REPRESENTING CLIENTS AT THE MASTER CALENDAR HEARING

How to Prepare for an Initial Hearing with Quick-Reference Checklist

By ILRC Attorneys

I. Overview

The master calendar hearing is the first hearing in removal proceedings before an immigration judge of the Executive Office for Immigration Review (EOIR), which is part of the Department of Justice. The Department of Homeland Security (DHS) acts as "prosecutor" in these proceedings and must file charges with the immigration court, alleging the reasons why the non-citizen is removable from the United States. During the master calendar hearing, the immigration judge can make serious substantive decisions in a case, including ordering the respondent's removal or denying applications for immigration relief. Therefore, preparation for the master hearing goes beyond reviewing administrative matters and can require a significant amount of legal analysis and strategizing. Advocates must be well prepared and have a clear case strategy in mind prior to the master calendar hearing, as well as a detailed plan for how to advocate during this hearing.

Typically, the immigration judge will decide three questions at a master hearing:

1. Has DHS properly served the respondent with a legally sufficient Notice to Appear (NTA) and filed it with the court?
2. Is the respondent removable as charged on the NTA? In other words, has the respondent conceded that they are removable, or, applying the correct burden and standard of proof, does the evidence prove that the respondent is removable as charged?
3. If so, should the person be removed, or can the person apply for some kind of relief from removal, such as adjustment of status, cancellation of removal, or asylum?

In addition to deciding these questions, the master calendar hearing is also typically a preliminary hearing used to manage the court's docket, to discuss preliminary issues until an individual's application for relief from removal is ripe to be heard. The master calendar might be used as a status conference on a case or as a deadline to turn in documents prior to the individual merits hearing. For this reason, a person may have several master calendar hearings before presenting their full case to the judge in an individual hearing.

Because a master hearing may involve a variety of legal and procedural issues, it is important for advocates to orient themselves to the client's procedural history, relevant legal issues, and options for relief from removal before appearing

on the client's behalf. This advisory and accompanying checklist are designed to provide a quick guide for advocates to flag the issues that need to be addressed when representing clients at a master calendar hearing.[1]

II. Understanding the Client's Case

Advocates may encounter clients at various stages of their removal proceedings; some clients may have never before appeared in Immigration Court while others may have undergone their entire removal proceedings and are in immigration court after the remand of an appeal or a granted motion to reopen. Therefore, it is important that advocates understand the procedural history of the client's case at the outset, to understand what legal questions are at issue in the case and the next steps to be taken.

A. Review the Procedural History of the Case

Advocates should prepare by gathering information prior to the master calendar hearing. At a minimum, the advocate must interview the client and review the charging document before pleading on behalf of a client (i.e. admitting or denying the allegations and conceding or contesting the charges). It is important to ascertain whether the client has already appeared at a master calendar hearing prior to meeting with you and whether the client has already entered pleadings[2] or sought a form of relief from removal. Additionally, some clients may have completed their entire case before the immigration judge, but a decision was remanded by the Board of Immigration Appeals (BIA). If so, the advocate should review the Board's remand order to understand what issues must be considered by the immigration judge. In such a case, this will likely require a review of the prior record of proceedings. See the next section below for information about obtaining the client's immigration court history.

B. Gather Information About The Case

There is no formal discovery process in immigration proceedings. For this reason, advocates must act quickly to gather information related to a client's case. However, gathering information from the immigration file with DHS or through state criminal courts can be a lengthy process. The government will only provide the evidence they have against a client in proceedings when required to do so in response to contested pleadings—one reason to deny allegations and contest charges of removal—or when ordered by a federal court.[3] Thus, Freedom of Information Act (FOIA) requests and document gathering by immigration counsel is the main way to access this information.

Advocates can call the EOIR hotline (1-800-898-7180) and use the A-number on the client's Notice to Appear (NTA) or other immigration documents to verify that the client has a case in immigration court and confirm the date and time of the next hearing. It is important to obtain a copy of the NTA from the client or the immigration court and review it carefully. If a client does not have an NTA, advocates can review the court file or contact opposing counsel (Chief Counsel for ICE)[4] for a copy. Note that, if the client was not properly served an NTA by DHS, the client may be able to file a motion to terminate in the master hearing based on deficient service of the NTA. See Section III.B for more information.

