed in a timely manner may be subject to corrective action.

### A. Removal Cases

ACIJs and CAs should remain cognizant of prior guidance that detained removal cases should be input into the case management system within three days[1] of the filing of the Notice to Appear (NTA) and that—for cases not scheduled by DHS through the interactive scheduling portal—the initial master calendar hearing in a detained removal case should occur no later than ten days after the filing of the NTA.

### B. Custody Redetermination Hearings[2]

EOIR maintains a goal of completing ninety percent of custody redetermination hearings within fourteen days of receipt of the request. Appendix A, *Case Priorities and Immigration Court Performance Measures* (Jan. 17, 2018). To meet this goal, custody redetermination hearings should occur no later than three to five days after the date the custody redetermination request was received. All immigration judges possess the professional competence to adjudicate

[1] All references to days in this PM refer to calendar days; however, for any deadline that falls on a Saturday, Sunday, federal holiday, or other government closure, the deadline is extended to the next business day.

[2] Although most custody redetermination hearings involve detained aliens, aliens who have been released from custody may request amelioration of the terms of release through a custody redetermination request filed within 7 days of release. 8 C.F.R. § 1236.1(d)(1); *Matter of Aguilar-Aquino*, 24 I&N Dec. 747 (BIA 2009). Such cases remain subject to EOIR's established goals for custody redetermination hearings.

custody redetermination cases, *Ethics and Professionalism Guide for Immigration Judges*, § IV, and such cases may be placed on any immigration judge's docket, including an ACIJ's docket, to ensure they are heard in a timely manner.

Once an immigration judge has issued a decision on an initial custody redetermination request, subsequent requests must be in writing and must demonstrate that "the alien's circumstances have changed materially since the prior bond redetermination." 8 C.F.R. § 1003.19(e). Before scheduling a second or subsequent request for custody redetermination, the request should be routed to an immigration judge for review within 24 hours of receipt. If the request does not allege a material change in circumstances since the prior redetermination, then the immigration judge may adjudicate the request without a hearing. If the immigration judge determines that a hearing is warranted, however, then the hearing should occur within three to five days of receipt of the request.

C. Credible Fear Reviews/Reasonable Fear Reviews[3]

Credible fear reviews "shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than seven days after the date of" DHS's determination. 8 U.S.C. § 1225(b)(1)(B)(iii)(III). To ensure that this statutory directive is followed, ACIJs and CAs should ensure that a hearing on each request for review of a negative credible fear determination occurs within 24 hours of receipt of the request to the maximum extent practicable. In no case should a credible fear review hearing occur later than seven days after the DHS determination.[4]

In the absence of exceptional circumstances, reasonable fear reviews should be conducted within ten days of the receipt of the request for review. 8 C.F.R. § 1208.31(g). Accordingly, ACIJs and CAs should ensure that a hearing on each request for review of a negative reasonable fear determination occurs within that time frame, absent exceptional circumstances.

II. Non-detained Removal Cases

For many non-detained removal cases, DHS schedules the initial master calendar hearing through an interactive scheduling portal. For cases that are not scheduled through the interactive scheduling portal, however, the ACIJ and the CA should ensure that cases are docketed as expeditiously as possible upon the filing of the NTA. To that end, ACIJs and CAs should ensure that cases are input into the case management system within five days of the filing of the NTA and that—for cases not scheduled by DHS through the interactive scheduling portal—the initial master calendar hearing in a non-detained case occurs no later than between 30 and 90 days after the filing of the NTA.

[3] Most credible fear review and reasonable fear review cases involve aliens who are detained. Nevertheless, the statutory and regulatory time frames—and, thus, the guidance in this PM—apply regardless of detention status.
[4] In cases in which DHS files the charging document in a credible fear review case more than 7 days after its determination, the hearing should occur within 24 hours to the maximum extent practicable and no later than 7 days after the filing of the charging document.

III. Unscheduled Immigration Judge Absences

EOIR continues to maintain its policy of "no dark courtrooms" to ensure that parties do not have to wait any longer than necessary for the resolution of their cases. *See* PM 19-11, *"No Dark Courtrooms"* (Mar. 29, 2019). Consistent with that policy, an immigration judge's unexpected or unscheduled absence should not automatically require the rescheduling of cases scheduled on that judge's docket.[5] Rather, such dockets should be re-assigned to the ACIJ located at the court where the immigration judge is absent—if there is one—and the ACIJ should hear the cases as scheduled.[6]

For a detained docket, if no ACIJ is located at the court of the absent judge, the cases should be transferred to the docket of another immigration judge at the court to the maximum extent practicable.[7] This practice is already common at many courts to ensure that detained cases are not delayed and is consistent with EOIR's longstanding prioritization of detained cases discussed above.

