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BOND HEARING CHECKLIST

I. Referral Process

When RMIAN identifies a detainee who is likely bond eligible and could benefit from legal representation during a custody redetermination hearing, RMIAN will send emails to potential attorney volunteers to determine immediate availability. If matched with the case, RMIAN will provide the volunteer attorney with a copy of the intake sheet completed through the Legal Orientation Program screening.

Pro bono attorneys will have to act on a tight timeline to gather the documents needed in support of a request for bond. It is possible to seek a continuance if additional time is needed, but it is important to keep in mind that the longer it takes to prepare for the bond hearing, the longer the individual will remain detained.

II. Initial Client Appointment

Once matched with a client, the volunteer attorney will need to meet with the client to gather more information and to sign certain important documents. RMIAN encourages *pro bono* attorneys to review and sign the following forms with clients at the initial meeting:

- ☐ Legal Services Agreement
- ☐ G-28
- ☐ E-28 (please note: the client does not need to sign this form, but you should review it with the client and provide a copy for his/her records)
- ☐ GEO medical release
- ☐ Authorization to consult or release
- ☐ OPTIONAL: Freedom of Information Act (“FOIA”) Requests. There is a useful practice advisory on FOIA requests, *available at*:
https://www.ilrc.org/sites/default/files/resources/foiaadvisory_11.7.pdf
 - o DOJ-361 (to obtain copy of EOIR file)
 - o G-639 (to obtain copy of USCIS, ICE, OBIM file)

Although the client does not need to sign the following documents, RMIAN provides a worksheet that may be used to collect necessary client information:

- ☐ *Pro Bono* Volunteer Bond Informational Worksheet

- *Please note:* It is important to gather information about any family/friends/employers/etc. of the client who may be able to assist with gathering evidence in support of the requested bond redetermination.

Additionally, the attorney may wish to file the following document with the Aurora Immigration Court in order to seek permission to review the EOIR file at the Court:

- ☐ EOIR Information Request Form (this may take a week for the Court to approve, but it may be useful for the attorney to see what information is included in the Court's file)

III. Preparing for the Custody Redetermination Hearing

When making a determination on whether to grant or lower a bond amount, the Immigration Judges ("IJs") are considering the following factors:

- (1) Whether the individual has a fixed address in the United States;
- (2) Length of residence in the United States;
- (3) Family ties in the United States;
- (4) Employment history;
- (5) Record of appearance in court;
- (6) Criminal record;
- (7) History of immigration violations;
- (8) Any attempts to flee prosecution; and
- (9) Manner of entry to the United States.

Matter of Guerra, 21 I&N Dec. 37, 40 (BIA 2006).

The Immigration Judge has broad discretion in deciding the factors that he or she may consider in custody redeterminations and may choose to give greater weight to some factors, as long as the decision is reasonable. *Id.* It is important to brainstorm with your client regarding what evidence might exist to prove the elements needed to establish bond eligibility.

Typically, judges are looking at whether an individual is a flight risk or a danger to the community. As a result, it is important to discuss any criminal history with your client and then help prepare the client to be able to discuss these issues if questioned by the judge.

You should verify all criminal history that your client reports. It is wise to obtain a certified disposition for any convictions your client may possess. You can call the criminal court directly to learn the best way to request those certified dispositions. If no records exist at the court, you should ask whether the court clerk is willing to state as such on court letterhead so that you have concrete evidence that no records exist.

It is essential that during the bond hearing clients can explain:

- What happened? What were the circumstances that led up to the criminal incident?

- If your client has a DWAI or DUI charge, you should review how much the individual had to drink and review the reported blood alcohol level (“BAC”) because it is likely that the Immigration Judge will ask those types of questions.
- What was going on in their life at the time that might mitigate the offense?
- What did the client learn?
- Is there evidence of rehabilitation?
- The client should be able to provide an explanation as to why the client will not commit the same mistake in the future.

*** RMIAN recommends preparing clients for the hearing by pretending to be either the Immigration Judge or the DHS Trial Attorney so that they can get a sense of what the questioning will be like and so you can get a sense of how clients respond to tough questions. ***

Recent entrants into the United States: If your client recently entered the United States without inspection, your client will need to find a “sponsor” who can provide the client with a fixed address in the United States. The sponsor should provide the following documents in support of bond:

- ☐ Letter of support
 - Describing how the sponsor knows the respondent;
 - Stating that the sponsor will pay the bond amount and travel arrangements;
 - Offering to facilitate transportation to future immigration related appointments and hearings before the Immigration Court;
- ☐ Current employment letter signed by sponsor’s employer, stating his position, salary, and length of employment;
- ☐ Copy of sponsor’s latest tax return (if available);
- ☐ Copies of sponsor’s various utility bills, as proof of adequate residence;
- ☐ Copy of sponsor’s proof of lawful status (e.g. certificate of citizenship, U.S. passport, lawful permanent resident card – AKA “green card,” etc.)
 - It is NOT required that a bond sponsor have proof of lawful status, however, under the current political climate RMIAN does not recommend providing the Department of Homeland Security with evidence of individuals who do not have evidence of proof of lawful status in the United States.