Advocates should also submit a FOIA request for the client's records from U.S. Citizenship and Immigration Services (USCIS), to obtain information about any previous immigration applications that the client may have filed. A person in removal proceedings may file a USCIS FOIA under "Track 3" for faster processing. In addition, FOIA requests may be filed with the immigration court and other agencies, such as CBP. ILRC's "Step by Step Guide to Completing FOIA Request with

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[1] For more information on providing representation in removal proceedings, consult *Removal Defense: Defending Immigrants in Immigration Court, Chapter 7* (ILRC 2017), available at: https://www.ilrc.org/publications.
[2] For example, the respondent is required to submit pleadings as part of a motion to change venue. See Immigration Court Practice Manual, Chapter 5.10(c) [hereinafter ICPM], available at https://www.justice.gov/eoir/office-chief-immigration-judge-0 (last visited December 19, 2018).
[3] *Dent v. Holder*, 627 F.3d 365 (9th Cir. 201); see also American Immigration Council, *Practice Advisory:* Dent v. Holder *and Strategies for Obtaining Documents From The Government During Removal Proceedings* (June 12, 2012), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/dent_practice_advisory_6-8-12.pdf.
[4] For ICE legal counsel contact information, see U.S. Immigration and Customs Enforcement, *Principal Legal Advisor Offices*, https://www.ice.gov/contact/legal (last visited December 19, 2018).

DHS" provides instructions on how to obtain records from DHS: https://www.ilrc.org/step-step-guide-completing-foia-requests-dhs. The advocate should request FBI and criminal background checks for the client to gather all possible information relevant to the client's criminal record.

Finally, advocates may orient themselves to prior events in the client's immigration court case by reviewing the court's file prior to the date of the hearing. It is also possible to order or schedule a time to review the recording of any prior hearings. Check with each local court for the specific process for requesting a file review.[5] Finally, advocates should submit a FOIA request to EOIR for a record of any prior proceedings for the client.[6]

PRACTICE TIP: If an advocate is not ready to proceed in taking pleadings, it is important to ask for continuance in order to prepare. It is common practice for an attorney appearing for the first time with a client to be granted additional time to prepare before entering pleadings on behalf of a client. The advocate may file a written motion to continue, or appear with the client at their master calendar hearing and request on the record a continuance for attorney preparation.[7] Keep in mind, however, that the immigration judge may ask questions about the length of time that the advocate has been working with the client and the steps taken thus far to prepare for the hearing. Additionally, the Attorney General recently issued a decision clarifying the "good cause" standard for continuances.[8] Advocates should be prepared to explain how their request meets the standard set forth in *Matter of L-A-B-R*.[9]

C. Interview the Client!

It is important to have a strategy for the case before taking pleadings on behalf of a client. Indeed, case strategy might impact whether the advocate asks for a continuance or prepares an application to file at the advocate's first appearance. It is impossible to proceed effectively at the master calendar hearing without first interviewing the client. As such, a full intake is essential to effectively representing the client. Before the master calendar hearing, the advocate should conduct a full intake, which should cover questions regarding:

- How the client was served the NTA;
- The client's manner of apprehension or referral to immigration court, for a possible motion to suppress;
- The client's manner of entry and current or prior forms of lawful status;
- Whether the client may have derived or acquired U.S. citizenship;
- Eligibility for all possible forms of relief, including possible bars such as grounds of inadmissibility and criminal issues. Remember to look for defenses to or relief from removal based on the client's status, or that may be available if a family member obtains lawful status;
- Whether the client can pursue post-conviction relief to vacate a conviction that makes them removable or ineligible for relief; and
- The client's best language for communicating in court and whether they need to update their address with the court.

[5] For specific court information, see Executive Office for Immigration Review (EOIR), *EOIR Immigration Court Listing*, www.justice.gov/eoir/sibpages/ICadr.htm (last visited December 19, 2018).
[6] For more information on how to obtain records from EOIR, see EOIR, *Freedom of Information Act*, https://www.justice.gov/eoir/foia-facts (last visited December 19, 2018).
[7] For more information about the specific procedure for requesting a continuance and filing other motions in Immigration Court, see EOIR, *Immigration Court Practice Manual* (Aug. 2, 2018).
[8] See American Immigration Council, *Practice Advisory: Motions for A Continuance* (Sept. 7, 2018), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/motions_for_a_continuance_practice_advisory.pdf.
[9] See *Matter of L-A-B-R-*, 27 I. & N. Dec. 405 (A.G. 2018).

For short summaries of forms of relief from removal, advocates can consult the Defender's Toolkit.[10] Advocates can use this sample intake questionnaire to guide their interview with the client.[11]

III. Identifying Legal Issues – Analyzing the NTA

In addition to understanding the procedural history of the client's case, advocates must orient themselves to the legal issues at play in the client's removal proceedings. In order to do this, the advocate must understand the allegations (facts) and charges (law) that DHS has brought against the client, the evidence that DHS might file to support the charges, and what relief from removal the client will seek if the immigration judge finds they are removable from the United States.

In evaluating the NTA, it is important for advocates to confirm whether the factual allegations are accurate. A respondent should not admit facts that are uncertain or that are alleged using vague or confusing language. Additionally, the advocate must review the grounds of deportability or inadmissibility charged against the client and whether DHS or the client has the burden of proof in this client's case.

