OOD
PM 25-30
Effective: April 25, 2025

To: All of EOIR
From: Sirce E. Owen, Acting Director
Date: April 25, 2025

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CANCELLATION OF OPERATING POLICIES AND PROCEDURES MEMORANDUM 18-01

PURPOSE:	Rescind and Cancel Operating Policies and Procedures Memorandum 18-01
OWNER:	Office of the Director
AUTHORITY:	8 C.F.R. § 1003.0(b)
CANCELLATION:	Operating Policies and Procedures Memorandum 18-01

I. Introduction

On January 17, 2018, the Chief Immigration Judge issued Operating Policies and Procedures Memorandum (OPPM) 18-01, *Change of Venue*, providing guidance to EOIR adjudicators regarding changes of venue in Immigration Court. While much of OPPM 18-01 remains useful—and has been incorporated into the instant Policy Memorandum (PM)—updated guidance is needed to address and clarify procedures EOIR has developed over several years to address operationally-unique issues related to a change of venue (COV). To that end, this PM cancels and replaces OPPM 18-01.

II. Immigration Judge Authority to Change Venue

Venue for Immigration Court proceedings lies with the Immigration Court where the charging document is filed by the Department of Homeland Security (DHS). 8 C.F.R. §§ 1003.14(a) & 1003.20(a). Immigration Judges may, upon a proper motion, change venue in those proceedings pursuant to the authority contained in 8 C.F.R. § 1003.20. The standard for granting a motion for COV is "good cause." 8 C.F.R. § 1003.20(b). The regulation provides authority to grant a COV only when one of the parties has filed a motion for COV and the other party has been given notice and an opportunity to respond. *See* 8 C.F.R. § 1003.20(b).

III. Requirement to Follow the Law of the Case Doctrine in Change of Venue Cases

The law of the case doctrine, while non-statutory, is a well-established legal doctrine with a long-standing foundation in the federal courts. In essence, this rule requires that once a court determines any issue of law, such ruling should not be altered by a receiving court if venue is subsequently

changed. In other words, once an Immigration Judge issues an order changing venue to another court, the receiving Judge is not permitted to hear the case *de novo* and may not disregard legal conclusions and their related orders that were made prior to the venue change, unless particular circumstances exist permitting departure from this policy, as further described in this PM. Adherence to this doctrine is so critical in COV situations that even the Supreme Court has declared that "the policies supporting the doctrine apply *with even greater force to transfer decisions* than to decisions of substantive law; transferee courts that feel entirely free to revisit transfer decisions of a coordinate court threaten to send litigants into a vicious circle of litigation." *Christianson v. Colt Indus. Operating Corp*., 486 U.S. 800, 816 (1988) (emphasis added).

Following the law of the case doctrine is crucial "to preserve the ordered functioning of the judicial process." *United States v. Baynes*, 400 F. Supp. 285, 310 n.3 (E.D. Penn. 1975), *aff'd*, 517 F.2d 1399 (3d Cir. 1975). It is also used "to prevent 'delay, harassment, inconsistency, and in some instances judge-shopping.'" *Gen. Elec. Co. v. Westinghouse Elec. Corp*., 297 F. Supp. 84, 86 (D. Mass. 1969). Moreover, it "promotes the finality and efficiency of the judicial process by 'protecting against the agitation of settled issues.'" *Christianson*, 486 U.S. at 816.

The law of the case doctrine is not absolute; rather, there are certain delineated circumstances where departure from the doctrine may be permitted. Thus, Immigration Judges are not expected to follow this rule blindly. As one court indicated, the "rule was not absolute and all-embracing and there are exceptional circumstances which will permit one judge of a district court to overrule a decision by another judge of the same court in the same case." *United States v. Wheeler*, 256 F.2d 745, 747 (3d Cir.), *cert. denied*, 383 U.S. 873 (1958). Circumstances which may warrant a deviation from applying the law of the case include: 1) a supervening rule of law; 2) compelling or unusual circumstances; 3) new evidence available to the second judge; and 4) such clear error in the previous decision that its result would be manifestly unjust. *Hayman Cash Register Co. v. Sarokin*, 669 F.2d 162, 169 (3d Cir.1982). *See also Christianson*, 486 U.S. at 816; *Arizona v. California*, 460 U.S. 605, 617 (1983).

