



HOW TO SURVIVE YOUR IMMIGRATION COURT MASTER CALENDAR HEARING

AILA Santa Clara Valley Chapter
Continuing Legal Education – March 14, 2014

MASTER CALENDAR CLE PANEL

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THANKS TO OUR ORGANIZERS...

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WHAT IS A MASTER CALENDAR HEARING?

- Master calendar hearing determines the outlines of
 1. DHS's removability case – legal grounds for Respondent removability
 2. Respondent's eligibility to remain in U.S. – legal grounds for relief
- Contrast with contested removability hearing, which is to resolve questions of fact related to legal grounds of removability through documentary evidence and witness testimony

CONTRAST WITH THE INDIVIDUAL HEARING

- Individual hearing resolves questions of fact related to legal grounds for relief through introduction of documentary evidence and witness testimony

CONTRAST WITH CONTESTED REMOVABILITY HEARING

- Contested removability hearing resolves questions of fact related to legal grounds of removability through submission of documentary evidence and witness testimony.

PLAYERS AT MASTER CALENDAR HEARING

- Client
- Counsel
- Assistant Chief Counsel
- Immigration Judge

RECONCILING PLAYERS CONTENDING INTERESTS AND VALUES

- Identify your client's goals at the hearing and for the case
 - Time to remain in the US, EAD, legal status
- Identify your own personal goals
 - Earning fees, managing workload, winning, client satisfaction, ethical representation
- Identify TA's goals
 - Workload, winning, fairness, ethical representation
- Identify IJ's goals
 - Workload, fairness, legal correctness, Respondent's danger to society, ethical conduct

APPROACH IS EVERYTHING

- MASH is a negotiation between you, your client, the TA, and the IJ
- In any negotiation, you must have a clearly defined agenda and strategic vision
- Develop a personal theme to your client's case, use client's sympathetic equities at all times
- **Define your bottom line, trust yourself, and stick to it, no matter how upset the IJ or the TA gets**

DEFINE YOUR AIMS AT THE MASTER CALENDAR

- Ethically maximize client's time in the U.S.
 - Tough legal issues, bad equities
- Obtain client's employment authorization
- Acquire stable U.S. legal status
 - How quickly to individual hearing?
- Reunite client's overseas relatives

GETTING WHAT YOU WANT AT THE MASTER CALENDAR

- Seize the initiative
- Know your case strengths and weaknesses
 - Equities, legal authority, strength of witnesses

MASTER CALENDAR RELEVANT AUTHORITY

- INA 239, 240, 8 CFR 1003, 1239, 1240
- Immigration Court Practice Manual

5TH AMENDMENT DUE PROCESS APPLIES

- *Reno v. Flores*, 507 U.S. 292, 306 (1993); *Cruz-Rendon v. Holder*, 603 F.3d 1104, 1109-10 (9th Cir. 2010).
- If you think client treated unfairly, say so.

SELF-INCRIMINATION

- Non-citizen may refuse to answer questions at removal hearing by claiming self-incrimination under 5th Am., if answer may reasonably tend to incriminate or furnish proof of link in chain of evidence necessary to convict. *Matter of R-*, 4 I&N Dec. 720 (BIA 1952).
- However, adverse inference may be drawn from witness' silence in removal proceedings. *Matter of Guevara*, 20 I&N Dec. 238 (BIA 1991). See also, e.g., *Gutierrez v. Holder*, 662 F.3d 1083, 1091 (9th Cir. 2011).

ENTERING ATTORNEY'S APPEARANCE ON DOCKET

- Filing EOIR-28s and G-28s
- E-Registration for Attorneys:
<http://www.justice.gov/eoir/engage/eRegistration.htm>
- Order of Cases
- Pro Bono Attorney at MASH

FAIR NOTICE OF HEARING AND CHARGES

- Notice to Appear (NTA)
 - INA § 239(a)(1); 8 CFR §§ 1003.13, 1239.1
- The Hearing Notice
 - INA § 239(a)(2)(A), (B)
- What type of service of notice is required?
 - *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001)
- In absentia removal
 - INA § 240(b)(7)
- Ensuring update of client's physical and mailing address

THE NOTICE TO APPEAR (NTA)

- What is the NTA?
- Allegations vs. charges

ENTERING PLEA TO THE NTA

- Orally or in writing.
- Change of Venue 8 CFR § 1003.20(b) requires pleading, but not concession of removability.

