OCIJ
PM 21-18

Effective: April 2, 2021

To: All of OCIJ
From: Tracy Short, Chief Immigration Judge TS
Date: April 2, 2021

REVISED CASE FLOW PROCESSING BEFORE THE IMMIGRATION COURTS

PURPOSE:	Implementation of a revised case flow processing model for certain non-detained cases with representation in immigration courts.
OWNER:	Office of the Chief Immigration Judge
AUTHORITY:	8 C.F.R. §§ 1003.0(b), 1003.9(b)
CANCELLATION:	PM 21-05 (concurrent)

On November 30, 2020, EOIR issued Policy Memorandum ("PM") 21-05, *Enhanced Case Flow Processing in Removal Proceedings*, implementing a new case flow processing model that generally applies to removal cases involving non-detained respondents with representation.[1] As part of its continued commitment to ensuring efficient and fair adjudications and that each respondent with a claim to relief or protection from removal receives a hearing in a timely manner,

[1] Scheduling orders may also be issued in cases that do not fall within this case processing model. This model does not apply to cases of detained respondents, respondents not placed in removal proceedings whose removability is already established (most of whom are also detained), and respondents proceeding pro se. Further, this model does not apply to cases that have been appropriately placed on a status docket—*e.g.*, a case of an unaccompanied child with an asylum application pending before the Department of Homeland Security ("DHS"). *See* PM 19-13, *Use of Status Dockets* (Aug. 16, 2019), https://www.justice.gov/eoir/page/file/1196336/download. Additionally, this model does not apply to cases in which a protective order has been issued or that involve the handling of classified information. *See* 8 C.F.R. § 1003.46; EOIR Operating Procedures and Policy Memorandum ("OPPM") 09-01, *Classified Information in Immigration Court Proceedings* (Feb. 5, 2009) https://www.justice.gov/sites/default/files/eoir/legacy/2009/02/11/09-01.pdf; OPPM 09-02, *Protective Orders and the Sealing of Records in Immigration Proceedings* (Feb. 9, 2009), https://www.justice.gov/sites/default/files/eoir/legacy/2009/02/11/09-02.pdf. Finally, this model does not apply to cases involving Special Immigration Juvenile Status; mental competency issues, including identification under the EOIR Nationwide Policy, *Franco-Gonzalez v. Holder*, CV 10-02211 (C.D. Cal. 2010) or Matter of *M-A-M-*, 25 I&N Dec. 474 (BIA 2011); or other vulnerable populations. Upon a showing of good cause, a representative may seek relief from the application of one or more provisions of a scheduling order by motion to the immigration judge. Immigration judges retain discretion to deviate from this model as appropriate.

the Office of the Chief Immigration Judge ("OCIJ") now issues a revised case flow processing model.[2] The Acting Director has concurrently cancelled PM 21-05.[3]

I. Background

Under prior EOIR practice, short hearings were generally scheduled in all cases to conduct essential tasks such as administering rights and advisals, confirming service of the charging document, allowing respondents time to obtain representation, and taking pleadings on the allegations and charges contained in the charging document. In many represented cases, however, basic case elements such as removability are not contested, and representatives often waive the reading of charges and advisals and enter pleadings at the hearing. As a result, initial hearings in these cases take place solely to take pleadings and establish document filing deadlines.

In order to increase docket efficiency, reducing the number of in-person hearings held to deal with purely preliminary and routine matters is an imperative that benefits both the immigration court system and the parties before it by ensuring that cases are effectively managed and those which require a trial are heard more quickly overall. Rather than expending valuable hearing time and imposing the attendant costs of an in-person appearance upon the parties, existing law, regulation, and policy already provide a way for the confirmation of service of the charging document and the taking of pleadings to be accomplished through documentary submissions with no adverse impact to due process.

EOIR encourages parties in immigration court to resolve cases through written pleadings, stipulations, and joint motions.[4] Actions such as these help cases progress through the immigration court system in a timely and efficient manner by reducing the time and expense incurred by parties for routine hearings and making additional docket space available to hear and resolve contested cases.[5] It is not uncommon for counsel to waive the reading of advisals or to submit pleadings in writing in advance of a master calendar hearing using the template provided in the EOIR Policy Manual. *See* EOIR Policy Manual, App'x K (Sample Written Pleading). Many immigration judges have encouraged written pleadings for represented respondents for several years, and the use of written pleadings remains a well-established judicial procedure that helps cases progress more efficiently to a timely resolution without compromising the respondent's right to due process in removal proceedings, including the right to review the charges.

