



National Immigrant Justice Center

**MONITORING THE IMMIGRATION COURT:
A TRAINING MANUAL**

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National Center for Detention, Democracy, and Due Process

Court Monitoring Training Manual

Introduction

Each year, the Department of Justice's Executive Office for Immigration Review (EOIR) processes more than 300,000 immigration cases. In many of these cases, immigrants seek various forms of relief, including waivers of removal and protection-based relief such as asylum, withholding of removal, or relief under the Convention Against Torture (CAT). In other cases, immigrants may contest removal or seek voluntary departure from the United States. Many immigrants appearing before EOIR do not speak English and have difficulty understanding the immigration charges brought against them and how they can contest these charges. Their ability to avail themselves of immigration relief is further hampered by the lack of appointed counsel in immigration proceedings. More than half of immigrants appear before EOIR *pro se*.¹

Approximately one-third of immigrants appearing before EOIR are detained by the Department of Homeland Security's Immigration and Customs Enforcement (ICE).² Each year, ICE holds more than 230,000 immigrants in civil detention pending their immigration proceedings and/or removal. Unless an immigrant is eligible for bond, he/she will remain in detention throughout the completion of his or her immigration proceedings. ICE holds immigrant detainees in hundreds of facilities across the country. In the Midwest, ICE contracts with county jails located in remote and rural locations to hold immigrant detainees. Historically, ICE transported detained immigrants to their immigration hearings before EOIR. However, in the past few years, EOIR has begun to employ Video-Teleconferencing (VTC) in hearings for detained immigrants. In VTC hearings, detained individuals are not physically present at their hearing, but are transmitted through an audio-visual feed from a detention center to the immigration courtroom.

The effects of VTC have yet to be fully studied and evaluated.³ To what extent do VTC hearings present technological difficulties for the immigrant, judge, or counsel in hearing or viewing the proceedings? Do VTC hearings present additional disadvantages for immigrants appearing *pro se*? For those that do have counsel, does VTC hinder effective communication between counsel and client? Most importantly, do VTC hearings affect the due process rights of detained individuals? Independent monitoring of VTC immigration court hearings presents an opportunity to study the procedural and substantive problems with this new technology. Further, court monitoring is an important tool in preserving the immigration system's accountability to due process for immigrants, refugees, and asylum seekers. The purpose of this manual is to train court monitoring groups to assess the effect of VTC hearings on due process. The manual explains the immigration detention system in the United States, describes EOIR and the immigration court process, and establishes guidelines for court monitoring with special emphasis on monitoring VTC hearings.

¹ *FY 2004 Statistical Year Book*, U.S. Department of Justice, Executive Office of Immigration Review, March 2005

² *Id.*

³ The Legal Assistance Foundation of Chicago and Chicago Appleseed Fund for Justice conducted a study of VTC in the Chicago Immigration Court in 2005 and produced a report based on its findings, entitled "Videoconferencing in Removal Hearings: A Case Study of the Chicago Immigration Court," in August 2005. This report provides an excellent initial study into the effects of VTC in master calendar hearings and can be obtained here:

<http://www.lafchicago.org/immig%20case%20study.htm>

Heartland Alliance is a service-based, human rights organization focused on investments in and solutions for the most poor and vulnerable men, women, and children in our society. Heartland Alliance's mission is to advance the human rights and to respond to the human needs of endangered populations – particularly the poor, the isolated, and the displaced – through the provision of comprehensive and respectful services and the promotion of permanent solutions leading to a more just global society.

Within Heartland Alliance, the National Immigrant Justice Center (NIJC) advances rights and protections for low-income and impoverished immigrants, refugees, and asylum seekers, and strives to empower them to participate fully in public life. By monitoring and responding to human rights conditions and abuses at the local, regional, national, and international levels, MIHRC leverages its expertise to influence public policy and effect legislative and regulatory change. Building on a foundation of direct services work, MIHRC's National Center for Detention, Democracy, and Due Process promotes reform in the immigration detention system through advocacy, public education, and impact litigation.

This Court Monitoring Training Manual was produced by NIJC in January of 2006 with the generous support of The Atlantic Philanthropies and the Open Society Institute. Any questions or comments can be directed to Helen Harnett, Director of Policy, by phone at (312) 660-1363 by email at hharnett@heartlandalliance.org, or by mail at 208 S. LaSalle St. #1818, Chicago Illinois, 60604.

Please note: This manual is a brief guide to the immigration detention and court system in the United States and does not purport to be a comprehensive legal manual on immigration practice.

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PART ONE:
**OVERVIEW OF THE U.S. IMMIGRATION
DETENTION SYSTEM**

1.1 What is immigration detention?

Immigrant detainees are individuals who are held by Immigration and Customs Enforcement (ICE), a branch of the Department of Homeland Security (DHS), on administrative immigration charges. Immigration charges are civil in nature and may include unlawful entries, visa overstays, or removal (deportation) grounds based on questions of admissibility, exclusivity, or past criminal convictions for which immigrants already served their sentence. Detainees facing immigration charges are placed in removal proceedings before the Executive Office for Immigration Review (EOIR) and may seek relief under U.S. immigration law before an EOIR judge (commonly referred to as an Immigration Judge or IJ). For example, an individual fleeing persecution in his or her home country may seek asylum before an IJ.

1.2 Who is being detained?

Immigrants being detained by ICE can be categorized into four different groups: asylum seekers, non-citizens, long-term detainees, and even U.S. citizens.

