

MEMORANDUM

TO: All Assistant Chief Immigration Judges
All Immigration Judges
All Court Administrators

FROM: Office of the Chief Immigration Judge

SUBJECT: Interim Operating Policies and Procedures Memorandum No. 97-2 : Notices of Immigration Judge Hearings

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I. INTRODUCTION

This OPPM **supersedes OPPM 92-2, Notices of Immigration Judge Hearings** and sets forth new interim uniform procedures for providing Hearing Notices to non-detained and detained (including Institutional Hearing Program (IHP)) aliens in immigration proceedings. **OCIJ stresses that these procedures are interim in nature, and we will continue to revise and reformulate them to reflect any changes that may become necessary.** Section 239 of the Immigration and Nationality Act, (INA), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, (IIRIRA), has substantially changed the notice requirements for aliens in immigration proceedings. These new notice provisions apply to those individuals placed in proceedings under the new INA. 8 C.F.R. § 3.13. Because the requirements did not change for individuals in deportation/exclusion proceedings, the Immigration Court will need to operate under two sets of rules, depending on the type of proceeding that has been instituted against the individual. OCIJ, where appropriate, has unified the two procedures.

THIS OPPM ONLY APPLIES TO THOSE CASES WHERE THE IMMIGRATION AND NATURALIZATION SERVICE (INS) HAS PROPERLY FILED A CHARGING DOCUMENT VESTING JURISDICTION WITH THE IMMIGRATION COURT.

II. NOTIFICATION OF HEARINGS TO ALIENS

A. In-Person

In-person service of the Hearing Notice to the alien **MUST** be used whenever practicable in lieu of mailing, regardless of the type of proceedings. If in-person service of the Hearing Notice is not

practicable, however, the Hearing Notice, accompanied by a Change of Address Form (EOIR Form-33), must be mailed to the alien, if unrepresented, or to the alien's attorney or representative. Procedures for mailing, including any additional notice requirements, are outlined below. **Notwithstanding the different mailing requirements, a copy of all Hearing Notices sent, including any accompanying attachments, must be placed in the Record of Proceedings.**

B. Non-Detained Cases

In non-detained cases a Hearing Notice will be printed through the ANSIR system. The Hearing Notice will contain a certificate of service at the bottom of the page. The Court personnel serving the Hearing Notice **MUST SIGN** the certificate of service and check the appropriate box indicating how the service was completed. If in-person service is not practicable, one copy of the **SIGNED** Hearing Notice will be sent to the alien or his/her representative with a Change of Address Form (EOIR Form-33). (See example at Attachment A).

1. Mailing Requirements for Non-Detained Aliens in Removal Proceedings

Section 239 of the new INA, as amended by IIRIRA, does not require that the charging document, Notice to Appear or any change/rescheduled Hearing Notice be served by Certified Mail in those instances where in-person service is not practicable. The Court Administrator, therefore, will ensure that all Hearing Notices, including the Hearing Notice containing the time, place and date of the hearing (pursuant to 8 C.F.R. § 3.18) are served by **regular mail**. The certificate of service at the bottom of the Hearing Notice, will be executed in every case by Court personnel as proof of service.

There may be circumstances, however, when the use of Certified Mail may be appropriate. If Certified Mail is used, it should be Certified Mail-Return Receipt Requested. **In no case should Certified Mail be used as a regular practice.** If there are any questions regarding the use of Certified Mail, please contact your Assistant Chief Immigration Judge.

2. Mailing Requirements for Non-Detained Aliens in Deportation Proceedings

Section 242B of the old INA required that the Hearing Notices be served by Certified Mail if in-person service was not practicable. See § 242B(a)(2)(A) of the old INA. The Certified Mail requirement also applied to any Hearing Notices notifying the alien of a change or a rescheduling. See § 242B(a)(2)(B) of the old INA. In a subsequent BIA decision, the Board found that so long as the Hearing Notice was sent by Certified Mail, the alien's signature was not required. Matter of Grijalva, Int. Dec. 3246 (BIA 1995). Consequently, OCIJ will continue the practice of sending Hearing Notices, accompanied by a **Spanish** translation, in deportation proceedings by Certified Mail-Return Receipt

Requested.

3. Mailing Requirements for Non-detained Aliens in Exclusion Proceedings

Since the statute and regulations are silent regarding notice requirements in exclusion proceedings, non-detained aliens in exclusion proceedings will be served their Hearing Notices by **regular mail**. There may be circumstances, however, where the use of Certified Mail may become necessary. If the Hearing Notice is sent Certified Mail, it must be sent Certified Mail-Return Receipt Requested. **In no case should Certified Mail be used as a regular practice.** If there are any questions regarding the use of Certified Mail, please contact your Assistant Chief Immigration Judge.