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[2] All currently outstanding orders of the immigration court remain in effect unless otherwise modified or rescinded by the immigration judge. The revised case flow model will apply prospectively to cases initiated on or after the date of this memorandum. Pending cases before EOIR may be added to the revised case flow model following an individualized determination that they are amenable to this process. Nothing in this memorandum limits the discretion of an immigration judge to utilize scheduling orders in the management of cases to which this model does not apply.

[3] *See* PM 21-17.

[4] *See, e.g.,* PM 20-13, *EOIR Practices Related to the COVID-19 Outbreak* at 5 (Jun. 11, 2020), https://www.justice.gov/eoir/page/file/1284706/download.

[5] Joint or stipulated requests for the disposition of a pending case—*e.g.*, requests for a stipulated order of removal, a stipulated order of voluntary departure, or a stipulated order granting protection or relief from removal; or joint motions to terminate or dismiss proceedings—are to be adjudicated expeditiously by an immigration judge. PM 20-13 at 5-6.

In the interest of efficiency for all involved, EOIR previously discouraged holding master calendar hearings in cases involving represented respondents solely for the purpose of filing an application and scheduling an individual merits hearing. *See* PM 12-03 at 6. Furthermore, EOIR does not require any application to be filed in open court. *See*, *e.g.*, PM 21-02, *Cancellation of Certain Operating Policies and Procedures Memoranda* (Nov. 6, 2020), https://www.justice.gov/eoir/page/file/1335101/download ("Relatedly, EOIR now allows the filing of an asylum application by mail, at the window, in court, or, where available, electronically, through either the EOIR Courts & Appeals System (ECAS) or email, and it will continue to accept the filing of an asylum application through those methods until further notice."). Additionally, the continued deployment of ECAS to immigration courts, scheduled for completion in 2021, has made electronic filing of case documents more accessible and convenient for both parties.

Immigration judges are authorized to issue orders for pre-hearing statements. 8 C.F.R. § 1003.21(b), (c). Subject to certain criteria, immigration judges are also authorized to issue standing orders, and immigration courts are authorized to adopt local operating procedures pursuant to 8 C.F.R. § 1003.40. *See generally* PM 20-09, *The Immigration Court Practice Manual and Orders* (Feb. 13, 2020), https://www.justice.gov/eoir/page/file/1249276/download.

Reliance on scheduling orders has been a common practice in federal and state courts for decades to guide practitioners in the preparation of a case, reduce the need for continuances, and provide greater trial date certainty. Indeed, the district courts of the United States are required to issue scheduling orders in civil cases. *See* Fed. R. Civ. P. 16(b)(1).[6]

Accordingly, OCIJ's revised case flow processing model continues to fit well within existing law, regulation, and agency policy, and is the culmination of existing policies and processes, which have been consolidated, harmonized, and organized toward the goal of improving docket efficiency and ultimately reducing the amount of time respondents must wait to have their cases heard.

II. Updated Case Flow Processing Model

In general, under the new model,[7] for non-detained cases in which a representative, as defined in 8 C.F.R. § 1001.1(j) and 1292.1, files a Form EOIR-28 at least 15 days[8] before a master calendar hearing, the hearing will be vacated and the court will send to the parties a scheduling order, setting deadlines for the filing of written pleadings and any evidence related to the charges of removability. The deadline will be 30 days after the most recently scheduled hearing date, whether vacated or held, unless pleadings have already been taken or a deadline is otherwise specified by the immigration judge. Where necessary, parties may request a master calendar hearing or seek

[6] "The judge must issue the scheduling order as soon as practicable, but unless the judge finds good cause for delay, the judge must issue it within the earlier of 90 days after any defendant has been served with the complaint or 60 days after any defendant has appeared." Fed. R. Civ. P. 16(b)(2).

[7] To facilitate this model, a copy of the list of pro bono legal service providers and a notice of the respondent's appeal rights will be included with the initial hearing notice that is served on all respondents by mail, and the provision of those items will be reflected or noted in the record.

[8] The term "day" as used throughout this PM refers to calendar days. If a deadline falls on a Saturday, Sunday or legal holiday, the deadline is construed to fall on the next business day.

extensions of filing deadlines by written motion pursuant to EOIR Policy Manual, Part II, Chapter 3.1(c)(4), (5).