Asylum seeker: A person who was persecuted or has a well-founded fear of future persecution in his/her home country because of his/her race, religion, nationality, political beliefs or membership in a particular social group, and is seeking asylum in the United States. An asylum seeker is usually detained when he or she arrives at a U.S. port of entry and expresses fear about returning to his or her country of origin.

Non-citizen detainee: A person who is a lawful permanent resident (has a “green card”) or other legal status (e.g., a refugee or an individual in the U.S. on a visa) or who is undocumented. Some of these individuals are detained by ICE because they entered unlawfully or overstayed their visas while others have committed “deportable” crimes, including minor infractions, for which they already served a criminal sentence. Many such individuals may be legally eligible for protection from removal if they can prove to an IJ that deportation will cause hardship on their spouses, children, or parents if they are returned or by arguing that a past crime does not qualify as a deportable offense.

Long-term detainee: A non-citizen who has been ordered deported by a judge but who cannot be sent to his/her home country. If an individual’s country of origin or country of last residence will not issue her travel documents, she may remain in detention indefinitely in the United States. Many Laotians, Vietnamese, Cubans, and Somalis cannot be removed to their home country and may remain in ICE detention for months or years. In 2001, the U.S. Supreme Court ruled that ICE cannot indefinitely detain immigrants who cannot be deported to their home countries. However, ICE has not consistently complied with this ruling.

United States Citizen: In some cases, individuals may have derived or acquired United States citizenship from their parents without realizing it. These individuals may be detained and placed in removal proceedings despite their status as citizens. However, these individuals may contest their removability on the basis of their citizenship during removal proceedings.

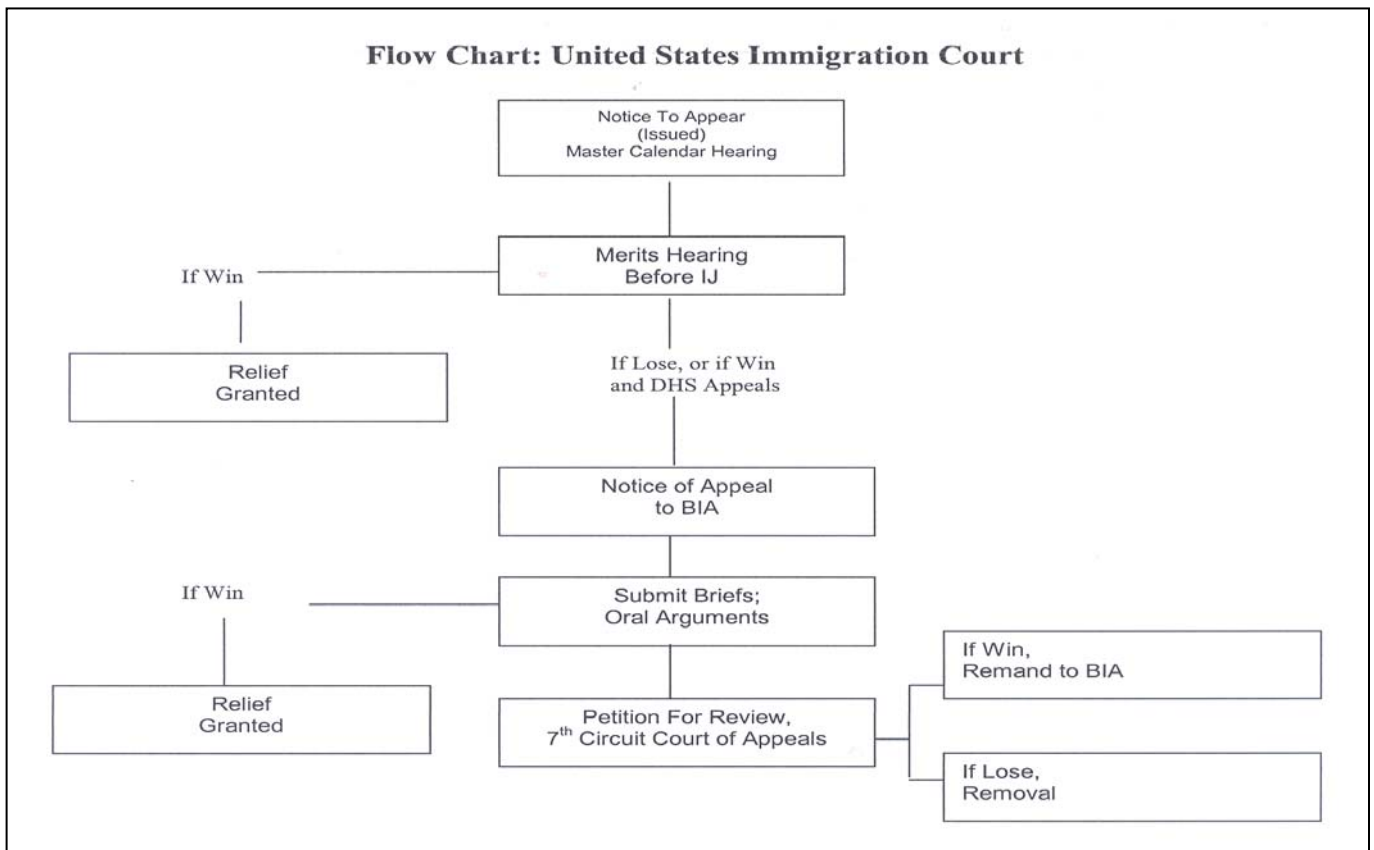
1.3 Where are immigrant detainees held?

