Frequently Asked Questions: New DOJ Regulations on Efficient Case and Docket Management in Immigration Proceedings

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On May 29, 2024, the Department of Justice (DOJ) issued final regulations, effective July 29, 2024, codifying the ability of adjudicators within the Executive Office for Immigration Review (EOIR) to administratively close and terminate removal proceedings when certain standards are met. These final regulations followed a notice-and-comment period in which the administration solicited feedback from practitioners on the best standards for EOIR adjudicators, defined as Immigration Judges or members of the Board of Immigration Appeals (Board), to use when considering motions for administrative closure and termination of proceedings.

In addition to setting standards for administrative closure and terminations, the regulations also establish that the Attorney General's decision in *Matter of Thomas & Thompson,* 27 I&N Dec. 674 (A.G. 2019), will not apply retroactively to sentencing modifications sought by a noncitizen before the effective date of the decision (October 25, 2019), *or* in situations where an applicant can show detrimental reliance on the prior standard even if the applicant sought the sentencing modification after the effective date of *Thomas & Thompson*.

These new regulations also finalized the withdrawal of a final rule issued by the prior administration, referred to as the AA96 Final Rule, which had created several adverse procedures for noncitizens in immigration court while simultaneously increasing inefficiencies and backlogs in the immigration courts and the Board. Since 2021, the AA96 rule had been enjoined by litigation and never went into effect. However, with these new regulations, the Biden administration removed this rule in its entirety.

Below are frequently asked questions on the new regulations, specifically as they pertain to administrative closure, termination, and *Matter of Thomas & Thompson.* These subjects represent the most substantive and impactful changes for most legal services practitioners.

What is administrative closure?

Administrative closure is a docket-management tool with a long history of use by EOIR in which a case is removed from the active docket. While the noncitizen remains subject to removal, proceedings are effectively suspended, and either party may file a motion to re-calendar at any time to return the case to the active docket.

In *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), the Board held that an Immigration Judge (IJ) may administratively close proceedings over the objection of one of the parties, and it established a list of factors for the IJ to consider when making this decision. Although *Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018), overruled *Avetisyan* during the Trump administration, the Biden administration restored the

decision in *Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021). The new regulations incorporate many of the factors set out by *Avetisyan*, with some additions as described in further detail below.

What do the regulations say about administrative closure before EOIR?

The regulations codify the ability of the EOIR adjudicator (IJ or Board member) to administratively close cases in certain circumstances upon oral or written motion of either party if the factors supporting administrative closure are present in a given case. 8 CFR §§ 1003.1(l) (administrative closure before the Board) and 1003.18(c)(3) (administrative closure before IJs).

Are there situations when an IJ or the Board must grant administrative closure?

The IJ or Board must grant a joint motion to administratively close removal proceedings or a motion filed by one party where the other party has affirmatively indicated its non-opposition. The only exception is if the IJ or Board member provides "unusual, clearly identified, and supported reasons" for denying a joint or affirmatively unopposed motion. 8 CFR §§ 1003.1(l)(3), 1003.18(c)(3). Thus, the denial of a jointly filed or affirmatively unopposed motion for administrative closure should be a rare occurrence. This standard also provides a clear legal basis for appeal should an IJ or Board member not follow the regulations. The requirement to defer to the parties' agreement in a particular case is intended to limit situations where IJs deny even jointly filed motions to administratively close cases before them.

> **Example:** Fernando is a citizen of Mexico seeking cancellation of removal in proceedings. His attorney and the trial attorney for DHS file a joint motion for administrative closure. The motion simply states that the parties have agreed to administrative closure in the case without details as to the reason for the agreement. The IJ must grant this motion unless there are unusual, clearly identified, and supported reasons for denying it.

It is important to note that administrative closure does not become mandatory when one party has not responded within an allotted time. Rather, there must be a joint motion or an affirmative communication of non-opposition by one of the parties to take the motion into "mandatory" territory.

If one party opposes administrative closure, what factors should the EOIR adjudicator consider in deciding whether to grant or deny a motion for administrative closure?

While no single factor is dispositive, the regulations state that the adjudicator should consider the following factors based on the totality of the circumstances of each case:

- The reason administrative closure is sought;
- The basis for any opposition to administrative closure;
- Any requirement set by the Department of Homeland Security (DHS) that a case be administratively closed for a petition, application, or other action to be filed with, or granted by that agency*;
- The likelihood the noncitizen will succeed on any petition, application, or other action that the noncitizen is pursuing, or that the noncitizen states in writing or on the record at a hearing that they plan to pursue, outside of removal proceedings;
- The anticipated duration of the administrative closure;
- The responsibility of either party, if any, in contributing to any current or anticipated delay;
- The ultimate anticipated outcome of the case pending before the IJ or BIA; and

- The ICE detention status of the noncitizen.*

See 8 CFR §§ 1003.1(l)(3)(i), 1003.18(c)(3)(i).

These factors largely mirror the factors set out in *Avetisyan*, with two exceptions noted with an asterisk above. The first new factor allows an EOIR adjudicator to consider a noncitizen's eligibility for an I-601A provisional unlawful presence waiver. *See* 8 CFR §§ 1003.1(l)(3)(i)(C)), 1003.18(c)(3)(i)(C)). The regulations implementing the provisional waiver process require that removal proceedings be administratively closed for the waiver to be adjudicated by U.S. Citizenship and Immigration Services (USCIS). 8 CFR § 212.7(e)(4)(iii). Since the provisional waiver regulations did not go into effect until 2013, eligibility for the provisional waiver is not referenced as a factor in *Avetisyan* and thus has been added by the new regulations.