In maintaining this guidance from OPPM 18-01, this PM continues to emphasize that the law of the case doctrine is consistent with all existing immigration laws and regulations, and its application can also be inferred from 8 C.F.R. § 1240.1(b). Moreover, one coherent and continuous record is necessary to comply with the requirements for review once an appeal is filed. *See* 8 C.F.R. § 1003.5. Further, the law of the case doctrine generally includes the recognition of another Immigration Judge's COV order. Thus, absent an appropriate basis for reconsideration based on an error of fact or law in the COV decision, *see* 8 C.F.R. § 1003.23(b)(2), an Immigration Judge cannot generally return a case to the sending court.

IV. Specific Requirements for Oral and Written Motions for Change of Venue

A. Oral Motions

If either party makes an oral motion for COV, the Immigration Judge must record the motion, as well as his or her decision on the motion, on the Digital Audio Recording (DAR) system. The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the oral motion for COV. Notations in the ROP or

on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

B. Written Motions

The Immigration Judge must issue a written order (either a long-form order or a standardized order generated by the case management system) on the motion for COV. Notations in the ROP or on the Immigration Judge worksheet are insufficient to grant a motion for COV. The court administrator at the receiving court will return to the sending court any ROP that does not contain a written order.

V. Administrative Requirements for Valid Venue Changes

A. Mandatory Forwarding Address for Non-Detained Cases

A motion for COV should not be granted without identification of a fixed street address, including city, state and ZIP code, where the movant can be reached for further hearing notification. 8 C.F.R. § 1003.20(c). This requirement was instituted to avoid a court receiving an ROP through a motion for COV and having no mechanism to notify the parties of a hearing date at the new location. It also allows the sending court to determine the correct receiving court to which the case should be subsequently transferred.

B. Pleadings, Issue Resolution, and Scheduling

Prior to granting a motion for COV, the assigned Immigration Judge should make every effort, consistent with due process, to complete as much of the case as possible in the time available. Specifically, the Immigration Judge should attempt to obtain pleadings; resolve the issue of deportability, removability, or inadmissibility; determine what specific form(s) of relief will be sought; set a date certain by which such relief application(s)must be filed with the court; and explicitly state on the record that failure to comply with the filing deadline will constitute abandonment of the relief application(s) and may result in the Judge rendering a decision on the record as constituted. In cases where the Immigration Judge has completed these actions but has not yet scheduled the case for an individual merits hearing, upon the granting of a COV, the receiving court will schedule the case for an individual merits hearing on the next available date. In such circumstances, the Immigration Judge granting the change of venue should also advise the respondent that any arrangements to retain existing counsel or obtain new counsel should be made sufficiently in advance of the hearing in the new venue to enable that hearing to proceed on the date scheduled.[1]

[1] Cases in which a COV is granted after a non-detained case is already scheduled for an individual merits hearing should be rare. In such circumstances, however, the same guidance would apply—*i.e*. the receiving court will schedule the case for an individual merits hearing, and the Immigration Judge granting the COV should also advise the respondent that any arrangements to retain existing counsel or obtain new counsel should be made sufficiently in advance of the hearing in the new venue to enable that hearing to proceed on the date scheduled.

For cases to be scheduled on a master calendar after a COV has been granted, the master calendar hearing at the new court should occur as soon as practicable and no later than 14 days (for a detained case) or 30 days (for a non-detained case) after the date the COV was granted.

