

APPEARING AT A MASTER CALENDAR HEARING IN IMMIGRATION COURT

I. Procedures and Pleading to Removability

A. Overview of Immigration Court

If the Asylum Office did not grant the asylum application and referred it to Immigration Court, your client can now pursue his or her asylum claim as a defense to removal in Immigration Court. If your client never filed for asylum with the Asylum Office but rather the government started removal proceedings against him or her for some other reason, he or she can now pursue an asylum case in Immigration Court.³³ The immigration judges are part of the Executive Office for Immigration Review ("EOIR"), an agency of the Department of Justice.³⁴

The immigration court is located at Room 320 of the John F. Kennedy Federal Building, Government Center, 15 New Sudbury Street, Boston. Room 320 contains a lobby (with a two-hole punch), the court clerk's window and four of the judge's courtrooms. The docket sheets for all judges are posted in Room 320. If you are not sure which judge is hearing your client's case, check the docket sheets. You may also obtain this information by calling the EOIR automated telephone line at 1-800-898-7180.

B. Procedures at the Master Calendar Hearing

The first hearing in Immigration Court is the Master Calendar hearing. At this hearing your client will plead to the government's allegations that he or she is removable from the United States. Your client will also state the forms of relief from removal that he or she plans to seek. This hearing is similar to an arraignment in criminal court (although Immigration Court proceedings are civil and not criminal proceedings): the government's trial attorney alleges grounds of removability, contained in the Notice to Appear. Your client then pleads to those allegations, as explained in more detail below, and requests any form of relief for which he or she is eligible, such as asylum, withholding of removal, relief under the Torture Convention and voluntary departure.

The judge will have several cases set at the same time for Master Calendar hearings since each hearing is rather short. There is a sign-up sheet for Master Calendar hearings in the lobby of Room 320 next to the two-hole punch. If you do not want to spend a great deal of time waiting for your client's case to be

³³ See *id.*

³⁴ See 8 C.F.R. §1003.0, §1003.9-4.

called, sign in early. The judge will first hear the cases of respondents who are represented by an attorney. If you sign in as the second or third attorney on the list, then you will have a chance to witness a few Master Calendar hearings to see how the judge runs his or her courtroom.

The hearing itself will likely last several minutes. Once the clerk calls your case, you and your client (your client **must** attend all hearings) will take a seat at the table in front of the judge. If your client does not speak English or Spanish, you should bring an interpreter to this hearing or request a court interpreter well in advance of the hearing. The court will provide an interpreter for the Individual Calendar hearing. Once the hearing begins, the judge will ask your client for name and address. After that, the judge will deal with you and the trial attorney.

At the Master Calendar hearing, the judge will make sure that your client was served with the Notice to Appear and the list of free legal services, and you're your client understands other rights. You should ask the trial attorney for copies of any statements that your client has made to the government. The immigration judge will ask your client to respond to the allegations of removability in the Notice to Appear. The court has a pleadings form, which is described in detail below, that you will use to respond to the allegations of removability. The judge will also ask your client to designate a country of deportation if he or she does not receive a grant of asylum or other relief from removal. Your client can name any country to which he or she has a right to enter, but should not name the country in which he or she fears persecution. Thus, typically, clients refuse to designate a country, and the judge will name one, which is usually the client's home country.

The judge will expect you to file an EOIR-28, Notice of Entry of Appearance as Attorney or Representative, if you have not already done so, and a pleadings form. (The pleadings form is discussed in detail below.) You must two-hole punch all documents presented to the court. (If you forget, there is a two-hole punch in the lobby.) Give a copy of all documents filed in court to the government's trial attorney. You should also give the trial attorney Form G-28 (Notice of Appearance), signed by the applicant.

If the immigration judge finds that your client is removable from the United States, the immigration judge will allow him or her to apply for relief from removal, such as asylum, withholding of removal, Torture Convention relief, and voluntary departure.

If the Asylum Office referred your client to Immigration Court, the judge already has a copy of the asylum application and you do not have to refile the asylum application. You can, however, supplement the asylum application with additional information and can request time to do so, anywhere from thirty to sixty days is typical. The judge will schedule a date for filing the supplemental

materials. Then, the judge will set a date for an Individual Calendar hearing, which is your client's full hearing on the merits of his or her claim. At that hearing your client will testify, present witnesses and be subject to cross examination, as explained below.

If your client is requesting asylum for the first time in Immigration Court, the judge will schedule another Master Calendar hearing where your client will file his or her asylum application in court. Again, you should ask for time to complete the asylum application, usually forty-five to sixty days.

Your client **MUST ATTEND** all Master Calendar hearings and the Individual Calendar hearing or he or she will be ordered removed *in absentia*.

C. Pleading to Removability

The main legal issues at the Master Calendar hearing are the allegations of removability in the Notice to Appear, and your client's response to them. In pleading to removability, the court prefers that you use the court's pleadings form. On this form your client responds to the allegations listed in the Notice to Appear, and requests relief from removal. There are three types of pleadings forms, one for removal proceedings, one for deportation proceedings and one for exclusion proceedings. It is very unlikely that you will require either the deportation pleadings form or the exclusion pleadings form. Removal proceedings replaced these two separate proceedings after amendments to the INA, effective April 1997. This article only discusses the removal pleadings form. *See* sample form entitled "Respondent's Pleadings in Removal Proceedings," *infra*.