In the past decade, the U.S. immigration system has constructed an elaborate system of detention facilities for immigrants and asylum seekers. In border and coastal areas, ICE operates large, centralized facilities that house only ICE detainees. In the Midwest, ICE contracts with county jails to hold detainees for a set dollar amount per individual per night. In contracted county jails, ICE detainees and criminal inmates are held side-by-side. Contracted county jails tend to be located in remote areas and are designed for short-term detention, although ICE detainees may be held there for months and sometimes years. ICE transports detainees held in county jails throughout the Chicago District (which comprises Wisconsin, Illinois, and Indiana) to a detention processing center in Broadview, Illinois (located approximately 20 minutes from the immigration court in downtown Chicago) to attend their immigration hearing via Video-Conference.

PART TWO:
OVERVIEW OF THE U.S. IMMIGRATION COURT PROCESS

2.1 Adjudication of immigration hearings

EOIR, a branch of the U.S. Department of Justice is responsible for adjudicating immigration cases in removal proceedings. Under delegated authority from the Attorney General, EOIR interprets and administers federal immigration laws by conducting immigration court proceedings, appellate reviews, and administrative hearings. EOIR has two primary components: the Immigration Court, where IJs adjudicate individual cases, and the Board of Immigration Appeals (BIA), which primarily conducts appellate reviews of IJ decisions. IJ decisions are administratively final unless the case is appealed to the BIA. BIA decisions are binding unless modified or overruled by the Attorney General or a federal court.



2.2 Removal proceedings

An immigrant is typically placed in removal proceedings when ICE deems that he/she has violated immigration law in some fashion. Once in removal proceedings, the individual in proceedings is referred to as the “respondent.” Because there is no court-appointed counsel in immigration proceedings, the respondent may or may not have representation; often, impoverished or low-income respondents are dependent on a legal service provider or *pro bono* attorney to represent them in their proceedings. The government is represented by attorneys from the Office of Chief Counsel of ICE. They are referred to as “Chief Counsel,” or simply the “government” (a less informal designation is “trial attorney or “TA”).

In removal proceedings, the government bears the burden of proving removability by evidence that is “clear and convincing.” 8 C.F.R. §1240.8(a); *see also Woodby v. INS*, 385 U.S. 276 (1966) (requiring that evidence be “clear, unequivocal and convincing”). Likewise, if a respondent is seeking admission, the respondent must demonstrate that he or she is “clearly and beyond a doubt entitled to be admitted.” 8 C.F.R. §1240.8(b) and (c). Because different burdens attach to both the government and the respondent depending on whether a respondent is removable from or seeking admission to the United States, and what type of relief, if any, a respondent may seek, the burden-shifting scheme in the immigration context is quite complex. The complexity of the proceedings puts *pro se* respondents at a particular disadvantage.

Many things can happen at the preliminary hearing which is called the “Master Calendar” (MC) hearing (see Appendix C, sample Notice to Appear or “NTA”). Unless there are complications in the case, the MC hearing is normally a routine proceeding that usually takes less than one hour to complete. It functions much like an arraignment in criminal proceedings. During the MC hearing, the IJ will first ascertain whether the respondent is represented and if not, whether the respondent would like a continuance to seek legal representation. If the respondent states that he or she cannot afford legal counsel, the IJ should advise the respondent of the availability of free legal services. *See* 8 C.F.R. §1240.10(a)(2). If the respondent is represented by counsel, the IJ will ascertain whether counsel is ready to proceed with the case. Generally, the IJ will grant an initial continuance to counsel if needed. If the respondent and/or counsel choose to proceed, the IJ will ask him or her to plead to the charges on the NTA and set the case over for an Individual Merits Hearing if the respondent is eligible for and requests relief from removal. Otherwise, the IJ will likely issue an order of removal if he or she determines that the charges have been sustained and the respondent is not eligible for any relief.

2.3 Options for relief

Some individuals in removal proceedings may apply for relief from or contest their removal based on eligibility for various types of immigration relief. These include the following:

Cancellation of Removal

Non-citizens in the United States, both lawful permanent residents and non-permanent residents, may seek different types of Cancellation of Removal (also known as Suspension of Deportation) as a defense to their removal. These are waivers available to individuals in removal proceedings depending on their length of residence and presence in the United States; good moral character; and hardship to qualifying relatives. These waivers are also available to victims of domestic abuse and a special form of these waivers is available to certain nationals of Guatemala and El Salvador.

Asylum, Withholding, and Convention Against Torture Relief

There are three forms of protection for persons who fear harm or torture if they are returned to their home countries: asylum, withholding of removal, and relief under the Convention against Torture (CAT).

Asylum: Asylum protection may be requested when an individual fears harm upon return to his or her country or if harm has been experienced in the past. The threat of harm must be due to race, religion, nationality, political beliefs, or membership to a particular social group. Generally, there is a one-year application deadline for asylum. An application may still be filed after this deadline if special conditions exist relating to why one did not apply on time, if country conditions have become worse since coming to the United States, or if applying within six months after one has lost lawful status in the United States. Otherwise, one can apply for “withholding of removal,” described below.

Withholding of Removal: Another type of protection available to individuals fleeing persecution is withholding of removal. Withholding of removal is a form of protection that is similar to asylum. To qualify, an individual must show that it is more likely than not that they will be harmed upon return to their country due to race, religion, nationality, political beliefs or membership to a particular social group. Withholding is usually sought if: 1) the individual has committed an aggravated felony, making him/her ineligible for asylum; 2) there are negative factors in the individual’s past such as a criminal history which make discretionary grant of asylum questionable; 3) the individual is ineligible for asylum because of other factors, commonly filing past the one-year deadline. Unlike asylum, withholding is not subject to a one-year deadline. In addition, withholding is a mandatory form of relief; it is not discretionary as is relief under asylum.