A. Has DHS Met its Burden of Proof?

The immigration judge cannot order the respondent removed from the United States if DHS cannot prove that they are a citizen of another country or have violated the immigration laws. However, the burden of proof is assigned to different parties depending on the stage of removal proceedings and the legal question at issue. Therefore it is important for advocates to understand which party has the burden of proof in order to prepare the strongest defense for the client.

DHS bears the burden of proof to show:

a) That the respondent is not a U.S. citizen.[12]
b) That a noncitizen is deportable under INA § 237 when that noncitizen has been admitted to the United States.[13]
c) The existence of a conviction, when the client has been charged as removable based on a criminal conviction.[14]
d) That a returning lawful permanent resident (LPR) is an applicant for admission and therefore subject to the inadmissibility grounds.[15]

Once DHS has proven the respondent's alienage (i.e. that they are not a U.S. citizen and therefore a citizen of a specified country), a respondent bears the burden of proof to show:

a) They are clearly and beyond doubt entitled to be admitted and not inadmissible, *or*
b) They are lawfully present in the U.S. pursuant to a prior admission.[16]

Advocates must review the burden of proof and evidence presented in each client's case to determine if, in fact DHS can meet its burden of proof in that client's case. This will allow the advocate to determine whether a motion to terminate can be filed in the client's case or whether the client must rely on a form of relief from removal in order to prevail in their case.

[10] ILRC, *Immigration Relief Toolkit For Criminal Defenders: How to Quickly Spot Possible Immigration Relief For Noncitizen Defendants* (January 2016), https://www.ilrc.org/sites/default/files/resources/n.17_questionnaire_jan_2016_final.pdf.
[11] ILRC, *Screening for Immigration Relief: Client Intake Form and Notes* (July 14, 2016), https://www.ilrc.org/screening-immigration-relief-client-intake-form-and-notes.
[12] 8 CFR § 1240.8(c). See also *Murphy v. INS*, 54 F.3d 605 (9th Cir. 1995).
[13] INA § 240(c)(3).
[14] INA § 240(c)(3)(B) states the specific types of evidence that ICE can use to prove the existence of a conviction.
[15] *Matter of Rivens,* 25 I. & N. Dec. 623, 624-7 (BIA 2011); see also *Kwong Hai Chew v. Colding,* 344 U.S. 590,73 S.Ct. 472 (1953).
[16] INA § 240(c)(2).

B. Can the Client's Proceedings Be Terminated?

Some noncitizens may be able to terminate their removal proceedings, either because of DHS error or failure to meet its burden to prove the respondent is removable. Advocates may file a motion to suppress and terminate proceedings if DHS violated the Constitution or certain regulations during the arrest, detention, or interrogation of the client. Additionally, advocates may file a motion to terminate proceedings if there is a defect in the content or service of an NTA that initiated the client's proceedings. And, of course, termination is also proper if the government has the burden to prove removability and cannot meet their burden of proof.

- **Motion to Suppress: Was the client's arrest, detention, or interrogation lawful?**[17] While noncitizens in removal proceedings do not have a Fourth Amendment right against unreasonable searches and seizures, some circuit courts have held that egregious violations of the Fourth and Fifth Amendments can warrant the exclusion of evidence from removal proceedings.[18] This means that an advocate can still move to suppress evidence of a client's alienage or removability if DHS committed an egregious violation of the Fourth or Fifth Amendment in the process of arresting the client or obtaining evidence of removability.[19] Successful suppression of evidence may require the immigration judge to terminate proceedings because of a lack of sufficient evidence in support of the charges.

- **Motion to Terminate: Was the NTA defective?** Advocates may file a motion to terminate proceedings if there is a defect in the content or service of the NTA that initiated the client's proceedings. Specifically, advocates could argue that the NTA is defective because it does not contain the time and place of hearing or other required content.[20] Under *Pereira v. Sessions,* 585 U.S. ___ (2018); 138 S.Ct. 2105 (June 21, 2018), advocates should argue that such an NTA does not vest jurisdiction with the court.[21]

- **Motion to Terminate: Was the NTA improperly served?** Advocates may also file a motion to terminate if DHS did not properly serve the NTA on the client.[22] Whether to file a motion to terminate will depend on many factors, such as whether the client is eligible for relief from removal. However, if your client is close to accruing the time required for relief such as cancellation of removal, suspension of deportation, NACARA, or voluntary departure, it may be useful to challenge service of the NTA, in addition to challenging its legal sufficiency. Advocates should be particularly mindful of NTAs that lack the time and date of the hearing. Under *Pereira v. Sessions,* 585 U.S. ___ (2018); 138 S.Ct. 2105 (June 21, 2018), such an NTA cannot stop accrual of time for cancellation of removal under INA 240A(b).[23]

- **Motion to Terminate because ICE cannot prove charges.** Advocates should file a motion to terminate to raise legal arguments that the government cannot meet its burden of proof related to the charges against the client.