The removal pleadings form contains eighteen paragraphs, most of which require a response of either "concedes or denies." Before filling out the form, you should read it to your client and confirm the correct answers with him or her.

- ❖ Paragraphs one - confirm that your client received the Notice to Appear by hand or certified mail. If so, concede.
- ❖ Paragraph two - Is your client the named respondent? Even if your client is the named respondent, you may need to answer "denies" if you have reason to believe that any evidence obtained by the government to determine your client's identity and alienage was obtained unlawfully. This does not happen very frequently, but if it does, you may need to file a motion to suppress with the court. Call PAIR for sample motions if you believe one is needed.
- ❖ Paragraph three - Explain to your client that the pleading form will be made part of the record.

- ❖ Paragraph four - confirm that your client received a list of Free Legal Services and Notice of Appeal Rights.
- ❖ Paragraph five - make certain that your client's address is correct.
- ❖ Paragraph six - you need to advise your client of the "nature and purpose" of these proceedings.
- ❖ Paragraph seven - normally, one waives a formal reading of the allegations and charges.
- ❖ Paragraph eight - If any of the factual allegations on the Notice to Appear are incorrect, you need to deny each incorrect allegation. Again, as in paragraph two, if you believe that the evidence against your client was illegally obtained, you should deny all allegations and seek to file a motion to suppress.
- ❖ Paragraph nine - If all of the factual allegations are correct, you may concede removability as charged. Clients usually get nervous about conceding removability. Explain to your client that admitting removability does not mean that your client will be removed or that your client has no relief from removal.
- ❖ Paragraph ten - Refuse to designate a country for removal purposes. Let the judge make such a designation.
- ❖ Paragraph eleven - This is a list of possible forms of relief from removal. In an asylum case, one would normally request the following: asylum, withholding of removal, protection pursuant to the UN Convention Against Torture, and voluntary departure for as long a period as permitted under INA Section 240B. You should also discuss with your mentor whether your client is eligible for any other forms of relief. You must request all forms of relief for which your client is eligible at this time or you will be barred from requesting such relief in the future.
- ❖ Paragraph twelve - Always ask for the amount of time you require to submit an asylum application to the court, usually forty-five or sixty days.
- ❖ Paragraph thirteen - You must file your client's asylum application when scheduled or risk having your client's right to file for asylum deemed waived. If additional time is required to file any application with the court, you may file a motion for additional time.
- ❖ Paragraph fourteen - If you fail to file an application timely, the court can enter an order of removal against your client.

- ❖ Paragraph fifteen - Asylum cases take longer than other immigration proceedings. At a minimum, you should request three hours, but if you have witnesses and evidence to submit, you should request more than three hours.
- ❖ Paragraph sixteen - If your client does not speak English fluently, you should request an interpreter.
- ❖ Paragraph seventeen - Your client MUST attend all hearings. Failure to do so will result in an order of removal entered *in absentia*.
- ❖ Paragraph eighteen - Make certain that your client knows the date, time and place for each hearing.

D. Scheduling the Individual Calendar Hearing

Once your client has plead to removability, the immigration judge will set a date for an Individual Calendar (or merits) hearing, which is a several hour hearing where your client will testify and present any other witnesses and evidence to support his or her case. The judge may offer a hearing date that is only a few days or weeks later. If you and your client are not prepared to have a full hearing on the case so soon, you can ask the immigration judge for another hearing date and you will receive one, often many months or even a year later. Your request for a later hearing date, however, is treated as a request for a continuance and it will stop the 180-day “clock” for work authorization, which is described in more detail in the chapter on work authorization, *infra*. The additional time your client waits for the hearing will not count towards the 180-day period that must run before your client can seek work authorization. Thus, it is important to discuss with your client the consequences of asking for a later hearing date if you are not prepared to accept an earlier date. If, however, your client already has work authorization, asking for a later hearing date will not affect it.

E. Biometrics Instructions

The Boston Immigration Court has implemented biometrics requirements. An asylum seeker with a case in Immigration Court must submit additional items to the Nebraska Service Center, in addition to filing his or her asylum application and supporting documents in Immigration Court. All clients must be fingerprinted for background checks before the immigration judge will issue a decision.

Biometrics must be current at the time of the merits hearing. Asylum seekers must send the following: (1) a copy of the first three pages of their completed Form I-589 filed in Immigration Court; (2) a

copy of their attorney's Form EOIR-28 Notice of Appearance, if represented; and (3) a copy of the instructions sheet to:

USCIS Nebraska Service Center
Defensive Asylum Application with Immigration Court
P.O. Box 87589
Lincoln, NE 68501-7589

There is no fee for asylum applicants. If you do not receive a receipt notice in 3 weeks, call 800-375-5283. Please *see* appendix for a copy of the instructions sheet.