Convention Against Torture Relief: The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (“CAT”)⁴ prohibits the return of a person to another country where substantial grounds exist for believing that he or she would be in danger of being subjected to torture if returned. *Matter of Y-L- A-G-, R-S-R-*, 23 I&N Dec. 270 (A.G. 2002); *see also Matter of S-V-*, Interim Decision 3430 (BIA 2000). The ability to raise a claim for relief from removal under the CAT was only very recently made a part of U.S. domestic law. *See* Pub. L. No.105-277, §2242. A CAT claim may be raised even after a final order of removal/deportation has been issued.

The advantage of CAT is that there are no bars to eligibility. Therefore, since the treaty itself does not contain any bars to its mandate of non-return, aggravated felons can make claims for relief if they fear torture. Additionally, an applicant is not required to establish her fear if torture is on account of race, religion, nationality, political opinion, or membership in a social group.

Adjustment of Status

Individuals who have approved family petitions, have a visa immediately available and are eligible to adjust their status within the United States may also make their applications for adjustment of status (or renew them if they have been denied) before the IJ. Refugees who have been continuously present in the United States for more than one year since their date of admission may also make an application for Adjustment of Status or renew a denied application in proceedings. There are also waivers available to individuals to overcome certain grounds of inadmissibility in conjunction with applications for adjustment of status.

Citizenship

In some cases, lawful permanent residents whose parents naturalized while they were under 18 may have automatically derived U.S. Citizenship. Citizenship is also an option for certain military veterans.

Voluntary Departure

Voluntary departure permits an individual, who is otherwise removable, to depart from the country at his/her own expense within a designated amount of time in order to avoid a final order of departure. INA §240B. However, this is not available in all cases. INA §240B(c).

⁴ United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature February 4, 1985, G.A. Res. 39/46, U.N. GAOR Supp. No. 51, at 197, U.N. Doc. A/RES/39/708(1984), reprinted in 23 I.L.M.1027 (1984), modified in 24 I.L.M. 535 (1985).

Voluntary departure is preferable to a removal order for a number of reasons. If an individual is issued a removal order he/she may be barred from reentering the United States for up to ten years and may be subject to civil and criminal penalties if he/she enters without proper authorization. If the individual voluntarily departs within the time ordered by the court, he/she will not be barred from legally reentering in the future. In addition, an individual with a removal order is barred from applying for ten years for cancellation of removal, adjustment of status and other immigration benefits.

An individual may apply for voluntary departure either prior to the master calendar hearing or at the conclusion of proceedings, provided that the individual meets the necessary requirements.

PART THREE:
OVERVIEW OF IMMIGRATION COURT PROCEEDINGS

3.1 Master Calendar hearings

The following is common immigration court procedure for a Master Calendar hearing (MC).

1. THE BEGINNING OF THE HEARING

When the case is called, on the record, through an interpreter where necessary (the Immigration Court will provide the interpreter at its own expense, no matter what the language), the IJ will state the nature of the proceedings and ask the respondent if she understands what is happening.

2. DETERMINING REPRESENTATION BY COUNSEL

If the respondent has counsel, the IJ will confirm that the attorney present is the respondent's counsel. If the respondent appears without counsel, the IJ should advise the respondent of his/her right to representation, at no expense to the government. 8 C.F.R. §1240.10(a)(1). The IJ may then ask the individual if he/she would like a continuance in order to seek legal counsel. The IJ should advise them on the availability of free legal services in the area and ascertain that the respondent has received a list of these legal service providers with contact information. 8 C.F.R. §1240.10(a)(2) and (3).

3. ESTABLISHING RECEIPT OF THE NOTICE TO APPEAR

The IJ will read the factual allegations and the charges in the Notice to Appear (NTA) to the respondent and explain them in non-technical terms. 8 C.F.R. §1240.10(a)(6). The IJ will often grant continuances so that the attorney can go over the NTA with her client to determine whether the charges are correct.

4. ADMITTING OR DENYING THE CHARGES AND CONCEDING REMOVABILITY

The IJ will require the respondent to plead to the NTA by stating whether he or she admits or denies the factual allegations and his or her removability under the charges contained in the NTA. 8 C.F.R. §1240.10(a)(7)(c).

5. DESIGNATING A COUNTRY OF REMOVAL

Next, the IJ will ask if the respondent wishes to designate a country of removal. The respondent may decline for various reasons, but the most common is where a respondent fears returning to his/her country of origin and is seeking protection-based relief, such as asylum, withholding of removal and/or protection under the Convention Against Torture (CAT). Otherwise, a respondent will designate his country of origin. If the respondent declines to designate a country for removal, the IJ will then ask the Government if he or she wishes to direct a country of removal, which is usually designated by the Government as the respondent's home country, and the IJ accordingly directs that country. 8 C.F.R. §1240.10(a)(7)(f).

6. STATING A CLAIM FOR RELIEF

Once removability has been established, the IJ will ascertain whether the individual is eligible for any form of relief from removal. If so, the IJ will likely set the case over for the filing of any applications for relief.

7. FILING AN APPLICATION FOR RELIEF

On the day the application is due with the Court, the IJ will receive the application and set the case over for an "Individual Merits Hearing." If an individual does not file an application for relief by the date set by the IJ, the IJ may consider the claim abandoned.

