

# Quick Guide to Effective Advocacy in Immigration Court

Presented by Caitlyn DeWitt of Social Justice Collaborative

# Agenda

- EOIR Basics
- What to File in Asylum Cases
- Prepping Your Client
- Prosecutorial Discretion Pros and Cons
- Thinking On Your Feet
- Questions

# EOIR Basics

## Immigration Court Admission

- Register on [ereg.eoir.justice.gov/register](http://ereg.eoir.justice.gov/register)
  - Complete process by taking identification to any Immigration Court
  - Manage cases in EOIR Portal
- EOIR-28 Entry of Notice of Appearance

U.S. Department of Justice  
Executive Office for Immigration Review  
Immigration Court

OMB#1125-0006  
Notice of Entry of Appearance as Attorney or  
Representative Before the Immigration Court

<b>NAME AND ADDRESS OF REPRESENTED PARTY</b> (Type or Print)		<b>ALIEN ("A") NUMBER</b> (Provide A-number of the party represented in this case.)
(First)	(Middle Initial)	(Last)
(Number and Street)		(Apt. No.)
(City)	(State)	(Zip Code)

**Attorney or Representative (please check one of the following):**

I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following state(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary), and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

**Full Name of Court** \_\_\_\_\_ **Bar Number (if applicable)** \_\_\_\_\_

I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization: \_\_\_\_\_

I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3).

I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from \_\_\_\_\_ (country).

I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

**Attorney or Representative (please check one of the following):**

I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Immigration Court. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

**SIGNATURE OF ATTORNEY OR REPRESENTATIVE** \_\_\_\_\_ **EOIR ID NUMBER** \_\_\_\_\_ **DATE** \_\_\_\_\_

**X**

**NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS**

Name: \_\_\_\_\_  
(First) (Middle Initial) (Last)

Address: \_\_\_\_\_  
(Number and Street)

Law Firm: \_\_\_\_\_  
(City) (State) (Zip Code)

Telephone: \_\_\_\_\_ Facsimile: \_\_\_\_\_ Email: \_\_\_\_\_

Check here if new address

# EOIR Basics

## Notice to Appear

- 8 C.F.R. §§ 239.1, 1239.1
- Precedent
  - BIA
    - *Matter of R-T-P-* (2024)
    - *Matter of Fernandes* (2022)
  - Supreme Court
    - *Campos-Chaves v. Garland* (2024)
    - *Niz-Chavez v. Garland* (2021)

U.S. Department of Homeland Security Notice to Appear

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**In removal proceedings under section 240 of the Immigration and Nationality Act:**

Subject ID: [REDACTED]      FINS #: [REDACTED]      File No: A2 [REDACTED]  
DOB: [REDACTED]      Event No.: [REDACTED]

In the Matter of: \_\_\_\_\_

Respondent: \_\_\_\_\_ currently residing at:  
SOUTH TEXAS FAMILY RESIDENTIAL CENTER 300 EL RANCHO WAY DILLEY, TEXAS, UNITED STATES (830) 378-6600  
78017  
(Number, street, city and ZIP code)      (Area code and phone number)

1. You are an arriving alien.  
 2. You are an alien present in the United States who has not been admitted or paroled.  
 3. You have been admitted to the United States, but are removable for the reasons stated below.

The Department of Homeland Security alleges that you:  
1. You are not a citizen or national of the United States;  
2. You are a native of EL SALVADOR and a citizen of EL SALVADOR ;  
3. You arrived in the United States at or near HIDALGO, TEXAS, on or about December 1, 2016;  
4. You were not then admitted or paroled after inspection by an Immigration Officer.

On the basis of the foregoing, it is charged that you are subject to removal from the United States pursuant to the following provision(s) of law:  
212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that you are an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution or torture.  
 Section 235(b)(1) order was vacated pursuant to:     8CFR 208.30(f)(2)     8CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at:  
333 South Miami Avenue, Suite 700 Miami FL US 33130

on \_\_\_\_\_ at \_\_\_\_\_ to show why you should not be removed from the United States based on the  
(Date) (Time)  
charge(s) set forth above.      MICHAEL SCAPPECHIO Acting Patrol Agent in Charge  
Date: December 03, 2016      McAllen, Texas  
(City and State)

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See reverse for important information

Form I-862 (Rev. 08/01/07) N

# EOIR Basics

## Master Calendar Hearing

- Held for pleadings, scheduling, miscellaneous matters
- *Supposed* to be the date on the NTA
- “In proceedings in which the Form EOIR-28 is filed at least fifteen days prior to a master calendar hearing, the hearing will be vacated.” ICPM 3.1(b)(1)(B)
- EOIR-33 if address has changed
- Biometrics advisal
- Careful with adjournments—keep the clock running!
- Can also move to vacate MCH and set an individual hearing date if pleadings have already been filed