*** The respondent must intend to live at the address presented in the bond packet. If the respondent later files a motion to change venue to a *different* jurisdiction than indicated at the time of the bond hearing, some of the Immigration Judges are electing to deny the motion to change venue. ***

Please note: If you are only entering your appearance on behalf of the respondent in the custody redetermination hearing, it is important for you to explain that you will *not* be appearing on behalf of the client during the removal hearings. As a courtesy, you may wish to review what will take place at the client’s initial master calendar hearing. The

Immigration Judge will want to review the charging document that initiated removal proceedings. This is called the “Notice to Appear” or “NTA” and the client should review the factual allegations and charge of inadmissibility/removability to ensure that all of the information contained in the NTA is correct.

While you need not advise the client regarding how to plead to the charging document, it is useful to orient the respondent so that he or she is prepared to proceed before the court. Or, you may wish to mention that all respondents have the right to seek a continuance at the initial master calendar hearing if they are trying to seek counsel or need additional time to verify the information included in the NTA.

IV. Filing the Custody Redetermination Evidence Packet

You may wish to file a brief in support of your request for custody redetermination. Should you decide to do so and have questions about the structure or content of your brief, please do not hesitate to contact RMIAN for additional guidance and sample materials. Regardless of whether you file a brief, you should file an index of documents in support of your request for bond. *See* Immigration Court Practice Manual, Ch. 9: “Detention and Bond,” *available at:*

https://www.justice.gov/sites/default/files/pages/attachments/2016/12/02/practice_manual.pdf#page=138. A sample index is included in the CLE materials.

The Immigration Court requests that evidence packets in support of bond be submitted to the Court at least *three days* in advance of the hearing so that the Court may review the documents prior to the hearing. If you are able to obtain additional documents in support of bond between the date of the initial filing and the date of the bond hearing, you may bring those documents to the hearing and title the filing accordingly (e.g. “Supplemental Documents in Support of Custody Redetermination”). In that case, you may wish to begin the page numbers in your supplemental index at the next page number after the final page in your original evidence submission. This helps to avoid any confusion when you are referring to supporting documentation during the hearing.

V. Client Advisals on Rights and Responsibilities

As best practice, you should review the following information with your client prior to the custody redetermination proceeding:

- You are appearing on your client’s behalf for **ONLY** the custody redetermination hearing. There will be separate hearings before the same Immigration Judge for the removal proceedings. Each respondent has the right to counsel in those proceedings, and if your client wishes to seek counsel to assist in those proceedings but needs additional time to find an attorney, the Court can grant a continuance for that purpose. However, respondents in removal proceedings do **NOT** have the right to free legal representation before the Immigration Court.
- If bond is granted, the client will need to file a *pro se* **Motion to Change Venue**. If the client intends to remain in the area, the case should be transferred to the non-

detained docket at the Denver Immigration Court. Otherwise, the case will be transferred to the non-detained Immigration Court that has jurisdiction over the respondent's new address.

- If bond is granted and the client later moves or changes phone numbers, he/she must file a Form E-33, Change of Address **within five business days** of moving/changing their phone numbers. The form must be filed with the Immigration Court that has jurisdiction over the case and service must be filed with the DHS Office of Chief Counsel in that same jurisdiction.
 - <https://www.justice.gov/sites/default/files/pages/attachments/2016/08/23/eoir33icaurora.pdf>
- It is imperative that all respondents understand the consequences associated with failing to appear before the Immigration Court for any future hearings. It is possible that if a respondent does not attend his/her scheduled court hearing, an Immigration Judge can issue a **final order of removal *in absentia***. If this takes place, the respondent will be at risk for deportation.¹

VI. Appearing at the Custody Redetermination Hearing

When you appear before the Immigration Court, you should state the following at the beginning of the hearing:

“Your honor, I am appearing *pro bono* on behalf of the Respondent. I was referred this case by RMIAN and I am not an immigration attorney (if applicable).”

You may ask the Immigration Judge whether he/she would like an opening statement (describing the factual circumstances, why the Respondent is in custody and why bond is merited). It is possible that the Immigration Judge will decline and will either rely on you to conduct the direct exam of your client. Or, the IJ may conduct the hearing by asking most of the questions. The Trial Attorney may also ask questions of your client. You will have the opportunity to redirect and ask additional pertinent questions to clarify important issues. Finally, you may wish to include a closing statement regarding why the facts demonstrate that bond is warranted.

We greatly appreciate you taking a *pro bono* case referral from RMIAN! Should you have any questions as you move forward, please do not hesitate to contact us directly:

- Alex Gavern, *Pro Bono Coordinator*
- Laura Lunn, *Managing Attorney, Detention Program*

¹ It is possible to file a Motion to Reopen and Rescind *In Absentia* Removal Order, but all respondents are obliged to attend their removal proceedings and it is never advisable for them to rely on this avenue to address the rare occasion when the Court will grant such a motion.