3.2 Merits Hearing

1. BEGINNING THE MERITS HEARING

a. Off the Record Formalities

Before the start of the Merits hearing, the IJ will generally engage in a substantial amount of off-the-record conversation, reviewing the file, identifying exhibits, and clarifying issues, such as the status of previously filed motions, or the number of witnesses the respondent will call.

b. Correcting and Updating Information

At the beginning of the hearing on the record, counsel for the respondent is generally given a chance to update or correct any information on the application for relief or other materials previously submitted. .

c. Identifying and Admitting Exhibits

Next the IJ will go through the process of admitting exhibits. Generally, the NTA and related materials have already been admitted as initial exhibits and the application for relief along with all attached materials will be identified and admitted as a group exhibit. The IJ will simply identify all offered exhibits and ask if there are any objections. There are generally no objections to this, but if there are any objections to a particular piece of evidence, the IJ will usually permit brief arguments and rule quickly. Occasionally, specific items such as expert witness affidavits or *curriculum vitae*, or pieces of direct evidence, such as letters or documents, will draw objections that the IJ is not comfortable ruling on at that point. In the circumstances, the IJ may instead reserve his/her ruling until the attorney presents the evidence during the course the case.

2. PRESENTATION OF CASE

Once the preliminary and procedural matters have been taken care of, the respondent proceeds to present his or her case. This includes offering his or her own testimony, as well as that of other witnesses, in addition to presentation of documents that may already be part of the record. 8 C.F.R. §1240.10(a)(4). The presentation of testimony occurs in the traditional adversarial manner, that is first direct examination of witnesses is conducted, with an opportunity for cross-examination by opposing counsel, and finally, an opportunity for a redirect examination. In immigration proceedings, the IJ may ask questions of his or her own, during direct, cross or re-direct.

3.3 Special considerations in detained court proceedings

Video Teleconferencing

The use of VTC in EOIR proceedings presents a number of challenges in ensuring due process for immigrants. *Rusu v. INS*, 296 F.3d 316, 321-22 (4th Cir. 2002). In the Chicago Immigration Court, VTC is used for both master calendar hearings and merits hearings for detained cases only. The Court Monitoring Questionnaire included as Appendix A poses detailed questions as to the procedural, technical, and due process considerations that arise in VTC hearings. Some of these considerations include:

- The ability of the respondent to communicate effectively through VTC;
- The court translator's ability to interpret for the respondent and IJ;
- The ability of the IJ to assess the respondent's credibility;
- The respondent's ability to have confidential attorney-client communication;
- The effect of a non-court environment on respondent's ability to testify without distraction or privacy;
- The ability of the respondent to review documents and other evidence admitted into the case by the government;
- The ability of the respondent to present evidence in his or her own behalf and to cross-examine witnesses presented by the government;

- The ability of the respondent to present his or her physical injuries in cases when those injuries are relevant to his or her claim;
- Technological problems that hinder effective communication (such as ability for the respondent, the IJ, and the government attorney to see or hear one another).

Pro se detainees

More than half of immigrants appear before EOIR *pro se*. *Pro se* respondents face a number of particular challenges in their proceedings. Most respondents are unfamiliar with EOIR procedures and their options for relief. Due to fear or unfamiliarity with the process, the respondent may not voice his or her questions or confusion about the process. In cases where *pro se* respondents have limited English proficiency, their ability to communicate with and understand the IJ is limited and effects their right to a fair hearing. Insofar as VTC may effect the respondent's ability to communicate with the IJ through a translator, language barriers are arguably heightened in VTC hearings. *Pro se* respondents appearing for their hearing via VTC are made doubly vulnerable by a system that does not provide counsel and that often hinders effective communication with the IJ.

APPENDIX A:
Court Monitoring Questionnaire

Immigration Court Monitoring Questionnaire

Student Name: _____ Date: _____

Name of Respondent (R): _____ Did Respondent have attorney? YES NO

If yes, what is attorney's name: _____ Firm: _____

If not: Did Immigration Judge (IJ) ask respondent if he/she wanted a continuance? YES NO

Did IJ provide a list of legal service providers / pro bono attorneys? YES NO

Type of Hearing (circle one): MASTER MERITS BOND

All Hearings

1. TRANSLATION

- | | | | |
|--|------------|-----------|--------------------------|
| 1.1 Was a translator always used when a language barrier existed? | Yes | No | N/A or Don't Know |
| 1.2. Is the translator (if needed) physically present in the room? | Yes | No | N/A or Don't Know |
| 1.3. Is the translator (if needed) available through the phone? | Yes | No | N/A or Don't Know |
| 1.4. Could the translator be heard clearly by the detainee? | Yes | No | N/A or Don't Know |
| 1.5. Could the translator be heard clearly by the courtroom? | Yes | No | N/A or Don't Know |

2. AUDIO-VISUAL CLARITY / TECHNOLOGICAL ISSUES

- | | | | |
|---|------------|-----------|--------------------------|
| 2.1 Did IJ ask R if s/he could see the courtroom and its occupants clearly? | Yes | No | N/A or Don't Know |
| 2.2. Did IJ ask R if s/he could hear sufficiently? | Yes | No | N/A or Don't Know |
| 2.3. Could R be heard clearly in the courtroom? | Yes | No | N/A or Don't Know |
| 2.4 Was there more than a 10 second delay between the asking of questions R's answer? | Yes | No | N/A or Don't Know |
| 2.5. Was there any equipment malfunction of any sort? | Yes | No | N/A or Don't Know |
| 2.6. Was the hearing itself ever delayed due to equipment malfunction? | Yes | No | N/A or Don't Know |
| 2.7. If technological problems arose, did IJ reschedule hearing? | Yes | No | N/A or Don't Know |