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[17] For detailed information on what constitutes an illegal arrest in the immigration context, see *Motions to Suppress* and *Removal Defense: Defending Immigrants in Immigration Court* (ILRC 2018).
[18] *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1053 (1984); *Sanchez v. Sessions*, 904 F.3d 643, 656 (9th Cir. 2018); *Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988). Generally, evidence is admissible if it is probative and its admission is not fundamentally unfair. *Saidane v. INS*, 129 F.3d 1063 (9th Cir. 1997); *see also Pouhova v. Holder,* 726 F.3d 1007 (7th Cir. 2013), citing *Barradas v. Holder,* 582 F.3d 754, 762 (7th Cir. 2009).
[19] *Matter of Toro*, 17 I. & N. Dec. 340 (BIA 1980); *Gonzales-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994); *Orhorhaghe v. INS*, 38 F.3d 488 (9th Cir. 1994). For more details on arguments to suppress evidence in immigration court, see *Motions to Suppress: Protecting the Constitutional Rights of Immigrants in Removal Proceedings* (ILRC 2018) and *Removal Defense: Defending Immigrants in Immigration Court* (2017), Chapters 2 and 7.
[20] See *Pereira v. Sessions,* 585 U.S. ___ (2018); 138 S.Ct. 2105 (June 21, 2018). For more information on how to file a motion to terminate based on this argument, see National Immigration Project and Immigrant Defense Project, *Practice Advisory: Challenging the Validity of Notices to Appear Lacking Time-and-Place Information* (July 16, 2018), https://www.immigrantdefenseproject.org/wp-content/uploads/FINAL_Pereira_Advisory_updated_July_16th_2018.pdf; see also ILRC, *Potential Ramifications of Pereira v. Sessions* (forthcoming). But see *Matter of Bermudez-Cota,* 27 I. & N. Dec. 441 (BIA 2018) (holding that an immigration judge has jurisdiction over removal proceedings and thus may not terminate proceedings when an NTA lacks a time or place of hearing).
[21] See *supra* note 20. In addition, note that the BIA has already ruled on this issue, in light of the Supreme Court's holding in *Pereira*. See *Bermudez-Cota*, 27 I. & N. Dec. at 447.
[22] For more details on how to challenge the content and service of an NTA, see American Immigration Council*, Notices to Appear: Legal Challenges and Strategies* (June 2014), https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/notices_to_appear_fin_6-30-14.pdf.
[23] See *supra* note 20.

For instance, an advocate would file a motion to terminate to argue that a particular crime is not a basis of removal under the categorical approach, along with citations to the appropriate caselaw.

Motions can be raised orally at the master calendar hearing, if an advocate's arguments have not already been prepared in a written motion with brief. Counsel may request a briefing deadline to turn in a complete written motion. In cases where a motion to suppress evidence is appropriate, the case begins with denying allegations of alienage and contesting removal. DHS must then produce evidence to support the charges. The advocate can then move to suppress the proffered evidence. Additionally, advocates who file a motion to suppress should request that the immigration judge set the case for a suppression hearing. Note that advocates may need to include a motion to subpoena witnesses and/or documents necessary to present further evidence of agency violations at the suppression hearing.

IMPORTANT! In cases where a motion to suppress or motion to terminate is part of the case strategy, it is important that the related factual allegations are denied and the charges of removal are contested. If the respondent concedes they are removable then there is no basis for termination!

C. How Should the Client Plead to the NTA?

Clients may be bound by incorrect admissions and concessions by counsel and lose possible defenses to removal based on pleadings.[24] Therefore, it is important for advocates to carefully review the NTA and the evidence that DHS may present against the client before entering the client's pleadings on the record. Generally, advocates should deny all allegations and charges of removal where the government has the burden of proof. In many instances, DHS may not be able to meet its burden of proof to show that a respondent is, in fact, removable as charged, because of a lack of evidence or error in choosing the charges to bring against the client.[25] In addition, the government always bears the burden to prove alienage. If the government does not have properly obtained evidence of alienage, ICE cannot meet its burden.

Advocates should also deny the allegations in the NTA if the factual allegations are inaccurate. It is also important to contest the charges against a client if the allegations fail to establish that the client is deportable or inadmissible, or the government has the burden of proof, such as alienage. Finally, advocates should deny allegations and charges related to criminal convictions. For those charged as deportable for a criminal conviction, the government has the burden of proof. Additionally, caselaw is ever-changing regarding the immigration consequences of an noncitizen's criminal conviction. Therefore, it is important to always contest removal charges that are based on a criminal conviction to preserve future opportunities for the client to challenge their removal.[26]

- **When to admit or concede to information on the NTA:** It may be prudent for advocates to admit the allegations and concede the charges if the client has already filed a sworn application with the same facts, such as a referred asylum case. Additionally, a client may not wish to contest a charge of removability if there is relief available and such relief is time-sensitive or the client is detained. In all cases, it is important for advocates to explain to the client the advantage and disadvantage of admitting to allegations or conceding charges.

