



U.S. Department of Justice
Executive Office for Immigration Review
Office of the Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

February 3, 2016

MEMORANDUM

To: All Immigration Judges
All Court Administrators

From: Print Maggard 
Chief Immigration Judge (Acting)

Subject: Revised Docketing Practices Relating to Certain EOIR Priority Cases

In 2014, we added new priorities to our pre-existing priority for detained cases. We realigned our dockets and refocused immigration court resources to meet the new priorities, including: unaccompanied children, adults with children who have been released on alternatives to detention, and adults with children who are detained. This memorandum addresses revisions to our docketing practices for these priorities and the addition of a new priority for individuals released from custody as a result of a bond hearing conducted pursuant to the decision in *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015).

Except as provided in this guidance document, you should continue to follow the docketing standards set forth in the March 24, 2015 memorandum entitled "Docketing Practices Relating to Unaccompanied Children Cases and Adults with Children Released on Alternatives to Detention Cases in Light of New Priorities."

I. Unaccompanied Children (UC)

Currently, UC cases are scheduled for an initial master calendar hearing no earlier than 10 days and no later than 21 days from the Immigration Court's receipt of the Notice to Appear (NTA). Beginning on February 8, 2016, we will begin docketing UC cases as follows: Schedule the initial master calendar hearing no earlier than 30 days and no more than 90 days from the Immigration Court's receipt of the NTA. If the 90th day falls on a Saturday, Sunday, or legal holiday, court staff should schedule the case no later than the last business day before the Saturday, Sunday, or legal holiday.

UC cases remain a priority. This revision to our docketing practices for UC cases is intended to provide the Immigration Court with greater scheduling flexibility that benefits both parties.

II. Adults with Children Released on Alternatives to Detention (AWC/ATD)

During last year's influx of migrants, the Department of Homeland Security (DHS) instructed adults with children who were apprehended at the southwest border, but not placed in a family residential center, to report to a United States Immigration and Customs Enforcement (ICE) field office in the interior of the United States within 15 days after their apprehension to enroll in ICE's ATD program. DHS issued an NTA to each family member that was marked with the AWC/ATD designation. According to DHS, many of these families were not enrolled in the ATD program either because they failed to report to an ICE field office as instructed, or because they did report to an ICE field office but were deemed not appropriate for enrollment in the program.

DHS has begun a monthly reconciliation program with EOIR in order to accurately reflect those cases that are actually enrolled in the ATD program. As a result of the reconciliation, headquarters is removing the AWC/ATD priority code designation from the CASE system for pending AWC/ATD cases where the respondents are **not** actually enrolled in ATD. Beginning on March 1, 2016, AWC/ATD cases in which the AWC/ATD priority code designation has been removed from CASE will no longer be a docketing priority, even though DHS previously marked the NTA with the AWC/ATD designation. All court personnel must check CASE to ascertain the priority of a case for scheduling purposes. Respondents who are actually enrolled in the ATD program, and maintain the AWC/ATD priority code, are priorities for EOIR, per the July 2014 guidance.

There may be pending cases involving adults with children in which only one family member's case continues to be identified with the AWC/ATD priority code designation in the CASE system. Judges should consolidate the cases of these family members, where appropriate, and schedule them according to existing docketing standards for AWC/ATD cases.

The goal should be to promptly and efficiently move the case along, while affording all substantive and procedural rights and protections to the individual. Hearing time should be made available so that these cases are scheduled within appropriate time frames and are not extended solely due to calendar unavailability. Prompt and efficient adjudication does not inhibit a judge's discretion to reset a case for reasons supported by good cause consistent with the legal standard for continuances contained in 8 C.F.R. § 1003.29.¹

Please note that, even though the AWC/ATD priority code designation has been removed from the CASE system in a particular case, court staff should **not** cross out or otherwise remove the AWC/ATD designation on the NTA.

¹ See Operating Policies and Procedures Memorandum (OPPM) 13-01: *Continuances and Administrative Closure*.

III. Adults with Children/Detained (AWC/D)

AWC/D cases in which the respondents are released from custody will continue to be a priority. Beginning on March 1, 2016, these cases should be promptly and efficiently addressed, notwithstanding that these respondents have been released from custody. If a case must be referred to another entity for potential substantive relief (e.g., pending I-360, asylum, special immigrant juvenile status), the case should be administratively closed pursuant to *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012). For cases not so referred, the goal should be to promptly and efficiently move the case along, while affording all substantive and procedural rights and protections to the individual. Hearing time should be made available so that these cases are scheduled within appropriate time frames and are not extended solely due to calendar unavailability. Prompt and efficient adjudication does not inhibit a judge's discretion to reset a case for reasons supported by good cause consistent with the legal standard for continuances contained in 8 C.F.R. § 1003.29.²

IV. Individuals Released on *Rodriguez* Bonds

Detained cases are a priority. In addition, under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), individuals within the jurisdiction of the Ninth Circuit who are detained for six months or more, including those subject to mandatory detention, are entitled to an automatic bond hearing before an Immigration Judge. In addition, for those individuals who are detained for more than 12 months, bond hearings must occur periodically at six-month intervals. According to DHS, some respondents who are released from custody as a result of this type of bond hearing fall under DHS's Priority I category for civil immigration enforcement.³ Beginning on March 1, 2016, the cases of such respondents whose removal proceedings are pending before the Immigration Court will be a docketing priority. As with other priorities, these cases should be addressed promptly and efficiently, while safeguarding due process and the opportunity to be heard.

This new docketing priority will be implemented as follows:

- If a detained respondent whose proceedings are pending before the court is released as a result of this type of bond hearing, DHS will mark the top right-hand corner of the Form I-830 with the acronym "CR" (custody review).
- If upon the Immigration Court's receipt of a properly filed Form I-830 court staff determine (1) that this type of bond hearing was conducted and (2) that removal proceedings remain pending before the Immigration Court, court staff should enter the new priority case identifier "CR" into the CASE system.
- If the case is administratively transferred to a non-detained docket, court staff should schedule a master calendar hearing no earlier than 10 days following the respondent's release from custody and no later than 28 days after such release. If the 28th day falls on

² See *id.*

³ See OPPM 15-01: *Hearing Procedures for Cases Covered by New DHS Priorities and Initiatives.*

a Saturday, Sunday, or legal holiday, court staff should schedule the case no later than the last business day before the Saturday, Sunday, or legal holiday.

V. Conclusion

DHS will continue to annotate NTAs on the top, right-hand corner for the following priorities:

- UC: Unaccompanied Children
- AWC/ATD: Adults with Children/Released on Alternatives to Detention
- AWC/D: Adults with Children/Detained
- RBC/D: Recent Border Crossers/Detained

DHS’s annotation on the NTA will continue to define the cases that fall under one of the above priorities. Court staff should not add, delete, re-examine, or re-define the designations provided by DHS. We will accept the designation of the cases as priority cases and will process them accordingly. Nevertheless, should there be marked NTAs, or a pattern of marked NTAs that appear to be designated in error, please bring them to the attention of your Court Administrator or Assistant Chief Immigration Judge.

As additional issues arise relating to our new priorities, further guidance may be forthcoming. Please contact your Assistant Chief Immigration Judge about any issues that you believe need to be addressed and with any questions you may have concerning this memorandum.