3. COMMUNICATION BETWEEN COUNSEL/IJ AND RESPONDENT

- | | | | |
|---|------------|-----------|--------------------------|
| 3.1 If R had counsel, was s/he able to confer with counsel at the hearing? | Yes | No | N/A or Don't Know |
| 3.2. Did government counsel or IJ ask R questions? | Yes | No | N/A or Don't Know |
| 3.3 Did questioning show bias or prejudice by IJ? (if yes, please explain in notes section below) | Yes | No | N/A or Don't Know |

4. FAMILY

- | | | | |
|---|------------|-----------|--------------------------|
| 4.1. Were any of R's family members in the courtroom? | Yes | No | N/A or Don't Know |
| 4.2 Were most of the family members able to see R on screen? | Yes | No | N/A or Don't Know |
| 4.3. Were any family members allowed to sit at counsel's table? | Yes | No | N/A or Don't Know |

MASTER-specific

1. If R was pro se, did IJ inform him/her of right to seek counsel at no expense to government?	Yes	No	N/A or Don't Know
2. If R was pro se, did IJ advise R of availability of free legal services?	Yes	No	N/A or Don't Know
3. If R was pro se, did IJ ascertain whether R had received a list of free legal service providers in area?	Yes	No	N/A or Don't Know
4. Did IJ grant continuance to pro se R if he/she desired representation?	Yes	No	N/A or Don't Know
5. Did IJ confirm that R was served with an NTA?	Yes	No	N/A or Don't Know
6. Did the NTA served on R differ from that served on the court?	Yes	No	N/A or Don't Know
7. Was R given time to review the NTA?	Yes	No	N/A or Don't Know
8. Was R's counsel (if present) able to review the NTA?	Yes	No	N/A or Don't Know
9. Did R's charges include any criminal convictions?	Yes	No	N/A or Don't Know
10. Did IJ read the factual and legal allegations and explain them in non-technical language?	Yes	No	N/A or Don't Know
11. Did IJ require respondent to admit or deny pleadings?	Yes	No	N/A or Don't Know
12. Did respondent admit or deny charges?	Yes	No	N/A or Don't Know
13. Was the "document reader" used to serve the detainee with new documents?	Yes	No	N/A or Don't Know
14. Was the fax used to serve documents?	Yes	No	N/A or Don't Know
15. Did government attorney provide evidence regarding removability grounds?	Yes	No	N/A or Don't Know
16. Was R served with his/her criminal convictions?	Yes	No	N/A or Don't Know
17. Was the R ordered removed?	Yes	No	N/A or Don't Know
18. Were proceedings terminated?	Yes	No	N/A or Don't Know
19. Did IJ ask R if he/she would do merits hearing by VTC?	Yes	No	N/A or Don't Know

MERITS-specific

1. Did IJ question R's credibility?	Yes	No	N/A or Don't Know
2. Did witnesses testify at the hearing?	Yes	No	N/A or Don't Know
3. Did witnesses (if present), testify at the courtroom or by VTC?	Yes	No	N/A or Don't Know
4. Did the hearing run over the scheduled time?	Yes	No	N/A or Don't Know
5. If known, was motion objecting to VTC filed by respondent?	Yes	No	N/A or Don't Know
6. If so, did IJ address motion objecting to VTC?	Yes	No	N/A or Don't Know
7. If so, did IJ grant or deny motion?	Yes	No	N/A or Don't Know
8. Was R permitted to present opening and/or closing statement?	Yes	No	N/A or Don't Know
9. Did IJ issue a decision at the hearing?	Yes	No	N/A or Don't Know
10. Was R ordered removed?	Yes	No	N/A or Don't Know
11. Was R granted relief?	Yes	No	N/A or Don't Know

BOND-specific

1.1. Was the bond hearing conducted "off the record"?	Yes	No	N/A or Don't Know
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APPENDIX B:
Sample Notice to Appear

U.S. Department of Justice
Immigration and Naturalization Service **Notice to Appear**
In removal proceedings under section 240 of the Immigration and Nationality Act

Notice to Appear

Your name should be listed here.

File No: _____

This is the "A" number assigned to you by DHS.

In the matter of:

Respondent: _____ currently residing at: _____
(Number, street, city state and ZIP code) (area code and phone number)

Factual allegations.

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

The Service alleges that you:

1. Are not a citizen of the United States;
You are a native of _____ and citizen of _____;
3. You entered the United States at or near _____ on or about _____
4. You were then not admitted or paroled after inspection by an Immigration Officer.

Legal charge.

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:

Section 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, as an alien present in the United States without being admitted or paroled, or who has arrived in the United States at any time or place other than designated by the Attorney General.

Notice of court hearing, date and time.

This notice is being issued after an asylum officer has found that the respondent has demonstrated a credible fear of persecution.

Section 235(b)(1) order was vacated pursuant to: 8 CFR 208.30(f)(2) 8 CFR 235.3(b)(5)(iv)

YOU ARE ORDERED to appear before an immigration judge of the United States Department of Justice at: _____
To be calendared and notice provided.

On _____ at _____ to show why you should not be removed from the United States based on the charge(s) set forth above.