- **When to decline to plead:** Advocates may decline to plead and request a continuance for attorney preparation in a written motion filed prior to the master hearing or stated orally on the record at the master hearing.[27] If the client has received many continuances from the court prior to the advocate's appearance, the immigration judge may require pleadings. In such cases, counsel should assert the reasons for requesting the continuance

[24] See *Perez-Mejia v. Holder*, 663 F.3d 403 (9th Cir. 2011).
[25] Note that DHS may improperly charge an LPR as inadmissible when they return from abroad. See *Matter of Pena*, 26, I. & N. 613 (BIA 2015).
[26] Many state criminal statutes punish a broader range of conduct than federal statutes; therefore, not all state criminal convictions trigger grounds of removability.
[27] For further details, see Immigration Court Practice Manual, Chapter 5.10(a), *supra* note 2. Note that if an advocate does not receive a decision on a motion for continuance by the date of the hearing, the advocate *and client must appear in court. A failure to appear will cause the client to be ordered removed in absentia.*

for attorney preparation. If pleadings are required and the attorney is not fully prepared, it is best to deny all factual allegations and contest removability.

Note that, despite counsel's pleadings, the immigration judge may still find the client to be removable at the master hearing based on information in the Form I-213, Record of Deportable-Inadmissible Alien, submitted by DHS.[28] Additionally, if counsel denies factual allegations or declines to plead, the immigration judge may ask the client to testify regarding the allegations in the NTA. However, the client may invoke their Fifth Amendment right against self-incrimination and refuse to answer any questions by DHS or the immigration judge.[29]

D. What Relief from Removal Can the Client Seek?

If removability is established after pleadings are taken, the immigration judge will ask if the respondent seeks relief from removal. If the respondent does not request relief and removability has been established, the immigration judge will order the respondent removed. For this reason, it is important for the advocate to complete a full intake interview with the client before the first master hearing and consider multiple forms of relief available to the client. This should include screening for forms of relief that the client may seek based on the lawful status of other family members. Advocates must create both long-term and short-term strategies, which may involve pursuing collateral relief by filing a Form I-130 petition, a Form I-360 self-petition, or post-conviction relief. Requesting a continuance for attorney preparation or requesting voluntary departure on behalf of the client may also be appropriate. Advocates can consult the Defender's Toolkit for short summaries of various forms of relief.[30] Advocates can find a sample intake questionnaire here.[31]

Prepare for a Possible DHS Motion to Pretermit: Although an immigration judge does not ultimately decide whether to grant an application for relief from removal until an individual merits hearing, the judge may pretermit and deny an application for relief at the master hearing if the client is not statutorily eligible for such relief. Applicants for relief bear the burden of proving eligibility and, in the case of discretionary relief, that they merit a favorable exercise of discretion.[32] DHS may raise statutory bars to the client's eligibility for the relief requested during the master hearing. Advocates should therefore be prepared to argue how a client is statutorily eligible for the relief sought and to present counter-arguments to bars raised by DHS in the master hearing. See *Removal Defense: Defending Immigrants in Immigration Court, Chapter 10*, for more detailed information on the requirements for various forms of relief from removal.[33]

Pursuing Collateral Relief from Removal: Any Form I-130 or I-360 that forms the basis for the client's adjustment must be adjudicated by USCIS, which will happen while the client is in removal proceedings. In addition, some possible forms of relief are decided entirely by USCIS, such as U and T nonimmigrant status and Deferred Action for Childhood Arrivals (DACA). Advocates should file any petitions or applications as soon as possible prior to the client's next master hearing, in order to file a copy of a receipt notice with the immigration court. Advocates can then request that the client's case be placed on a "status docket" during the pendency of the adjudicatory process by USCIS, which avoids the need to request multiple continuances while the petition is adjudicated.[34] However, DHS may object to this request and assert that that the client's petition with USCIS is not approvable or that the client is inadmissible. Therefore, advocates should be