II. Checking Your Client's Immigration Court Record

You are permitted by the court to view your client's immigration court record once you have entered an appearance in the case (EOIR-28). If your client had a hearing before you agreed to represent him or her, you should check to see what is in the court file. The government's trial attorney may have submitted evidence to the court during a prior Master Calendar hearing.

A. Review Your Client's File

To check the court record, call the Immigration Court at the John F. Kennedy Federal Building and ask to make an appointment to review your client's court record. That number is 617-565-3080.

B. Instructions for Listening to a Record of Proceedings

You may also listen to the tapes of prior proceedings. The tapes run at a different speed than normal tapes; the clerk will provide you with a tape player upon your request. Be sure to call the immigration court to make an appointment; at a minimum, you should give yourself 2-3 hours. If you are not yet the attorney of record, please have the attorney of record draft a letter for you to bring.

1. Go to the JFK Building, Room 320. Hand your letter/EOIR 28 to the receptionist at the window. S/he will give you the file with the tape, a form to fill out, a log in which to enter your information, and a tape recorder. There are two tables in the waiting area that you can work at, with outlets within reach.
2. Bring a notebook/laptop and a set of head-phones, preferably ones that can block out a lot of noise as you will be working in the waiting area for the immigration courts.
3. The tape recorder is a little tricky:

- Make sure the tape is pushed all the way down in the recorder, otherwise it will not advance on the reels
- Look for the set of five gray buttons on the front of the recorder and make sure the one on the left is pushed in. You may have to push the one next to it in as well.
- On top of the recorder, there are four sliding adjusters for volume, tone, speed and something else. Volume is on the far right and should be set about three-quarters from the top. Speed is on the far left and should be set almost to the top. The two in the middle should be set around the one-quarter mark. Obviously, you can adjust as necessary, but if you set everything on low or high you most likely will not hear anything.
- If the sound is only coming out of one side of your headphones, try pulling the headphone plug out about a quarter of its length.

III. Freedom of Information Act Requests

As soon as you accept an asylum case that is pending in immigration court, you should file a Freedom of Information Act Request (“FOIA”). If your client previously filed for asylum, it is important that you obtain a copy of the record as it may contain a statement made by your client to an immigration officer, if immigration officials previously took your client into custody. The record may also contain a referral memorandum, the asylum officer’s reasoning for denying the asylum application. Unfortunately, the memorandum is difficult to obtain without a FOIA. To obtain a copy, FOIA USCIS (also ask the trial attorney if he or she will share a copy).

To make a FOIA request to the **US Citizenship & Immigration Service**, mail requests, including form G-639 and an affidavit from your client consenting to your request, to:

National Records Center
FOIA/PA Office
P.O. Box 648010
Lee's Summit, MO 64064-8010

Form G-639 can be found on the USCIS website: <http://www.uscis.gov/graphics/formsfee/forms/g-639.htm>.

To make a FOIA Request to the **Immigration Court**, submit a letter (not the G-639), and include identifying information such as your client’s full name, the alien registration number (if known), and a thorough description of the records being sought to either the Boston Immigration Court or EOIR’s General Counsel:

Boston Immigration Court
Executive Office for Immigration Review
15 New Sudbury Street
John F. Kennedy Building
Government Center
Boston, MA 02203

-or-

Office of the General Counsel
Attn: FOIA Service Center
Executive Office for Immigration Review
5107 Leesburg Pike, Suite 2600
Falls Church, VA 22041

If the alien registration number is not known, give the date of the order to show cause/Notice to Appear, country of origin, and home address, if available. The FOIA request must also be accompanied by the appropriate authorization:

- When a person is requesting information about himself/herself, the request must be accompanied by a notarized statement or a statement signed under penalty of perjury. This requirement may be fulfilled by completing and signing Form DOJ-361, having the signature on the request witnessed by a notary, or including the following statement immediately above the signature on the request: "I declare under penalty of perjury that the foregoing is true and correct. Executed on [date]."
- When seeking information about another individual or on behalf of another individual, a notarized statement must be provided by that person authorizing consent to release the information. Without the subject's written consent, the information is subject to limited disclosure pursuant to FOIA exemptions.
- When seeking information about a deceased individual, proof of death must be submitted. Proof of death may be a death certificate, newspaper obituary, or some other form of comparable proof.

If you do not provide the necessary information, such as the alien registration number, it is possible that the government will not process the request. For more information, log onto <http://www.usdoj.gov/eoir/mainfoia.html>. If you have further questions, you can call the FOIA Service Center at (703) 605-1297.

Please note that the EOIR has specifically asked that FOIA requesters *not* use Department of Homeland Security (DHS) Form G-639, Freedom of Information/Privacy Act Request, because use of this form creates confusion as to whether the requester seeks DHS or DOJ records.

FOIA requests take a long time to process. It is not unusual for the government to take three or four months to respond. If you need the records sooner, call the trial attorney and ask to expedite the request. If there is anything PAIR can do to help, call the office.