Date: _____

See attached Notice to the Respondent for important information

APPENDIX C:
Glossary of Immigration Terms

A

“A” Number:	An eight digit number (or nine digit, if the first number is a zero) beginning with the letter "A" that the DHS gives to some non-citizens.
Adjustment of Status:	A process by which a non-citizen in the United States becomes a lawful permanent resident without having to leave the U.S.
Admission:	The decision of the DHS to allow a non-citizen at the United States border or international airport or seaport to enter the United States.
Admissible:	A non-citizen who may enter the U.S. because s/he is not excludable for any reason or has a waiver of excludability.
Aggravated Felon:	One convicted of numerous crimes set forth at INA § 101(a)(43). An aggravated felony includes many crimes, but the most common are: (1) drug trafficking--any crime involving distribution, importation or sale of drugs, no matter the amount or the sentence; (2) the crime of theft, robbery or burglary with one year sentence whether imposed or suspended; and (3) the crime of violence with a one year sentence whether imposed or suspended.
Alien:	A person who is not a citizen or national of the United States.
Alien Registration Receipt Card:	The technical name for a "green card," which identifies an immigrant as having permanent resident status.
Aliens Previously Removed:	Ground of inadmissibility, for persons previously removed for anywhere from five years to twenty years depending on prior circumstances.
Aliens Unlawfully Present:	Ground of inadmissibility for three years for one unlawfully present in the U.S. for more than 180 days but less than one year commencing April 1, 1997 or for ten years if unlawfully present for one year or more.
Asylee:	A person who is granted asylum in the United States.
Asylum:	A legal status granted to a person who has suffered harm or who fears harm because of his/her race, religion, nationality, political opinion or membership in a particular social group.

C

Cancellation of Removal:	Discretionary remedy for an LPR who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an aggravated felony, or anyone physically present in the United States for a continuous period of not less than ten years immediately preceding the date of such application, who has been a person of good moral character during such period, has not been convicted of certain offenses and who establishes that removal would result in extreme hardship to the U.S. citizen or LPR spouse, parent, or child.
Citizen (USC):	Any person born in the fifty United States, Guam, Puerto Rico, or the U.S. Virgin Islands; or a person who has naturalized to become a U.S. citizen. Some people born abroad are also citizens if their parents were citizens.
Conditional Permanent Resident Status:	A person who received lawful permanent residency based on a marriage to a U.S. citizen who was less than two years old at the time. Conditional residents must file a second petition with the U.S. within two years of receiving their conditional resident status in order to retain their U.S. residency.

- Consular Processing:** The process by which a person outside the United States obtains an immigrant visa at a U.S. consulate in order to travel to the U.S. and enter as a lawful permanent resident.
- Conviction:** Formal judgment of guilt entered by a court or, if adjudication of guilt was withheld, if a judge or jury has found the person guilty or the person has entered a plea of guilty or *nolo contendere* and has admitted sufficient facts to warrant a finding of guilt and the judge has ordered some form of punishment, penalty or restraint.
- Credible Fear Interview:** An interview which takes place if an alien who arrives in the United States with false documents or no documents, and is therefore subject to expedited removal, expresses a fear of persecution or a desire for asylum. The purpose of the interview is to determine if the alien can show that there is a significant possibility that he/she can satisfy the qualifications for asylum.

D

- Department of Homeland Security (DHS):** The federal department charged, in part, with implementing and enforcing immigration law and policy.
- Deportable:** Being subject to ejection from the U.S. for violating an immigration law, such as entering without inspection, overstaying a temporary visa, or being convicted of certain crimes.
- Deportation:** The ejection of a non-citizen from the United States. A deported person cannot ordinarily reenter the United States for five years, or twenty years if deported for certain crimes. A non-citizen cannot be deported without a hearing, unless he/she has been convicted of certain crimes, and is not an LPR.
- Detention:** Asylum seekers who enter the U.S. without documentation may be detained at an DHS detention facility until they pass a credible fear interview or until the completion of their asylum hearing.

E

- Entry:** Being physically present in the U.S. after inspection by the DHS or after entering without inspection.
- Entry Without Inspection (EWI):** Entering the United States without being inspected by the DHS, such as a person who runs across the border between the U.S. and Mexico or Canada. This is a violation of the immigration laws.
- Employment Authorization Document (EAD):** The I-688 card that the DHS issues to a person granted permission to work in the U.S. The EAD is a plastic, wallet-sized card.
- Excludable:** Being inadmissible to the U.S. for violating an immigration law, such as for not possessing a valid passport or visa, or for having HIV, or for having been convicted of certain crimes.
- Exclusion:** The ejection of a non-citizen who has never gained legal admission to the U.S. (however, the person may have been physically present in the U.S.). Exclusion cannot happen without a hearing unless the non-citizen waives the right, and prevents reentry for one year unless the DHS grants an exception.
- Executive Office for Immigration Review (EOIR):** The Immigration Court, the Board of Immigration Appeals, and one other agency within the Department of Justice which decides immigration cases.

Expedited Removal: An abbreviated removal procedure applied to aliens who arrive in the United States with false documents or no documents.

I

Illegal Alien: See "Undocumented".

Immediate Relative: The spouse, parent, or unmarried child under 21 of a U.S. citizen. Generally speaking, the immigration laws treat immediate relatives better than other relatives of citizens or legal permanent residents.

Immigrant: A person who has the intention to reside permanently in the United States; usually a lawful permanent resident.

Immigrant Visa: A document required by the INA and required and properly issued by a consular office outside of the United States to an eligible immigrant under the provisions of the INA. An immigrant visa has six months validity.

Immigration and Customs Enforcement (ICE): The agency within the Department of Homeland Security responsible for overseeing detention and release of immigrants and the investigation of immigration-related administrative and criminal violations.

Immigration and Naturalization Service (INS): Former branch of the United States Department of Justice charged with enforcing the immigration laws. On March 1, 2003, the INS ceased to exist. Responsibility for immigration policy and immigration functions are now shared between the Department of Justice and the Department of Homeland Security.

Immigration Judge: Presides over removal proceedings.