[28] *Matter of Mejia*, 16 I. & N. Dec. 6, 8 (BIA 1976); *Matter of Barcenas*, 19 I. & N. Dec. 609, 611 (BIA 1988).
[29] *Kastigar v. United States*, 406 U.S. 441, 444 (1972) (explaining the Fifth Amendment right to remain silent "can be asserted in any proceeding, civil or criminal, administrative or judicial, investigatory or adjudicatory"); see also *Matter of Sandoval*, 17 I. & N. Dec. 70, 72 n.1 (BIA 1979); *Matter of Guevara*, 20 I. & N. Dec. 238 (BIA 1991) (silence as to alienage alone can't support adverse inference).
[30] ILRC, *Immigration Relief Toolkit For Criminal Defenders: How to Quickly Spot Possible Immigration Relief For Noncitizen Defendants* (January 2016), https://www.ilrc.org/sites/default/files/resources/n.17_questionnaire_jan_2016_final.pdf.
[31] See ILRC, *Screening for Immigration Relief: Client Intake Form and Notes* (July 14, 2016), https://www.ilrc.org/screening-immigration-relief-client-intake-form-and-notes.
[32] INA § 240(c)(4).
[33] *Removal Defense: Defending Immigrants in Immigration Court* (ILRC 2017).
[34] For futher information about status docket cases, see EOIR Memorandum, *Case Priorities and Immigration Court Performance Measures*, James R. McHenry, Director (January 17, 2018), *available at* https://www.justice.gov/eoir/page/file/1026721/download.

prepared to address the client's admissibility and eligibility for adjustment of status or other collateral relief at the master hearing.[35]

Voluntary Departure under INA § 240B: Individuals who are eligible for consular processing or who wish to simply return to their home country may wish to seek voluntary departure. This can be a strategic decision to begin consular processing.[36] A respondent can request voluntary departure at the beginning of proceedings, which will provide them 120 days to leave the country. A respondent can also request a post-conclusion 60-day period of voluntary departure at the end of proceedings, in the alternative to requesting other relief from removal. Note that there are heightened requirements for a respondent to receive post-conclusion voluntary departure, including a period of physical presence in the United States prior to being served an NTA.[37] It is important to discuss with the client the consequences of failure to depart from the United States under voluntary departure so that they are fully aware of the requirements and the penalties if they do not comply.

IV. Appearing At The Master Calendar Hearing

As the respondent's counsel, the advocate will directly communicate with the immigration judge during the master hearing. This involves communicating information on preliminary matters as well as entering pleadings and stating requests for relief from removal. A successful appearance requires clear communication with the client prior to the day of the hearing, to ensure that the client is aware of counsel's strategy and to understand the questions that the immigration judge may ask them in the hearing.

A. Before the Hearing

There are preliminary steps that the advocate must take in order to appear in front of the immigration judge on behalf of the client. Advocates must register with EOIR's E-Registry system to receive permission to enter an appearance.[38] Additionally, advocates must file an E-28 with the immigration court for the client's case either prior to the date of the hearing or at the hearing. If possible, it is best practice to observe a master calendar hearing before the judge that will hear the client's case and ask local counsel what the judge typically requires for filing applications for relief from removal.

It is important to meet again with the client to prepare them for what will take place at the master hearing. The advocate should confirm that the client is aware of the date, time, and place of the hearing and understands that they can be ordered removed if they fail to appear on time for the hearing. In order to facilitate the client's on-time arrival, it is helpful to ensure the client has a way to contact the advocate in the event of an emergency and knows what documents they will need to enter the building or court. Finally, advocates should describe what the client can expect to happen at the hearing and when the client will be asked to speak, including to verify their address, to consent to the advocate's representation in court, or to answer other questions under oath. This requires that the advocate confirm the best language for the client to communicate to the court.

B. At the Immigration Court

Upon arrival in the courtroom, advocates should file an E-28 with the immigration judge's legal assistant (and serve it on ICE counsel), if this is the advocate's first appearance for the case. Advocates are also encouraged to submit a motion for substitution of counsel, if the client had prior counsel for the case.[39] When the case is called (using the last

[35] Note that, if DHS has designated the client as an arriving alien, advocates should ask the court to maintain the client's case on the status docket because USCIS has jurisdiction over the client's adjustment of status application. See 8 C.F.R. §§ 245.2(a)(1), 1245.2(a)(1)(i).
[36] It is possible to leave the U.S. with a grant of voluntary departure and avoid a 3-year bar to admissibility due to unlawful presence. See INA § 212(a)(9)(B)(i).
[37] INA § 240B(b)(1)(A); *see Pereira v. Sessions, supra* note 20.
[38] To set up an account, see EOIR, *Welcome to EOIR – User Registration*, https://ereg.eoir.justice.gov/#maincontent (last visited December 20, 2018).
[39] See ICPM 2.3(i)(i) for the requirements of a motion to substitute counsel.

three numbers of the client's A-number), the advocate will move to the respondent's table with their client and, upon request, state their name on the record to enter an appearance. The judge will also go through preliminary matters, such as confirming the client's address and whether the client consents to the advocate's representation.