VI. Clerical Transfers

Although the language of 8 C.F.R. § 1003.20(b) appears clear that a COV may only be granted upon a motion by one party, EOIR has never interpreted that language in all circumstances as strictly as it may appear on a first reading. Rather, in certain circumstances, EOIR may administratively, or clerically, transfer a case between immigration courts even though such a transfer has the same practical effect as a formal COV. For example, EOIR has a well-established practice of administratively transferring cases when new hearing locations open or current hearing locations close. This practice recognizes the reality that Immigration Court locations are not static over time and that several Immigration Courts have opened or closed in recent years.

Further, a COV due to the closure of a hearing location is more efficiently accomplished by an administrative transfer rather than compelling the parties, through no fault of their own, to file a motion to change venue in every single case affected by the closure of a hearing location. When an Immigration Court closes, particularly in circumstances involving a detained immigration court, EOIR must transfer existing cases to the new court location as expeditiously as possible to ensure that cases do not linger in limbo on the docket of the Court that is no longer open. It would be absurd—and unreasonable and unduly burdensome—to require a party to file a motion to change venue from a court that is closing, especially considering that EOIR has administratively transferred venue without requiring a motion from the parties in such cases for many years without incident or concern. *See*, *e.g.*, EOIR, *The Executive Office for Immigration Review to Close El Centro Immigration Court*, Sept. 19, 2014, https://www.justice.gov/eoir/notice-el-centro-closed ("EOIR will send a new Notice of Hearing to all respondents who had received a Notice of Hearing for proceedings at the El Centro court location, informing them that the new hearing location will be the Imperial Immigration Court."); EOIR, *EOIR to Close York Immigration Court*, July 16, 2021, https://www.justice.gov/eoir/page/file/1412706/dl?inline= ("All pending cases for respondents in custody at the time of the closure will be transferred to another location, and parties will receive notice of such transfer."). For similar reasons, when a new Immigration Court opens, EOIR has, for many years, also administratively transferred cases to that new Court, based on the respondent's address, without necessarily requiring the parties to move for a COV.[2] Such administrative transfers reflect the operational realities of running a nationwide court system in which hearing locations change regularly over time, and such changes have never been thought to conflict with 8 C.F.R. § 1003.20. Accordingly, EOIR will continue to adhere to these practices whenever it closes or opens an Immigration Court.

Another longstanding EOIR exception to 8 C.F.R. § 1003.20 is a clerical transfer between a detained Court and a non-detained Court when an alien is released from custody of the Department of Homeland Security (DHS). *See* Paired Courts—Clerical Transfers Allowed, https://www.justice.gov/eoir/paired-courts-clerical-transfers-allowed. However, for reasons that are not entirely clear, EOIR has artificially and needlessly limited the availability of clerical

[2] EOIR will not administratively transfer a case without the identification of a fixed and complete street address, however.

transfers without providing meaningful justification. Indeed, there is no apparent reason why a clerical transfer cannot be effectuated any time an alien is released from DHS custody and the case no longer qualifies for placement on a detained docket.

Moreover, in 2021, EOIR explicitly allowed nationwide clerical transfers for cases under the auspices of DHS's Migrant Protection Protocols (MPP). U.S. Dept. of Justice, EOIR, OCIJ, Uniform Docketing System Manual, III-5, https://www.justice.gov/eoir/reference-materials/UDSM122020/dl (Feb. 2021) ("Additionally, EOIR has established five dedicated MPP-only hearing locations at four different administrative control Immigration Courts *that are authorized to conduct clerical transfers of MPP cases nationwide*. . . Upon receipt of a Form I-830, each of these administrative control Immigration Courts is authorized to clerically transfer MPP cases under their administrative control to the appropriate administrative control Immigration Court for the respondent's new address." (emphasis added)).