Inspection: The DHS process of inspecting a person's travel documents at the U.S. border or international airport or seaport.

L

Lawful Permanent Resident (LPR): A person who has received a "green card" and whom the DHS has decided may live permanently in the U.S. LPRs eventually may become citizens, but if they do not, they could be deported from the U.S. for certain activities, such as drug convictions and certain other crimes.

N

Native: A person born in a specific country.

National: A person owing permanent allegiance to a particular country.

Naturalization: The process by which an LPR becomes a United States citizen. A person must ordinarily have been an LPR for five years before applying for naturalization. A person who became an LPR through marriage to a U.S. citizen and is still married to that person in most cases may apply for naturalization after three years as an LPR.

Nicaraguan Adjustment and Central American Relief Act (NACARA):

Legislation passed by Congress in 1997 to restore the opportunity for certain individuals present in the U.S. to adjust to permanent resident status. The legislation covers Cubans and Nicaraguans, Guatemalans, Salvadorans, and

certain East Europeans of Former Soviet Bloc Countries. Under the legislation, different requirements apply to each group.

Non-citizen: Any person who is not a citizen of the U.S., whether legal or undocumented. Referred to in the INA as an "alien."

Nonimmigrant: A person who plans to be in the U.S. only temporarily, such as a person with a tourist or student visa. A nonimmigrant will ordinarily have a visa stamp in his/her passport, and an I-94 card which states how long the person can stay in the U.S.

Nonimmigrant Visa: A document issued by a consular officer signifying that the officer believes that the alien is eligible to apply for admission to the US for specific limited purposes and does not intend to remain permanently in the US. Nonimmigrant visas are temporary.

Notice to Appear: Document issued to commence removal proceedings, effective April 1, 1997.

O

**Order to Show Cause:
Overstay:** Document issued to commence deportation proceedings prior to April 1, 1997. To fail to leave the U.S. by the time permitted by the DHS on the nonimmigrant visa (as ordinarily indicated on the I-94 card), or to fail to arrange other legal status by that time.

P

Parole: To permit a person to come into the U.S. who may not actually be eligible to enter--often granted for humanitarian reasons, or to release a person from DHS detention. A person paroled in is known as a "parolee."

Petitioner: A U.S. citizen or LPR who files a visa petition with the DHS so that his/her family member may immigrate.

**Priority Registration
Date (PRD):** Everyone who files an I-130 Petition For Alien Relative receives a priority registration date. Once a person's PRD becomes current, he/she can apply for LPR status. This may often take a long time, until a visa number becomes available.

R

Refugee: A person who is granted permission while outside the U.S. to enter the U.S. legally because of harm or feared harm due to his/her race, religion, nationality, political opinion or membership in a particular social group.

Relief: Term used for a variety of grounds to avoid deportation or exclusion.

Removal: Proceedings to enforce departure of persons seeking admission to the US who are inadmissible or persons who have been admitted who are removable.

Rescission: Cancellation of prior adjustment to permanent resident status.

Residence: The principal and actual place of dwelling.

Respondent: The term used for the asylum seeker/person in removal proceedings.

S

Suspension of Deportation: Commonly referred to as "Suspension." A way for a non-citizen to become a lawful permanent resident. Historically, suspension has only been available to a person who is in deportation proceedings. The non-citizen usually must show

that he/she has resided continuously in the United States for at least seven years, is a person of good moral character, and either he/she or his/her U.S. citizen or LPR relative will suffer extreme hardship if he/she is deported. In the Violence Against Women Act, Congress created a new "suspension of deportation" for spouses and children of U.S. citizens or LPRs who can show that they have been victims of domestic violence or sexual abuse. Among other categories, these persons need only prove three years of continuous residence in the U.S.

T

Temporary Protected Status (TPS):

A status allowing residence and employment authorization to the nationals of foreign states, for a period of not less than six months or more than eighteen months, when such state (or states) has been appropriately designated by the Attorney General because of extraordinary and temporary conditions in such state (or states).

U

Undocumented:

A non-citizen whose presence in the U.S. is not known to the DHS and who is residing here without legal immigration status. Undocumented persons include those who originally entered the U.S. legally for a temporary stay and overstayed or worked without DHS permission, and those who entered without inspection. Often referred to as "illegal aliens."

United States Citizenship And Immigration Services (USCIS):

The agency within the Department of Homeland Security responsible for adjudicating all applications for immigration benefits.

V

Violence Against Women Act (VAWA):

Legislation passed by Congress in 1994, which contained certain immigration provisions. The immigration law provisions allow a spouse and children, or parents of children, who have been abused or subject to extreme cruelty by their legal permanent resident or United States citizen spouse or parent to immigrate without the assistance of the LPR or USC spouse or parent, provided that they meet certain conditions.

Visa:

A document (or a stamp placed in a person's passport) issued by a United States consulate abroad to a non-citizen to allow that person to enter the U.S. Visas are either nonimmigrant or immigrant visas.

Voluntary Departure:

Permission granted to a non-citizen to leave the U.S. voluntarily. The person must have good moral character and must leave the U.S. at his/her own expense, within a specified time. A non-citizen granted voluntary departure can reenter the U.S. legally in the future.

W

Waiver of Ground of Exclusion:

The excusing of a ground of exclusion by the DHS or the Immigration Court.

Work Permit:

There is no single document in U.S. immigration law that is a "work permit." Citizens, nationals, and lawful permanent residents are authorized to be employed in the U.S. Certain nonimmigrant visa categories include employment in the U.S. Other aliens in the U.S. may have the right to apply for an Employment Authorization Document (EAD).