Once the immigration judge has confirmed that the client consents to representation (or possibly from the outset of the hearing), the immigration judge will primarily address the advocate and ICE counsel for the remainder of the master hearing. The immigration judge will ask counsel to concede proper service, enter pleadings, and state relief. Advocates must be prepared to address the issue of service and take pleadings in the case, and reserve a necessary appeal if the judge finds the client removable. If the advocate is not ready to take pleadings for any reason, the advocate must be ready to make a motion to continue the case and state reasons why such a motion should be granted for "good cause."[40]

Finally, if the judge finds the client removable, the advocate must state relief that the client will seek. If the client is ready to apply for relief from removal at this master hearing, the judge will then set a date for an individual merits hearing and set "call-up" deadlines for filing supplemental application exhibits.

Advocates who plans to file applications for relief should bring three copies of any filed applications: one will be filed with the court, one will be served on DHS, one should be stamped as "filed" to keep in the client's file. If the advocate is not ready to file an application for relief, they should request a continuance for attorney preparation. If granted, the judge will set a future master hearing for the advocate to file the application.

Practice Tip: Although all Immigration Court hearings are recorded, some conversations between parties and the immigration judge may be conducted off the record. Make sure any decisions on motions and pleadings are on the record. Advocate should take detailed notes about the next hearing date, issues objected or stipulated to by DHS counsel, and any "call-up" deadlines for filing applications or motions that are set by the immigration judge.

Finally, after the master hearing, advocates should meet with the client to debrief them on what happened in the hearing and explain the next steps for their case, including the next date that they must appear in court (if any). It is helpful to make a copy of the hearing notice to give to the client. If the court has ordered the client to attend a biometrics appointment before the next appearance, it is important to explain this requirement to the client and that failure to submit biometrics information could cause them to abandon their applications for relief.

V. Conclusion

This advisory is meant to provide an introduction to the issues at play during a master calendar hearing and a checklist to assist advocates in exploring the relevant issues before a master calendar appearance. A checklist follows this advisory to guide advocates in preparing a client and their case for the master hearing. To dive deeper into any issues raised in this summary, consult ILRC's manual *Removal Defense: Defending Immigrants in Immigration Court* (ILRC 2017), as well as various advisories available on our website, cited within this document.

[40] 8 C.F.R. § 1003.26; *Matter of L-A-B-R-*, 27 I. & N. Dec. 405 (A.G. 2018).

Appendix A: Master Calendar Quick-Reference Checklist

This checklist accompanies the ILRC practice advisory *Representing Clients at the Master Calendar Hearing*, to guide advocates in preparing a client and their case for the master hearing. Please reference the corresponding sections for a fuller explanation of how to prepare for an initial appearance at a master calendar hearing. To dive deeper into any issues raised in this advisory and checklist, consult *Removal Defense: Defending Immigrants in Immigration Court* (ILRC 2017), as well as various advisories available on the ILRC website and cited within the practice advisory.

Step 1: Understand the client's case (Section II.A and II.B)

- ☐ Has the client has already appeared at a master calendar hearing?
- ☐ If so, what happened at the prior hearing(s)?
    - Have pleadings been taken?
    - Has the client filed an application for relief from removal?
    - Is there an upcoming due date to file an application?
- ☐ Is the case on remand from the Board of Immigration Appeals (BIA)? If so, you will need to review the Board's remand order to understand what issues must be considered by the immigration judge. In such a case, you will likely need to review the prior record of proceedings. See FOIA information below.
- ☐ Call the EOIR hotline (1-800-898-7180) and use the A-number on the NTA or other immigration documents to verify that the client has a case in the Immigration Court system.
- ☐ Obtain a copy of the client's Notice to Appear (NTA), either from the client or the Immigration Court and review it carefully. If the client was not served an NTA by DHS, see Section III.B below for information regarding challenging the service of an NTA in the master hearing.
- ☐ File a Freedom of Information Act (FOIA)[41] request for the client's records.
- ☐ Do FBI and criminal background checks.

Step 2: Interview the client (Section II.C)

- ☐ Explain both factual allegations and charges to the client.
- ☐ Ask how the client received the NTA from DHS.
- ☐ Ask about the client's manner of apprehension by ICE or referral to immigration court. See section III.B. for more information about motions to suppress.
- ☐ Ask the client about their manner of entry and any current or prior forms of lawful status.
- ☐ Explore all forms of relief and possible derived or acquired citizenship.
    - Consult this sample intake sheet as a guide.
    - Review options for relief based on the client's current status, or through obtaining lawful status for a family member.
    - Evaluate possible bars to relief such as grounds of inadmissibility and criminal issues.
    - Evaluate possible post-conviction relief to vacate criminal convictions that bar eligibility or cause the client to be removable.
    - Consider multiple forms of relief, including long-term and short-term strategies.
- ☐ Confirm the client's best language. If your client needs an interpreter, prepare to request a court-appointed interpreter for future hearings.
- ☐ Confirm the client's current address. Prepare to file an E-33 to change the client's address with the immigration court if this address is not correct on the NTA or immigration court hearing notice.