In short, not only does EOIR have the capability to clerically transfer detained cases to all non-detained Courts nationwide, but it has done so in the recent past.[3] There is no reason why EOIR cannot implement the same nationwide clerical transfer system that was utilized for MPP cases for *all* cases involving an alien released from DHS custody whose case is being heard at a detained Court that now must be transferred to a non-detained docket due to the alien's release. Accordingly, EOIR is henceforth authorized to clerically transfer all cases in which an alien is released from DHS custody (from the detained docket of one Court to the non-detained docket of any other Court within EOIR's system) without either party being required to file a motion for a COV, as long as a fixed and complete address for the respondent is provided to EOIR by one of the parties. Once a clerical transfer is effectuated, EOIR will send a Notice of Hearing to both parties indicating the location of the new Immigration Court where the case will be heard. If either party objects to the clerical transfer, that party may file a COV motion to indicate where it believes the case should properly be heard; such motion will typically be adjudicated by an Immigration Judge at the receiving Court. [4]

VII. Choice of Law Issues

Choice of law is a notoriously complicated topic, particularly within EOIR's nationwide Immigration Court system. Further, although choice of law is related to the legal concept of venue, choice of law is an analytically distinct notion. As such, a detailed analysis of it is beyond the scope of this PM. Nevertheless, cases involving COVs or clerical transfers may implicate complex choice of law issues. Consequently, adjudicators in such cases should familiarize themselves with the applicable case law, including case law from the Board of Immigration Appeals (Board) and the relevant circuit court of appeals, when confronting a choice of law issue in a particular case.[5]

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[3] MPP cases are considered detained cases. 8 C.F.R. § 235.3(d).

[4] Nothing in this PM should be construed as prohibiting a party from filing a motion for a change of venue before a clerical transfer is effectuated.

[5] Two recent Board decisions, *Matter of M-N-I-*, 28 I&N Dec. 803 (BIA 2024) and *Matter of Garcia*, 28 I&N Dec. 693 (BIA 2023), outline important choice of law principles with which all adjudicators should be familiar. Those decisions also contain dicta suggesting that a motion to change venue is required in *all* circumstances to effectuate a change of venue. As discussed, *supra*, that maximalist view of 8 C.F.R. § 1003.20(b) is inconsistent with EOIR's longstanding past practice regarding clerical transfers; in fact, EOIR has continued to use clerical transfers to effectuate changes of venue after those decisions were issued without any noted concerns. Further, the Board cannot change

VIII. Conclusion

Although OPPM 18-01 contained much useful guidance, which is retained herein, it did not anticipate EOIR's subsequent embrace of electronic filing and further systems integration nationwide, which rendered some of its guidance—*e.g.* calendaring deadlines—outdated. It also did not fully appreciate or address EOIR's use of clerical transfers, nor did it anticipate EOIR's nationwide use of such transfers in 2021. EOIR is committed to adjudicating cases fairly and efficiently. Utilizing the most effective methods to effectuate changes of venue will help ensure that EOIR meets those goals. Accordingly, OPPM 18-01, which no longer adequately supports those goals, is cancelled and rescinded.

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. Nothing in this PM limits an adjudicator's independent judgment and discretion in adjudicating cases or an adjudicator's authority under applicable law.

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EOIR policy without acknowledgment of the prior policy and an explanation of the change. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009) ("To be sure, the requirement that an agency provide reasoned explanation for its action would ordinarily demand that it display awareness that it *is* changing position. An agency may not, for example, depart from a prior policy *sub silentio* or simply disregard rules that are still on the books." (emphasis in original)). Thus, because neither Board decision addressed any policy changes regarding the use of clerical transfers, they are likely best read as not altering such policies; otherwise, they would run afoul of fundamental administrative law principles. Indeed, neither Board decision addressed clerical transfers in general nor had any occasion to consider EOIR's use of that procedure, including for MPP cases or for situations where Immigration Courts close. To the contrary, the respondent in *Matter of Garcia* was detained at the York Immigration Court at the time he was issued an order of removal, and nowhere in the Board's decision does it suggest that if the case had been remanded, the respondent or DHS would need to file a motion to change venue because the York Immigration Court had closed during the pendency of the appeal. In short, nothing in the Board's decisions on choice of law rules should be read to limit EOIR's well-established use of clerical transfers in three particular situations: opening a new Court, closing a Court, and transferring cases from a detained docket at one Court to a non-detained docket at another Court.