# Individual Hearing

## Individual Calendar Hearing

- Pre-hearing order vs. Immigration Court Practice Manual
  - Filing deadline typically 15 days prior to hearing
- 2-4 hours in length
- Interpreter provided
- OPLA Attorney:
  - [sfr.dutyattorney@ice.dhs.gov](mailto:sfr.dutyattorney@ice.dhs.gov)
  - (415) 705-4604
  - eService: <https://eserviceregistration.ice.gov/>

# What to File

- Declaration
- Country Conditions Documentation
- Psychological Evaluations
- Country Conditions Expert Affidavit
- Witness Affidavits
- Witness List
- Motions
  - Motion for Witness to Appear via Webex
  - Motion for Counsel to Appear via Webex
  - Motion to Waive Minors' Presence
  - Motion for Interpreter (*especially useful for indigenous languages*)
- Errata sheet for I-589
- Legal Brief or Pre-hearing Statement

# Preparing your client for court

- Discuss logistics of court including arrival time, dress, who needs to attend court, what documents to bring
- Tell the client who they will see in the room
  - Attorneys, IJ, interpreter
- Outline of the hearing
  - Basic questions from IJ
  - Legal discussion to narrow issues, discuss prosecutorial discretion, and marking exhibits
  - Readback questions and oath
- Instructions on testifying
- **Trauma-informed lawyering**



# Testimony prep

## Direct

- Write an outline of your questions but don't read from the script
- Use your client's own words back to them
- Avoid leading questions **even in prep**

## Cross

- Introduce client to the *tone* in which OPLA will ask questions
- Yes/no questions that lead to a yes
  - "Is it fair to say you are only afraid of extortionists?"
    - Mixed motivation exists!
- Translation issues
- Rehabbing criminal history

# Prosecutorial Discretion

## Pros:

1. Out of removal proceedings
2. Delays testimony
3. Two more bites at the apple

## Cons:

1. Left without any status
2. AO takes YEARS to get an interview (but maybe mandamus)
3. AO can be just as traumatizing

# How to object to late MTDs

- Cite how long your client has been waiting
- Timeliness of motion (has everything already been filed?)
  - Judicial economy
- Cite psychological evaluation regarding the toll the wait has had on your client
- Director's Memo 23-04
  - "Generally speaking, EOIR adjudicators should focus on cases where the respondent is a civil immigration enforcement priority *or desires a full adjudication of a claim for immigration relief...Our pending caseload **compels** us to prioritize cases where one or both of the parties wish to proceed."*

# Narrowing issues; objecting to OPLA filings

- Best practice: reach out to the assigned trial attorney ahead of time to obtain stipulations
- Reality: try to narrow issues in the first few minutes of the hearing, *especially* call for limiting harm-related testimony
- Proffer witnesses
- Bad facts from I-213 or Credible Fear Interview → look for procedural error (Correct language? Appropriate advisals?)

# Examination in court

## Direct

- Read the room: if IJ asks to hear about something specific, reserve a liberal redirect, but focus on the requested issues
- Get it on the record: client crying or upset, non-verbal trauma responses, ask judge for a break
- If you can't get the answer you want, move on! You can come back to it later.

# Examination in court

## Cross

- Don't be afraid to object
  - Asked and answered
  - Argumentative
  - Calls for speculation
  - Mischaracterizing evidence
- Transcribe
  - Especially helpful if you run out of time
  - Helps identify any places where redirect is necessary

# Examination in court

- Get the IJ's assessment on credibility
  - *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011).—the court must specify what credibility concerns they have and allow respondent to rehab with corroborating evidence

# The unexpected

- Something *always comes up*
  - Unknown criminal history
  - Big inconsistency in evidence
  - Legal issue that wasn't anticipated
  - Client has serious memory gaps
  - IJ decides to make a mountain out of a molehill
- Don't panic; do **not** ask your client a question to which you do not know the answer
- Ask for a continuance to gather more evidence, opportunity to brief an issue, or a written closing argument
- Own up to mistakes; with certain IJs this goes a long way



Questions?

# Helpful resources

- Immigration Court Practice Manual:  
<https://www.justice.gov/eoir/reference-materials/ic>
- Ninth Circuit Immigration Outline:  
<https://www.ca9.uscourts.gov/guides/immigration-outline/>
- Google “issue + ILRC”
- San Francisco Immigration Legal Defense Collaborative (SFILDC) listserv
- Find country conditions documents and experts at Center for Gender & Refugee Studies
- **Trauma-informed lawyering resources:**
  - The Trauma-Informed Lawyering with Myrna McCallum (podcast)
  - CLINIC: Developing a Trauma-Informed Consciousness for Legal Practitioners
    - <https://www.cliniclegal.org/training/archive/developing-trauma-informed-consciousness-legal-practitioners>

Contact me!

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