[41] See ILRC's "Step by Step Guide to Completing FOIA Request with DHS" for a guide on how to obtain records from DHS: https://www.ilrc.org/step-step-guide-completing-foia-requests-dhs.

Step 3: Determine the legal issues (Section III)

- Review the NTA.
  - Are the factual allegations accurate? Do not admit facts that are uncertain or that are alleged as written in vague or confusing language.
  - What grounds of deportability or inadmissibility are charged against the client?
  - Determine the burden of proof in this client's case.
- Can the client file a motion to terminate or motion to suppress?
  - Was the arrest, detention, or interrogation a violation of the Constitution or a regulation?
  - Is there a defect in the NTA?
  - Did DHS properly serve the NTA on the client?
  - Did DHS fail to prove the charges against the client?
- Determine how the client should plea and explain to the client the consequences of making such a plea. (See Section III.C.)
- Decide which relief from removal will the client seek.
  - Should collateral steps must be taken, such as filing I-130 petition, I-360 petitions, and post-conviction relief?
  - Can the advocate request that the client's case be placed on the "status docket" while USCIS processes a collateral application?
  - Determine if a continuance is helpful to meeting strategic goals.
  - Determine if voluntary departure is appropriate.
  - Discuss with the client the requirements for voluntary departure and the penalties for failure to depart.

Step 4: Prepare for the master hearing (Section IV.A)

- ☐ Register with EOIR's E-Registry system.
- ☐ Have an E-28 on file with the Immigration Court for this client or prepare to file one at the hearing.
- ☐ If possible, observe a master calendar hearing before the judge that will hear the client's case.
- ☐ Ask local counsel what the judge typically requires for filing applications for relief from removal.
- ☐ Verify the client's current mailing address. Prepare Form E-33, Change of Address to bring to court in case the court has an incorrect address.
- ☐ Verify your client's best language in order to request a court-appointed interpreter for future hearings.
- ☐ Confirm that the client is aware of the date, time, and place of the hearing.
- ☐ Explain the consequences of failing to appear on time for the hearing.
- ☐ Make sure client has a way to contact you in the event of an emergency.
- ☐ Explain to the client what documents they will need to enter the building or court and where they will meet the advocate on the day of the hearing.
- ☐ Describe what the client should expect at the hearing and when the client will be asked to speak, including to verify their address, to consent to the advocate's representation in court, or to answer other questions under oath.
- ☐ You should have already done a full intake with your client that covers relief, manner of entry and potential arguments for a motion to suppress!

Step 5: Appear at the immigration court (Section IV.B)

- ☐ Upon arrival in the courtroom, advocates should file an E-28 with the immigration judge's legal assistant, if this is the advocate's first appearance for the case. Advocates are also encouraged to submit a motion for substitution of counsel, if the client had prior counsel for the case.
- ☐ When the case is called, the advocate will enter an appearance.
- ☐ The immigration judge will verify the client's address. Note that the immigration judge may ask the

client to be the person to verify this. File an E-33 if the client's address has changed. Also note that some judges also require proof of enrollment in school for respondents under 18.

- ☐ Before proceeding with pleadings, the immigration judge may verify the respondent's consent to be represented by counsel.
- ☐ Concede or deny proper service of the NTA.
- ☐ Enter pleadings and explain any relevant arguments in support of denying allegations or contesting the charges.
- ☐ Reserve any necessary appeal, if the immigration judge denies any motions or finds that the client is removable as charged.
- ☐ State relief that the client will seek and ask for continuance for attorney prep or file relevant applications.
- ☐ File applications for relief. It is important for advocates to bring three copies of any filed applications: one will be filed with the court, one will be served on DHS, one should be stamped as filed to keep in the client's file.
- ☐ Note the next hearing date, any issues objected or stipulated to by DHS counsel, and any "call-up" deadlines for filing applications or motions that are set by the immigration judge.
- ☐ In the alternative, request a continuance for attorney preparation, if the advocate is not prepared to enter pleadings or file applications for relief.

Step 6: Debrief with the client after the hearing (Section IV.B)

- ☐ Explain what happened to the client during the hearing.
- ☐ Remind the client of the obligation to report any change in address.
- ☐ Provide the date of any next hearing and advise about the consequences of failing to appear.
- ☐ Explain any requirement that the client provide biometrics or attend a biometrics appointment.
- ☐ Discuss any evidence that the client must gather for the next court date.
- ☐ Set the next appointment between the client and advocate.

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About the Immigrant Legal Resource Center

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