

November 15, 2017, AILA-ICE Liaison Meeting Notes

**Present from the ICE Field Office: Dan Bible, FOD; Adrian Ramirez, AFOD.
Present from the ICE Office of the Chief Counsel: Chief McLane; Deputy Chief
Whatmough; Deputy Chief Calahan; and Acting Deputy Chief Alcorn**

ICE POLICY AND PROCEDURE QUESTIONS:

1. Why do ICE officers rarely issue bonds? It seems as though their default position is for everyone to see a judge. This needlessly clogs the detained court to such an extent that a Respondent is unable to have a bond hearing for 2-3 weeks after arrest.

FOD: Review is conducted on a case-by-case basis. ICE uses a Risk Classification Assessment tool to determine what the bond should be. CC McLane: Believes bond hearings are scheduled within 48 hours and occur within 1 week of request.

2. What criteria is being taken into consideration when issuing bonds and/or ORR? Can you please provide a specific list of factors that are taken into consideration? Many ICE-CAP officers report that they “plugged the information into the system, and it gave a number or said “No bond.” What kind of system is being used?

FOD: Risk classification assessment tool. It evaluates criminal history, danger, flight risk, and humanitarian factors. Will likely not receive bond if agency has to go arrest you. Submit request to SDDO -> AFOD -> FOD if you want ICE to reconsider its determination. If argument is that client is relief eligible, ICE “doesn’t need a book” the FOD is a “low-paper” guy. However, you can submit whatever and as much as you want regarding equities and they will be reviewed. If it’s about medical hardships, prefers current records.

Austin will have a new AFOD soon. To the extent you were told not to submit docs, that was incorrect.

3. What is ICE’s position on issuing detainers after the district court’s ruling in *Trujillo v. Bexar County*? The Court found the County’s policy of honoring detainers unconstitutional yet it seems that ICE is still issuing them.

Litigation is still pending at 5th Circuit on this issue. ICE believe detainers are constitutional.

4. Why does ICE continually arrest defendants at the State Courthouse? This practice causes Defendants to not appear at Court and disrupts state court proceedings.

FOD: Courthouses are safe since everyone has been through medical detector, etc. They are a location of last resort to arrest someone. They try to locate someone outside of that arena, first. Victims/Witnesses are not a target, absent special circumstances (e.g. 5x agg felon).

5. Please provide the most recent organizational structure for ICE ERO for both the detained and non-detained sections, including the AFODs at each of the detention centers?

FOD: Info is being provided but please note that "ICE 2.0" is coming. The office will be re-organized in 4-5 weeks.

6. What is the criteria for now putting an ankle monitor on a non-detained individual who has been in removal proceedings for years, has been regularly reporting to check-ins without an ankle monitor, and has had no change in circumstances? Why is this happening and what are the factors taken into consideration in making those decisions?

FOD: Case-by-case basis. If close to removal, the agency might decide to place on ATD (ankle-monitor) out of concerns client might be a flight risk.

7. What is the procedure for requesting that an ankle-monitor be removed? Who should we direct this request to? Who should we complain to if the request is ignored?

FOD: DO->SDDO->AFOD. You should receive a response in about a week.

8. Is ICE no longer granting Voluntary Departure as an alternative to removal proceedings?

FOD: Yes, VD/VR is still an available alternative. DO->SDDO->AFOD.

9. Assurances were made at a prior meeting that calls to ERO at STDC would be answered. We still do not have direct lines to all officers and getting to speak to

someone is extremely difficult. For example, the same number is listed for multiple ACAs and I have NEVER had anyone answer that line. It rings and rings and then cuts off.

FOD: He is aware of the problem. He often calls the numbers and officers on his own to determine whether calls are being answered. Notes that the phones at STDC have taken a dive and said a new system needs to be installed. He has also requested funding for staff-assistants who can answer phones and respond to inquiries. For now, a new main line number at Pearsall: 210.231.4587

10. Are DOs instructed to respond to requests within a given time frame? What recourse do we have when repeated calls, emails, and faxes go unanswered and the supervisor does not intervene to resolve the issue?

FOD: Within a couple of days. Otherwise, complain to SDDO->AFO->FOD

11. How is the reason for admin closure noted in ICE's system? Practitioners report that ICE-ERO officers are telling respondents during their check-in appointments that they will recalendar them for failing to apply for adjustment of status, when that is NOT the reason why proceedings were admin closed. Furthermore, it would not be appropriate to admin close proceedings for someone who is eligible for adjustment of status. Therefore, these repeated comments from ICE-ERO officers are nonsensical. The IJ admin closure orders usually state "at joint request of the parties" so I am unclear as to how the reason for admin closure is noted in the system so that ICE-ERO officers have accurate information as to the reason for admin closure?

FOD and OCC: officers should not be giving clients legal advice at these appointments. FOD: If there are instances where the officer is giving legal advice, please notify supervisor. SDDO->AFOD->FOD. They want specifics (A#, officer involved, time/date). It might be a training issue and the officer needs to be re-trained. The FOD notes that the officer's goal is to get a travel document.