4. Mailing Requirements for Non-detained Aliens in Rescission Proceedings

The same mailing requirements as for non-detained aliens in exclusion proceedings will apply to aliens in rescission proceedings under § 246 of the INA.

C. Detained Cases (Including IHP)

1. In-Person

Both the new and the old INA direct that all Hearing Notices for proceedings shall be in writing and provided to the alien in-person, if practicable, or to the alien and his or her representative by mail. No exception is made for cases in which the alien is detained by the INS or incarcerated by state or federal authorities on criminal grounds. In order to ensure that an alien is afforded proper notice of his or her hearing, the following procedures will be used for mailing the Hearing Notices in all detained settings, including but not limited to, Service Processing Centers (SPC); state, county, and municipal jails; and IHP sites where in-person service is not practicable.

In detained cases, a Hearing Notice will be printed through the ANSIR system. The Hearing Notice will contain a certificate of service at the bottom of the page. The Court personnel serving the Hearing Notices **MUST SIGN** the certificate of service and check the appropriate box indicating how the service was completed. The Hearing Notice for detained or incarcerated aliens shall state the alien's name, followed by a line addressing the Hearing Notice in care of the person in charge of the facility or institution where the alien is being detained or incarcerated.

The Court Administrator or his/her designee must deliver **in-person** the individual Hearing Notices with the signed certificate of service (except that aliens in deportation also get a Spanish translation), to the alien in care of the person in charge of the facility/institution where the alien is being detained. (See Attachment B). When in-person delivery is not practicable, delivery should be made by the procedures set forth in part II, § C(2), (3) & (4) of this OPPM with an executed certificate of

service. The Court Administrator must ensure that the Hearing Notices are delivered to the custodial authority with sufficient time to permit the custodial authority to serve the aliens.

In addition to delivery of the individual Hearing Notices, Court Administrators shall also provide the custodial authority or the person in charge of the facility where the alien is being detained with the full hearing calendar. The Court Administrator will also provide the INS a copy of the Court Calendar.

2. Mailing Hearing Notices for Detained Aliens in Removal Proceedings

An initial hearing date for aliens in Removal Proceedings cannot be set earlier than 10 days after service of the Notice To Appear, unless the 10 days to secure counsel has been waived by the alien. Once the Hearing Notices have been printed and signed (in duplicate), they will be sent to the alien, in care of his or her Custodial Authority, and his or her attorney, if any, via **an appropriate overnight courier**. One copy of the Hearing Notice will be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service upon the custodial authority will be deemed service upon the alien.

Service of the copy of the Hearing Notice will also be sent to the INS official shall be sent via **regular mail**.

3. Mailing Hearing Notices for Detained Aliens in Deportation Proceedings

For aliens in **deportation proceedings**, an initial hearing date cannot be set earlier than 14 days after the service of the charging document, unless the alien has waived the 14 days to secure counsel. § 242B(b)(1) of the old INA. Once the Hearing Notices have been printed and signed (in duplicate), they will be sent, accompanied by a **Spanish** translation, to the alien in care of his or her Custodial Authority, and his or her attorney, if any, via **Certified Mail-Return Receipt Requested**. One copy of the Hearing Notice will be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service upon the Custodial Authority will be deemed service upon the alien. c.f., 8 C.F.R. § 103.5a(c)(2)(i).

Service of the copy of the Hearing Notice to the INS official shall be sent by **regular mail**.

4. Mailing Hearing Notices for Detained Aliens in Exclusion Proceedings

An initial hearing for aliens in exclusion proceedings may be scheduled at anytime after the filing of the charging document (Form I-122) with the Court. Once the Hearing Notices have been printed

and signed (in duplicate), they will be sent to the alien in care of his or her Custodial Authority, and his or her attorney, if any, via **an appropriate overnight courier**. One copy of the Hearing Notice can be for the alien and the second copy will be retained by the Custodial Authority for his/her own records. Service to the Custodial Authority will be deemed service upon the alien.

Service of the copy of the Hearing Notice to the INS official shall be sent via **regular mail**.