ANSWERING THE NTA

- Admitting/Denying the Allegations
- Conceding/Denying the Charge
- Designating a country of removal under INA 241 (b) (asylum/withholding issues)
- Preserving Legal Grounds for Federal Court Appeal

ANSWERING CHARGES

- Who is subject to INA 237?
 - Admitted and present in the US
- Who is subject to INA 212?
 - Present without inspection or seeking admission or arriving aliens
- Who is treated as an arriving alien (INA 101(a)(13))?
 - Any non-citizen at POE except for LPRs or
 - LPR is at POE and is deemed inadmissible for CIMTs and CIMT conviction is post-April 1, 1997)
Vartelas v. Holder, 132 S.Ct. 1479 (2012) *Camins v. Gonzales*, 500 F.3d 872 (9th 2007).

ISSUES WITH NTA

- Check NTA for charging and allegation errors or formal defects
- Pleading on EWIs, PWIs, wave-throughs, admit in status to Preserve Adjustment of Status Eligibility
 - *Quilantan* and *Areguillin* cases

BURDENS OF PROOF TO ESTABLISH REMOVABILITY AND ALIENAGE

- DHS must establish removability by clear and convincing evidence
- See INA § 240(c)(3), *Cheuk Fung S-Yong v. Holder*, 600 F.3d 1028, 1034 (9th Cir. 2009) (“clear, convincing and unequivocal”).
- Motion to Suppress Evidence of Alienage and Removability

REQUESTING RELIEF FROM REMOVAL

- Motions to Terminate
- Designating your client's relief application(s)
- Scheduling relief application filings
- Filing deadlines and extensions
- “Fee-ing in” the Application with USCIS vs. filing an application with the Court
- Scheduling biometrics

WORK AUTHORIZATION AND APPLICATION FILING BEST PRACTICES

- EAD can only be obtained once relief application is filed and fee'd in
- File applications with proof as soon as you can, even before initial master
- File relief application and obtain EAD **before** applying for prosecutorial discretion and terminating, otherwise EAD may not issue with no pending relief application

SPECIAL ISSUES IN CONTESTING REMOVAL

- Getting the time you need
- Continuance motions and the proper exercise of discretion
 - 8 CFR §§ 1003.29, 1240.6
 - Time to respond to DHS evidence of fraud and criminal convictions as basis for removability
 - attorney prep
 - Obtaining evidence of removability
 - FOIA responses, *Dent v. Holder*, INA § 291
 - Pursue post-conviction relief as attorney prep

BURDEN OF PROOF TO ESTABLISH TIME, PLACE, MANNER OF ENTRY/ADMISSION

- Upon establishing alienage, burden shifts to non-citizen to demonstrate admissibility or lawful presence in the United States.
- INA § 291, *Tejada-Mata v. INS*, 626 F.2d 721, 725 (9th Cir. 1980).

SPECIAL ISSUES IN SEEKING RELIEF

- IJ and ICE will argue Respondent's burden to establish statutory relief eligibility
 - REAL ID
 - Criminal Bars: *Young v. Holder* – overturned by *Descamps* and *Moncrieffe*?
- ICE Motions at MASH to Pretermite Relief Application

PREPARING YOUR CLIENT FOR THE MASTER CALENDAR HEARING

- Explaining consequences of failing to appear
- Explaining rights in proceedings
- Reviewing allegations and charge
- Updating client's contact info
- Placing the MASH in context of individual hearing and future appeals
- Setting client expectations