For a non-detained docket, if no ACIJ is located at the court of the absent judge, the CA should inquire if another immigration judge hearing a docket that day is willing and available to accommodate the docket of the absent judge. If another immigration judge agrees to do so, then the cases should be transferred to that judge to be heard as scheduled. If no other immigration judge agrees to take the cases, then the clerk assigned to the absent immigration judge should have respondents check in and provide reset hearing notices to those who do. The cases of respondents who fail to appear, however, should not be rescheduled. Rather, those cases should be heard as scheduled by any available immigration judge, including an ACIJ, to determine whether an *in absentia* order of removal should be entered pursuant to 8 U.S.C. § 1229a(b)(5).

IV. Cases Rescheduled due to Immigration Court Closures or Immigration Judge Absences

Cases that must be rescheduled due to the closure of an immigration court (*e.g.*, a weather-related closure) or an immigration judge's absence should be rescheduled expeditiously. For detained cases, rescheduled individual merits hearings should be reset to a date within 14 days of the original scheduled hearing date and may be heard by an ACIJ or by any available immigration judge. Rescheduled master calendar hearings should be reset to a date within 21 days of the original scheduled hearing date and may be distributed among multiple dockets as needed. For non-detained cases, rescheduled merits hearings should be reset to a date within 30 days of the original scheduled hearing date and may be heard by an ACIJ or by any available immigration judge. Rescheduled master calendar hearings should be reset to a date within 60

[5] Consistent with PM 19-11, an immigration judge's planned or scheduled absence also should not require the rescheduling of cases, as there will generally be sufficient time to find coverage for that judge's docket. In such circumstances, it remains the ACIJ's responsibility to ensure coverage of the absent judge's docket, including for the ACIJ to hear the cases if necessary.

[6] Each ACIJ possess the professional competence to adjudicate any type of immigration proceeding, and each ACIJ is expected to complete at least 100 cases during a fiscal year.

[7] Although transferred cases may be heard by video teleconferencing (VTC) if feasible, nothing in this PM should be construed as requiring an immigration judge to appear in person at a court in another city to hear a docket, though nothing in this policy prohibits an immigration judge from doing so voluntarily.

days of the original scheduled hearing date and may be distributed among multiple dockets as needed. Unless the immigration court closure or immigration judge absence is prolonged, compliance with this policy should not require any additional rescheduling of cases and is not a reason to reschedule future cases.

## V. Additional Docketing and Case Processing Issues

### A. Interpreters

In-person contract interpreter services are billed based on a minimum block of time even if the services are not utilized for the entire block. It is incumbent upon EOIR to ensure that its resources related to in-person contract interpreters are utilized in the most efficient manner possible. If the hearing(s) for which an in-person contract interpreter was ordered conclude(s) before the end of the minimum billed time period, the CA should be notified prior to releasing the interpreter. For the remainder of the minimum billed time period, the interpreter should assist with other hearings if practicable. *See* OPPM 04-08, Contract Interpreter Services (Oct. 20, 2004) at 8 (". . .after a contract interpreter's services are no longer required for one hearing they may be asked to interpret in another. . .It should be noted that a contract interpreter is not released from duty until their services are no longer needed, as determined by the judge, court administrator, or other court designee.").

Interpreter services, delivered in person, by telephone, or by VTC, are an integral part of most EOIR proceedings. Although occasional interpreter unavailability does occur, repeated unavailability by a particular interpreter or in a particular case suggests a broader issue that should be addressed immediately. Accordingly, an immigration judge should notify the relevant ACIJ regarding any case that has been rescheduled two or more times due to interpreter unavailability, and the ACIJ should expeditiously elevate the issue to the Office of the Chief Immigration Judge for resolution, including scheduling and confirming an interpreter, either in person, by telephone, or by VTC, for the next hearing.

### B. Continuances

EOIR has no policy mandating or requiring immigration judges to grant a continuance for any reason in any particular case or circumstance, except where a continuance is required by binding law. *See*, *e.g.*, *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018); PM 19-13, *Use of Status Dockets* (Aug. 16, 2019) at 3.

### C. Juveniles

Wherever feasible, EOIR maintains separate dockets for juvenile respondents whose parents are not also presently in immigration proceedings. OPPM 17-03, *Guidelines for Immigration Court Cases Involving Juveniles, Including Unaccompanied Alien Children* (Dec. 20, 2017) at 5. Juvenile respondents are defined as those under the age of 18. 8 C.F.R. § 1236.3(a). Accordingly, ACIJs and CAs should ensure that no respondent over the age of 18 has his or her case scheduled on a juvenile docket, and all cases of aliens over the age of 18 currently on a juvenile docket should be transferred to a regular docket.

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As the steward of an effective, professional administrative court system, EOIR strives to ensure all parties receive due process, cases are handled efficiently and impartially, and justice is served through the rule of law. The guidance set forth in this PM will aid EOIR in achieving those goals.

This PM supersedes any prior guidance to the contrary issued by EOIR on an issue contained in the PM. Nothing in this PM requires the rescheduling of currently-docketed cases or should be interpreted to require such rescheduling, except for the transfer of cases of non-juveniles from a juvenile docket to a regular docket.

This PM is not intended to, does not, and may not be relied upon to create, any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person. Nothing herein should be construed as mandating a particular outcome in any specific case.

Please contact your supervisor if you have any questions.