D. Hearing Notices for Aliens in Credible Fear Review and Claimed Status Review

Due to the expedited nature of these proceedings, an attempt should be made to serve the Hearing Notice within 24 hours of receiving the Form I-863, Notice of Referral to Immigration Judge. The Hearing Notice **MUST** be served in-person, if practicable. If in-person service is not practicable, then the Hearing Notice must be sent to the alien, in care of his or her Custodial Authority, via **an appropriate overnight courier**. **However, because time is of the essence with regard to these expedited cases, the Court Administrator may elect to allow the INS to file the Form I-863 and accompanying documents via fax. If distance from the court renders it impractical for INS to file the Form I-863 and accompanying documents in person, the Court Administrator shall establish a procedure to allow for filing of the charging document by fax. Filing by fax shall be limited only to referring a request for a credible fear or claimed status review cases. Nothing precludes the court from serving the hearing notices by fax in appropriate circumstances.**

E. Hearing Notices for Aliens in Asylum-Only Proceedings

Asylum-only cases will generally follow the procedure rules for removal cases, except that an initial hearing date for aliens in asylum-only proceeding can be set earlier than 10 days from the service of the Notice of Referral to Immigration Judge (Form I-863) on the Court. The 10 day requirement in removal proceedings is only applicable to a Notice to Appear under § 239 and not a Form I-863. Court Administrators can therefore schedule these cases accordingly, and Hearing Notices for aliens in asylum-only proceedings will be served according to the procedures outlined for aliens in removal proceedings. This is consistent with the interim rule. *See* 8 C.F.R. § 208.2(b)(2).

F. Rescheduled or Continued Hearings

If the alien is not before the Court, the Hearing Notices will be mailed according to the procedures outlined in part II, §§ A, B & C of this OPPM. In situations when the case must be continued or rescheduled for hearing, and the alien is present before the Court, the following procedures apply.

When providing the alien with notice of a future scheduled hearing the Immigration Judge must ensure:

- (a) That the scheduled hearing date and time have been entered on the Hearing Notice and that a "Change of Address Form," EOIR-33, is provided to the alien;
- (b) The oral warning of the consequences for failing to appear has been given on the record and the appropriate box has been checked on the "Limitation on Discretionary Relief" form. The oral warning, if given, must be provided by the Immigration Judge, not by Immigration Court personnel nor by a contract interpreter, and;
- (c) If applicable, that the "Limitation on Discretionary Relief" form has been signed and dated by the Immigration Judge or Immigration Court personnel.

1. Non-Detained Rescheduled or Continued Cases in Removal Proceedings

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the ANSIR system. In addition, a notice entitled "Limitation on Discretionary Relief" (see example at Attachment C) will be printed and placed in the ROP prior to each hearing for all aliens, as well as a Change of Address Form (EOIR Form-33).

The "Limitation on Discretionary Relief" form is to be used ONLY after the alien has been given the appropriate oral warning by the Immigration Judge in the alien's own language or a language the alien understands. A description of the various oral warnings pursuant to new INA § 240 is at Attachment D. The "Limitation on Discretionary Relief" form must be completed and signed by the Immigration Judge or Immigration Court personnel who are present in the courtroom and who witnessed the giving of oral notice. The oral notice must be given only by the Immigration Judge. A contract interpreter is only authorized to translate the oral warnings. The Immigration Judge, however, may obtain a waiver of the reading of the oral warnings from the alien's attorney or accredited representative. To effect the waiver, the Immigration Judge must obtain a statement on the record from the alien's counsel or representative that he or she has advised the alien and explained the consequences of failing to appear, in lieu of the Immigration Judge's explanation.

After the alien has been given the warnings orally (or the warnings have been waived by the alien's attorney or representative), one copy of the "Limitation on Discretionary Relief" form shall be given to the alien in-person in **English**, in addition to the written Hearing Notice and Change of Address Form (EOIR Form-33) which were previously printed by the Court personnel.

2. Non-Detained Rescheduled or Continued Hearings in Deportation

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the ANSIR system. In addition, a notice entitled "Limitation on Discretionary Relief" (see example at Attachment D) will be printed and placed in the ROP prior to each hearing for all aliens, as well as a Change of Address form (EOIR Form-33).

The "Limitation on Discretionary Relief" form is to be used ONLY after the alien has been given the appropriate oral warning by the Immigration Judge in the alien's own language or a language the alien understands. A description of the various oral warnings pursuant to old INA § 242B(e) is at Attachment E. The "Limitation on Discretionary Relief" form must be completed and signed by the Immigration Judge or Immigration Court personnel who are present in the courtroom and who witnessed the giving of oral notice. The oral notice must be given only by the Immigration Judge. A contract interpreter is only authorized to translate the oral warnings. The Immigration Judge, however, may obtain a waiver of the reading of the oral warnings from the alien's attorney or accredited representative. To effect the waiver, the Immigration Judge must obtain a statement on the record from the alien's counsel or representative that he or she has advised the alien and explained the consequences of failing to appear, in lieu of the Immigration Judge's explanation.

