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NON-DETAINED

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UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT – DENVER, COLORADO

_____	)	
In the Matter of:	)	
	)	
_____	)	A# _____
	)	
In Removal Proceedings	)	
_____	)	

Immigration Judge \_\_\_\_\_

Next hearing: Individual Hearing  
\_\_\_\_\_

Notice of Erroneous Setting of Individual Hearing

Respondent, through counsel, provides notice to the Court that his Individual Hearing set for \_\_\_\_\_ appears to have been scheduled erroneously, less than 45 days after a master calendar hearing. Specifically:

- 1) EOIR PM 19-05, issued November 19, 2018, states at Footnote 2:

“Pursuant to the ABT Settlement Agreement, when setting a case from a master calendar hearing to an individual calendar hearing, a minimum of 45 days for a non-detained case and 14 days for a detained case *must* be allowed, even if the 180-day adjudications deadline is imminent. The instant PM does not alter that requirement.” (emphasis added)

**(Tab A: EOIR PM 19-05, Guidance Regarding the Adjudication of Asylum Applications Consistent with INA § 208(d)(5)(A)(iii), at page 6)**

- 2) According to the USCIS, the Agreement applies to asylum applications filed defensively with EOIR on or after December 3, 2013.<sup>1</sup>

**(Tab B: USCIS published guidance: “How the Agreement Affects Adjudication of Asylum and EAD Applications”, at page 8)**

- 3) According to the EOIR, the plaintiff class of the ABT Settlement consists of “all noncitizens in the United States who have been placed in removal proceedings, have filed a complete Form I-589, *Application for Asylum and Withholding of Removal*, and have filed or will file a Form I-765, *Application for Employment Authorization*, pursuant to 8 C.F.R. § 274a.12(c)(8).”

**(Tab C: EOIR O.P.P.M. 13-03, Guidelines for Implementation of the ABT Settlement Agreement, at page 12)**

- 4) Here, the non-detained Respondent filed Form I-589 defensively with EOIR on \_\_\_\_\_. The Respondent also intends to file a Form I-765, *Application for Employment Authorization*, if and when possible, under 8 C.F.R. §274a.12(c)(8) (the code for a pending asylum application).

**(Tab D: Statement of Respondent Regarding Form I-765, at page 48)**

- 5) Therefore, under either the guidance published by USCIS or that published by EOIR, the ABT Settlement Agreement applies to the Respondent.
- 6) At a master calendar hearing on \_\_\_\_\_, the Court set the Respondent’s individual calendar hearing for \_\_\_\_\_, 41 days later.

The Court should therefore *sua sponte* reschedule the Individual Hearing currently set for \_\_\_\_\_ to a date at least 45 days after the last master calendar hearing.

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<sup>1</sup> Source: <https://www.uscis.gov/humanitarian/refugees-asylum/asylum/how-agreement-affects-adjudication-asylum-and-ead-applications>, last updated 05/12/2017, last accessed [DATE].

Respondent through counsel also advises the Court that, nevertheless, Respondent intends to comply with the Court's order to file pre-hearing submissions (e.g., Witness List, Pre-hearing Submission of Evidence) by the Court's stated deadline of \_\_\_\_\_ – 15 days prior to the currently-scheduled Individual Hearing on \_\_\_\_\_.

Respectfully submitted this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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Eric H. Pavri, Esq.  
Catholic Charities of Central Colorado  
*Pro Bono* Counsel for Respondent

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## **CERTIFICATE OF SERVICE**

I hereby certify that the foregoing filing, Notice of Erroneous Setting of Individual Hearing, was served in person / by regular U.S. mail / by e-service on \_\_\_\_\_ upon the Department of Homeland Security, Immigration and Customs Enforcement, Office of Chief Counsel, 12445 East Caley Avenue, Centennial, CO 80111-6432.

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