For non-detained cases in which a representative files an EOIR-28 less than 15 days before a master calendar hearing—or does not file it until the date of the master calendar hearing—the representative and the respondent must appear at the scheduled hearing.[9] If the representative is not prepared to enter pleadings, the immigration judge will then generally issue a scheduling order containing the deadlines described above.

Once the written pleadings and evidence related to the charges of removability have been received, the parties will have 20 days to file a response with the court. Thereafter, the immigration judge will either decide the issue of removability, issue a scheduling order setting the deadline for the submission of additional supplementary briefing or evidence regarding removability, or schedule a hearing on removability. If the immigration judge decides the issue of removability based on the filings, the court will issue a written judicial determination of removability to the parties.

In cases where the immigration judge finds that removability has been established, the court will also send the parties a scheduling order setting forth the deadline for the submission of any applications for relief or protection from removal sought by the respondent, along with supporting documents, as well as any other documents to be submitted by the parties.[10] This deadline will be 60 days from the date of the order sustaining the charge(s) of removability, unless otherwise specified by the immigration judge.[11] The order will also contain a copy of the biometrics notice and instructions,[12] along with the consequences of failing to comply with that notice.

Once the court has received the applications for relief or protection from removal and supporting documents, an immigration judge will review the case for trial readiness. Cases that are ready for trial will be placed in a trial queue and scheduled for a merits hearing within 90 days, subject to docket availability. The court will order DHS to confirm whether the respondent has provided biometrics and other biographical information prior to the merits hearing. Cases that are not yet ready for trial will be set for a short matter hearing or pre-trial conference, placed on a specialized docket, or issued a scheduling order, as appropriate. Amendments to applications and other supplemental filings must be submitted at least 30 days in advance of the merits hearing, unless otherwise specified by the immigration judge.

In the event that written pleadings are not timely filed, DHS may proceed by written motion to request that the court make a finding of removability and issue a final order. In the event that DHS

[9] Absent receipt of a notice from the immigration court that a hearing has been rescheduled, parties should continue to appear at all previously scheduled hearings. A representative should exercise caution not to schedule other matters during scheduled hearings until the representative receives the new scheduling order.
[10] Such documents may include, for example, Form I-751, country conditions evidence, and documents relating to certain criminal convictions.
[11] Parties are expected to submit applications and supporting documents within the established 60-day deadline. However, a party may file a motion with the immigration judge, as appropriate, to extend a filing deadline or accept an untimely filing. *See* EOIR Policy Manual, Part II, Chapter 3.1(c)(4), (d)(3).
[12] A copy of the current notice and instructions is available at https://www.uscis.gov/sites/default/files/document/legal-docs/Pre%20Order%20Instructions%20EOIR.pdf.

does not timely meet its burden to demonstrate removability, the respondent may file a motion to terminate as appropriate. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived. 8 C.F.R. § 1003.31(c).

An immigration judge may order further briefing[13] or issue a final order resolving the case at any stage in the removal proceedings as appropriate. If the immigration judge resolves the case through a dispositive order—*e.g.*, granting a motion to terminate or a motion to pretermit—prior to the scheduled hearing, the immigration judge will issue an order accordingly, and the hearing notice will be vacated.[14]

Every effort has been made to ensure that, to the greatest extent possible, all cases to which this model applies are administered in a procedurally similar manner. Thus, cases that require pre-trial hearings and those that do not should expect similar pre-trial instructions from the court to allow the parties a reasonable opportunity to prepare their cases and proceed to trial expeditiously, thereby ensuring a full and fair hearing.

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. Nothing herein should be construed as mandating a particular outcome in any specific case. Nothing in this PM limits an immigration judge's independent judgment and discretion in adjudicating cases or an immigration judge's authority under applicable law.

Please contact your supervisor if you have any questions.

[13] If a respondent challenges his or her removability from the United States, does not seek to apply for any relief or protection from removal if found to be removable, and the issue of removability turns solely on a purely legal question that does not require a hearing—*e.g.*, whether the respondent's conviction constitutes an aggravated felony—then the immigration judge will generally not schedule a hearing, but may issue an order requesting further briefing on the issue from the parties if the record contains insufficient information on which to issue a dispositive order.

[14] Immigration judges are encouraged to resolve dispositive motions in advance of an individual hearing expeditiously. In situations where an individual hearing is vacated, immigration courts should endeavor to fill that docket slot with another individual hearing as expeditiously as possible after providing notice.