12. When clients appear at ICE for supervision appointments, officers will often advise or direct the client to take certain action to resolve their immigration matter.

Often, the “advice” of the immigration officer is wrong (e.g. telling a client to file for adjustment of status when he is seeking a provisional waiver in order to consular process). Aside from noting that the client has appeared as scheduled for his or her appointment, why is the immigration officer conferring with a represented person about their immigration matter? Who should we complain to when an officer speaks with our client without our consent, and in particular when the officer gives the wrong advice or direction?

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13. What is ICE's policy on removing ankle shackles? Many clients who are seeking asylum have been told they must provide a valid passport. This is very problematic for someone seeking asylum.

FOD: Prefers the term ankle-monitor. Evaluated on a case-by-case basis. A pattern of compliance will support removal. If getting is a passport is problematic for a particular case, notify DO->SDDO->AFOD->FOD. ERO’s mindset is one of enforcement and removal.

14. What is ICE's policy on phone reporting? Many individuals have been told they need a landline, while others are allowed to report via cell phone.

FOD: Cell phone is ok if the service is good and there is minimal background noise. The service needs to be good enough to comply with the voice recognition system. If the voice recognition system is unable to ID because of poor cell service or due to background noise, then a land-line will be required. Review with DO->SDDO->AFOD->FOD.

15. How often does ERO review files for those on enrolled in an ATD program? Are files reviewed only at the individual's request? (I've seen people with ankle

shackles for over a year. Seems like their file isn't reviewed unless someone raises the issue directly with the DO.)

Review should be done monthly but you can ask DO->SDDO->AFOD for review.

16. What is the proper procedure for notifying ICE ERO when an individual enrolled in an ATD program, like an ankle shackle, is planning to move?

FOD: Prefers 14-day notice, particularly when notice needs to be given to new ICE office. Otherwise contact DO ASAP.

QUESTIONS RELATING TO DETENTION FACILITIES:

1. Who should we submit complaints to about the length of time it takes to visit clients at a detention center? How should the complaint be submitted?

FOD: Submit complaint to AFOD. Please provide specific examples. Notes that the biggest problem is at STDC in Pearsall. Advises that the facility is going through a re-compete process and the visitation issue was asked to be addressed.

2. Why were the chairs in front of the security screening area at Pearsall removed? Since we are not allowed to use our cell phones or laptops inside the facility, attorneys would use those chairs to sit and work while waiting to see detained clients.

FOD: Will ask GEO to return the chairs.

3. Would it be possible to convert the window booths for phone visits into at least a few private booths with slots for G-28s and other documents to obtain signatures?

FOD: See answer to question 1 about re-compete process. ICE is asking for installation of additional visitation rooms.

4. Would it be possible to construct additional attorney visitation booths at Pearsall?

FOD: See answer to question 1 about re-compete process.

5. Since we often have to wait 2+ hours to visit clients while at Pearsall, would it be possible to bring in our laptops and cellphones into the visitation area so we can work while we wait?

FOD: If there is a particular circumstance where an electronic device is needed, then you can submit a request to the AFOD. The policy is to not allow electronics. Should not expect approval of routine, daily use of electronics even if requested.

6. Please provide a list of email addresses and phone numbers for deportation officers and their assigned A#s at each of the detention facilities. To date, such contact information has only been provided for STDC Pearsall.

FOD: Ok. See attached.

7. What is the status of getting landline phones installed in the visitation rooms at STDC to use to access interpreters? Even if cell phones are approved for use, the signal is so bad that the line cuts out or is completely inaccessible. This impedes access to counsel. If the contractor will not install the lines, what other arrangements will ICE make to facilitate communication with counsel?

FOD: A request for landline(s) has been submitted as part of the re-compete process.

8. What is the procedure for setting up free phone calls from detainees to their legal representatives if the detainee is found to be indigent under the detention guidelines?

FOD: Citing memo states that if client has less than \$15 in account for 10 days or more then may request an opportunity to make a phone call.

MISCELLANEOUS

Stays of removal are filed at Crosspoint. If client's court case is from another jurisdiction then you should file stay request there (e.g. Houston case but resides in San Antonio, then should file stay in Houston).

OFFICE OF THE CHIEF COUNSEL POLICY AND PROCEDURE QUESTIONS:

OCC is going to house 10 attorneys at the new 1 Alamo building. Once open, there will also be a black drop-box for service of filings to ICE at the new Immigration Court.

E-service is coming. You will have to register as you do for EOIR.

1. What is the preferred way of communicating with your office about motions to be filed with the Immigration Court such as motions to terminate or administratively close? Do we send an email? Do we send the proposed motion to your office with a letter asking if you are willing to join in the motion? If we do not know who the attorney is that will be handling the case, should this correspondence go to any particular person? How long does it take for a response? Or if there is no response after a week or some other period of time, do you want a call to the duty attorney?

CC: Email is the preferred method of communication. If the case is going from a MCH to an individual hearing, then email the attorney who appeared at the MCH. Otherwise, email the duty attorney. If you don't know who the attorney assigned is, then email the duty attorney. Response time may vary from 3 days to 1 week. If no response then resubmit.

