

Florida Bar Notes from Meeting with the Miami Department of Homeland Security,
Immigration and Customs Enforcement, Office of the Chief Counsel, Miami, FL Office
(DHS ICE OCC Miami)

On April 25, 2018, the DHS ICE OCC Miami Office held a questions and answers session with some members of the private bar, including members of AILA South Florida and members of the Florida Bar. The questions were submitted in advance to the DHS ICE OCC Miami Office.

1. Question: Please address OCC position regarding motions for administrative closure for respondent's with approved I-130s who are eligible to apply for a provisional unlawful presence waiver (Form I-601A). Assistant Chief Counsel is opposing these motions in court unless counsel submits proof that the Form I-601A has been filed with USCIS. However, the Form I-601A explicitly states that a respondent in removal proceedings cannot file the Form I-601A unless the removal proceedings are administratively closed or terminated. Also, please address OCC's position on termination of proceedings for cases where the respondent has an approved I-601A?

Answer: DHS ICE OCC Miami made it clear that they are not joining any petition to administratively close removal cases for the purpose of filing Form I-601A. OCC will not oppose Respondent's request for grants of Voluntary Departure. The private attorneys argued that the OCC's position is not reasonable as Voluntary Departure may be granted for a period not to exceed 120 days, and USCIS is taking more than 120 days to approve I-601As, so OCC's position prevents Respondents who have accumulated unlawful presence to obtain a waiver of unlawful presence before leaving the U.S., shortening the time that Respondents have to be away from their families and job responsibilities. OCC says that they cannot agree to the administrative closure of any cases at this point.

2. Question: Please provide us with the most recent list of Assistant Chief Counsels in Miami, Krome and BTC. Please provide an overview of any key staffing changes or other organizational updates that have been implemented since our last meeting.

Answer: See attached list

DEPARTMENT OF HOMELAND SECURITY
IMMIGRATION AND CUSTOM ENFORCEMENT
MIAMI OFFICE OF THE PRINCIPAL LEGAL ADVISOR

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3. **Question:** Are you able to provide the names and contact information for OPLA attorneys working at the HIS office?

Answer: No, not at this time.

4. **Question:** For individuals serving a federal sentence, is there a mechanism for requesting a stipulated administrative order of removal and avoiding lengthy removal proceedings? Is there a mechanism to arrange for someone to be transported from federal custody to the airport for a voluntary removal? Who is the point of contact?

Answer: Federal Judges have the power to issue removal orders during sentencing on criminal matters if the Defendant asks for it. If this was not done during sentencing, the Defendant/Respondent may contact the duty attorney with a proposed stipulated removal order, which is normally granted within a few business days.

5. **Question:** Are there any recent changes to your office's policies regarding requests for Prosecutorial Discretion (PD)? What is the current standard of review for these requests? Where is the decision of where to grant PD made and the approximate time frame for a decision?

Answer: There are no recent changes. PD is to be used sparingly, and all requests are analyzed on a case-by-case basis. OCC Miami is not following any specific standards when deciding whether to grant a request for PD.

6. **Question:** On February 24, 2012, ICE released the memorandum, "Facilitating the Return to the United States of Certain Lawfully Removed Aliens," which describes ICE's policy on the return of individuals whose petitions for review have been granted by a federal court. AILA members continue to report difficulty in facilitating the return of clients to the U.S. following successful petitions for review, which can result in docketing inefficiencies in immigration court. Please advise on the ICE contact in South Florida for facilitation of return, and please confirm that the 2012 policy remains in effect. How far in advance of a hearing date should the request be submitted to ICE to ensure the timely return of a respondent to the U.S.?

Answer: The policy remains in effect, but requests are not handled locally. If a court of appeals grants your client's petition for review, you should contact the Facilitation of Return team within the ICE Enforcement and Removal Operations (ERO) Custody Programs Division. The Custody Programs Division can be reached by contacting the ERO Contact Center of Operations (ECCO) at (888) 351-4024 or via email at ERO.INFO@ice.dhs.gov. When contacting the ECCO, please provide your court of appeals case number, alien registration number, and detailed contact information to allow ICE to get in touch with you. The process takes at least 30 days.

7. **Question:** ICE has previously indicated that it will join a motion to terminate proceedings when a respondent is otherwise eligible for parole in place for military family members, given that USCIS has stated it does not have jurisdiction over a parole in place application for someone in removal proceedings. Please confirm that this policy remains in effect.

Answer: Yes, after a de novo review of the file and of the PIP request, OCC will decide whether to join.

8. **Question:** After an immigration judge terminates proceedings for a respondent to pursue adjustment of status before USCIS, OCC must send this notice and documentation to USCIS. Members have reported that OCC does not always send this information to USCIS, even after attorneys have submitted numerous requests. Unfortunately, USCIS cannot proceed with adjudication until they have received this documentation from OCC. This issue causes significant case processing delays.

Answer: OCC advised that the ICE Office of Enforcement and Removal Operations is in charge of updating and forwarding the file to USCIS. However, OCC can help. So, private attorneys should feel free to contact the OCC duty attorney when there is a delay. It would also be helpful if private attorneys were to provide the correct Field Office address to ICE as ICE does not always know where the USCIS case is being handled.

9. **Question:** What is the policy or guidance for OCC to provide notice to USCIS after termination of proceedings where the foreign national will adjust before USCIS? What is the best procedure that attorneys should follow to follow up with OCC about this issue?

Answer: Same as answer 8. The ICE Office of Enforcement and Removal Operations is in charge of updating and forwarding the file to USCIS. However, the OCC Miami Office can help. So, private attorneys should feel free to contact the OCC duty attorney when there is a delay. It would also be helpful if private attorneys were to provide the correct Field Office address to ICE as ICE does not always know where the USCIS case is being handled.

In a separate note, OCC continues to encourage private attorneys to file their motions via E-Service. The private attorneys present at the meeting said that some attorneys are complaining that although they have filed documents for some cases using the E-Service system, OCC is not filing their documents through the E-Service. OCC says that they will look into that.

Patricia Castillo Flanagan, Esq.