After the alien has been given the warnings orally (or the warnings have been waived by the alien's attorney or representative), one copy of the "Limitation on Discretionary Relief" form shall be given to the alien in-person in **English and Spanish**, in addition to the written Hearing Notice, with a **Spanish** translation, and Change of Address Form (EOIR Form-33) which were previously printed by the Court personnel.

3. Non-Detained Rescheduled or Continued Hearings in Exclusion, Rescission and Asylum-Only Proceedings

For all rescheduled or continued hearings, a Hearing Notice with a date, time and place of hearing will be printed through the ANSIR system. Aliens in **exclusion, rescission, and asylum-only proceedings** will be given notice orally by the Immigration Judge as well as written notice via the ANSIR generated Hearing Notice and a Change of Address Form (Form EOIR-33) .

4. Detained Cases (Including IHP)

In all cases, during the first master calendar appearance, and at every hearing thereafter, the alien shall be provided with written notice of the date and time of the reset hearing. This is in addition to **orally** advising the alien on the record of the next scheduled hearing date. Each ROP should contain a pre-printed Hearing Notice so that the immigration judge or Immigration Court personnel need only

hand-write the date and time on the form. **For aliens in deportation proceedings, a Spanish translation of the Hearing Notice needs to be provided in addition to the Hearing Notice.** A copy should be kept in the ROP and served on the INS, and the original should be served upon the alien. The procedures outlined above for oral warnings of limitations on discretionary relief should be followed.

If personal service is not feasible, then service should be provided by sending the Hearing Notice by the procedures previously outlined in part II, §§ A, B & C of the OPPM. Strict adherence to the in-person written notice procedures will obviate the need for mailing in all but the most unusual cases.

III. NOTIFICATION OF HEARINGS TO INS

Regardless of what type of proceeding is initiated against the alien, the Courts will notify the INS in the following manner:

A. Initial Master Calendar Hearings

The Immigration Courts will send the INS an Immigration Judge's Master Calendar Summary, in the manner specified by the Uniform Docketing System Manual.

B. Continued/Individual Hearings

Immigration Courts will send the INS an Immigration Judge's Master and/or Individual Calendar summary, in the manner specified by the Uniform Docketing System Manual, as notice of continued removal, asylum-only, deportation and exclusion hearings. In addition, one copy of the Hearing Notice should be given to the INS during the hearing.

IV. TELEPHONIC HEARINGS

The procedures outlined above apply to all telephonic hearings. When oral notice of the next date and time of hearing has been given, and/or the oral warnings concerning failure to appear, the written notices of both and a "Change of Address Form" will be sent to the alien or the alien's representative after the telephonic hearing is completed. The written notice shall be served in accordance with the procedures for notice in the underlying proceedings (e.g., removal, deportation or exclusion proceedings.)

V. CERTIFIED MAIL RECEIPT

Although the new INA eliminates the Certified Mail requirement for cases filed with the court

on or after 04/01/97, there may be circumstances where the Certified Mail may still be used. In those instances when Certified Mail is used, the following procedures apply:

- A. The U.S. Postal Service will make an initial attempt to deliver the Certified Mail notice to the addressee. If successful, the receipt (green) will be returned to the Immigration Court and included in the ROP.
- B. If the delivery of the Certified Mail notice is unsuccessful and the Certified Mail is returned to the Immigration Court, the returned Certified Mail notice will be included in the ROP. If returned, the Postal Service will stamp on the mail the reason for non-delivery. If the Certified Mail notice is returned indicating that no such address exists, or the address is insufficient, the Central Address File should be checked to verify the accuracy of the address. If, according to the Central Address File, the original Hearing Notice was improperly addressed, the Hearing Notice should be sent again to the proper address.

VI. CHANGE OF ADDRESS FORM

The alien is required to notify the Immigration Court having administrative control over the case of any change in address and/or telephone number within five (5) days of such change. These changes, whenever practicable, should be recorded on the "Change of Address Form," EOIR-33 (See Attachment A, as revised in April 1996). Whenever practicable, Court personnel should have the alien complete and sign the form himself or herself. Otherwise, Court personnel may transfer new address information received from an alien to the EOIR-33. To provide the alien with the proper form to use, distribution of this form should occur at each hearing unless the Immigration Judge determines that the alien already possesses the form.

VII. CENTRAL ADDRESS FILE

In keeping with the INA's new requirements for the Central Address File, an alien's address shall be kept current in the ANSIR system. Even if an attorney or representative files an EOIR-28, the alien's address must be maintained and updated whenever a "Change of Address Form" is filed.

VIII. BOND HOLDER/OBLIGOR

EOIR will continue the policy of not providing a Hearing Notice to a bond holder/obligor.

IX. EFFECTIVE DATE

These procedures will take effect on April 1, 1997.

Michael J. Creppy
Chief Immigration Judge