2. Are there filing issues in your office? When supporting documents for cases have been submitted by mail and delivery confirmed, why are there calls from your office asking for these same filings to be scanned over before a hearing?

CC: No. All incoming docs are scanned in and there might be a slight delay but a lengthy delay shouldn't be the norm. Notes that when the office moved from Fourwinds to Jackson-Keller there might have been a delay in the mail. Acknowledges some mail might have been lost.

3. Have ICE Counsel been instructed to oppose administrative closure for all I-601A waiver cases across the board? If so, why if this policy negates the point of the existing regulation and seems to put the objectives of ICE in conflict with those of USCIS?
4. For motions seeking termination in connection with 601A waiver applications, do you want to see the 601A waiver application?
5. Why is OCC opposing Motions to Terminate Proceedings for respondents with approved I-601A provisional waivers? What is the goal or purpose for doing so?

CC: The national policy is to oppose administrative closure and termination for I-601A/CP. Per the CC, the ACCs should be appealing any grants of administrative closure or termination. We should start seeing more interlocutory appeals.

6. Why won't ICE attorneys agree to minimum bonds? Federal law sets the floor at \$1,500, but it's extremely rare to leave Pearsall with a bond lower than \$5-\$7,500.

CC: There should not be bond agreements. The OCC works closely with ERO in setting the bond and ACCs should be in communication with the DO prior to any bond hearing about the bond amount. The ACC's litigation goal at the bond hearing should be to uphold the agency's bond determination.

7. Is your office considering requests for prosecutorial discretion? If so, what is the process for requesting prosecutorial discretion? Who reviews requests for prosecutorial discretion? What is the chain of command to follow? It seems that all Assistant Chief Counsel attorneys are automatically saying no without reviewing the request.

CC: PD e-mailboxes across the country have been shut down. All cases have undergone attorney review. There is no need to submit request for PD.

Follow-up question: What about the asylum cases previously filed by Esquivel that are still on the docket? Will those be administratively closed as others have been?

CC: The cases have already been reviewed. If a case previously handled by Esquivel is still on the docket, it is because it has been reviewed and the determination was made to continue with the case.

Follow-up question: What about new facts or evidence showing exceptional circumstances developed after the case was filed?

CC: If new evidence of exceptional circumstances then speak to the attorney at the MCH. Still, OCC will not accept a PD request.

8. What is the criteria that OCC is currently using in evaluating a request to join in a Motion to Reopen Proceedings for someone with an in absentia removal order?

CC: Subject to a case-by-case review. OCC is particularly interested in knowing why the client FTA'd and whether client gave notice of address change. Reviewing

JMTRs is not a priority for the OCC. They are initially reviewed by ACCs and then go to management for review. ICE has a final order and the priority should be to act on the order. JMTR agreements are reducing. OCC will not agree to reopen for U- and T-visas unless the visa is current and the client is immediately eligible to adjust status. Otherwise the client can wait outside of the US and consular process.

9. What is the average time it's taking for OCC to review a request to join in a Motion to Terminate? Are all requests sent directly to management?

CC: The response time varies but should have a response within a week. Note that reviewed initially by ACCs and response time subject to their schedule. There is not necessarily management review of a motion to terminate.

10. What is the average time it's taking for OCC to review a request to join in a Motion to Reopen? Are all request sent directly to management?

CC: Generally, about a week. Note that reviewed initially by ACCs and response time subject to their schedule. JMTR requests go to a manager for review.

11. What is the criteria that OCC is using to determine whether to file a Motion to Recalendar an administratively closed case? Previously, headquarters stated that OCC would file Motions to Recalendar for respondents who have not followed through with filing an application before USCIS or for respondents with new arrests since the admin closure order. However, practitioners have seen OCC move to recalendar proceedings when neither of those situations apply.

CC: Case-by-case review. Notes that OCC does not have the resources to review all cases. If moving to recalendar, it's because something brought the case to the agency's attention.

12. What is OCC's policy on agreeing to Pre-Conclusion Voluntary Departure when an individual has a prior VR(s) from ICE many years ago? Some ACCs have opposed VD due to this reason alone (despite many other positive factors), while other ACCs have voiced no opposition in the exact same situation. Is there a uniform policy?

CC: No uniform policy and is subject to case-by-case review of ACC at the MCH. No two cases are the same. ACCs have the prerogative to manage the case as they see fit.

13. Has your office independently reviewed cases which are assigned to Immigration Judge Adams to determine whether there is a conflict of interest? If so, what method of screening did your office use? Has your office notified the Immigration Court in any case that IJ Adams should recuse himself? Who should we direct inquiries to in order to determine whether IJ Adams previously had any role in a case? When was IJ Adams a Deputy Chief Counsel at ICE? Who did he supervise and when during that time period?

CC: The OCC has not independently reviewed cases. Recusal is a matter for the Immigration Court to resolve. You should to take up the issue with EOIR. Review won't occur unless a motion is filed with the Court.

MISCELLANEOUS

CC: If U-visa granted (not a prima facie determination) then they will agree to terminate, but won't agree to JMTR unless immediately eligible to AOS.