In addition, the new regulations allow EOIR adjudicators to consider a non-citizen's ICE detention status when determining whether to administratively close a case. *See* 8 CFR §§ 1003.1(l)(3)(i)(H), 1003.18(c)(3)(i)(H). However, in its response to public comments on the regulations, the DOJ states that a noncitizen's detention is generally a factor weighing *against* administrative closure. ("Administrative closure in cases involving a detained noncitizen may prolong the noncitizen's detention, imposing a greater burden on the noncitizen and additional costs to the Government during the pendency of a case.").

Consider the following example of how an administrative closure motion could be filed with the immigration court:

> **Example.** Grace is a citizen of Cameroon. She recently applied for a U visa with USCIS and also has an asylum application pending with the immigration court. Her attorney asks DHS counsel to join in a motion to administratively close proceedings, but they refuse. Her attorney then files a motion to administratively close directly with the court. In the motion, Grace, through her attorney, submits evidence showing that she has a severely ill U.S. citizen child and needs to maintain her employment authorization document based on the pending asylum application. She also submits evidence showing that she has filed a U visa application and fulfills all the requirements necessary for U nonimmigrant status. In her motion, she also points to the backlog of pending U visa cases given the congressional cap of 10,000 U visas to be issued per year, noting that she bears no responsibility for this delay in processing but that the processing time is expected to be lengthy. As such, she argues that removing the case from the court's active docket is a more efficient use of the court's resources. The IJ considers the evidence and applies the regulatory factors to Grace's motion for administrative closure. The IJ grants administrative closure finding that the factors weigh in her favor despite the DHS opposition to the motion.

Must a petition or application be pending outside of removal proceedings for the IJ or Board to grant administrative closure?

No. Although administrative closure may be appropriate in those circumstances, a pending application or petition is not required to be filed for the EOIR adjudicator to grant administrative closure.

Are there situations in which an IJ or the BIA must grant the recalendaring of a case if a motion to recalendar is filed?

The standard for recalendaring is the same as for granting administrative closure, as outlined above. Specifically, the Board and IJ must grant a joint motion to recalendar removal proceedings or a motion filed by one party where the other party has affirmatively indicated its non-opposition. The only exception to this is if the Board or IJ state "unusual, clearly identified, and supported reasons" for denying a joint or affirmatively unopposed motion to recalendar. 8 CFR §§ 1003.1(l)(3), 1003.18(c)(3). This should be a rare occurrence.

If one party opposes recalendaring, what factors should the IJ or BIA consider when deciding such motions?

Many of the factors for consideration by the adjudicator in deciding whether to recalendar mirror the administrative closure standards. Adjudicators are to consider the following non exhaustive list of factors based on the totality of circumstances:

- The reason recalendaring is sought;
- The basis for any opposition to recalendaring;
- The length of time elapsed since the case was administratively closed;
- If the case was administratively closed to allow the noncitizen to file a petition or application outside of proceedings, whether the noncitizen actually filed the petition or application and the length of time elapsed between when the petition or application was filed and the motion to recalendar;
- The result of adjudication (approval or denial) of the petition or application;
- If the petition or application is still pending, the likelihood of success;
- The anticipated outcome if the case is recalendared;
- The ICE detention status of the noncitizen.

See 8 CFR §§ 1003.1(l)(3)(ii); 1003.18(c)(3)(ii).

What is termination of proceedings?

Termination refers to the EOIR adjudicator's authority to end removal proceedings in certain circumstances. The regulations provide a framework and explicit authority for IJs and Board members to terminate removal proceedings if certain criteria are met. Termination of proceedings may be with or without prejudice, depending on the facts and circumstances of the case. A removal case terminated "with prejudice" is terminated permanently, whereas a case terminated "without prejudice" permits the government to reinitiate proceedings in the future. For example, termination of proceedings to pursue a form of relief such as adjustment of status would likely be without prejudice, as USCIS could issue a new Notice to Appear in the future should the adjustment application be denied. However, termination based on DHS's failure to sustain a charge of removability may be *with* prejudice if the government is unable to meet its burden of proof.

The regulations distinguish between the IJ's authority to terminate in the situations described below and DHS's authority as a prosecutor to move to dismiss proceedings. DHS's dismissal authority is found in separate regulations contained at 8 CFR § 239.2 and is *not* affected by these new regulations. In recent

months, DHS has frequently moved to unilaterally dismiss removal proceedings under 8 CFR § 239.2(a)(7), which allows for dismissal if the circumstances of the case have changed after the issuance of the NTA such that continuation of proceedings is no longer in the best interest of the government. The new DOJ regulations do not alter 8 CFR § 239.2(a)(7), although the agency's response to comments to the text make clear that an IJ is not required to dismiss removal proceedings solely because DHS has moved for it. ("[T]he Department notes that nothing in the rule mandates that a DHS motion to dismiss be granted automatically or as a matter of course…in scenarios where a noncitizen opposes dismissal of their case because they would prefer to pursue relief before EOIR in removal proceedings, nothing in the rule prevents the parties from presenting relevant evidence as to whether proceedings should be dismissed…") In sum, the DOJ confirms that a motion to dismiss follows the same general motions practice before EOIR, and, as with any motion, before making a ruling, an adjudicator should consider the basis for the motion, any opposition, and any relevant arguments and evidence presented by the parties. Practitioners should cite this response to the comments when their clients seek to oppose unilateral motions to dismiss brought by DHS.

When must an EOIR adjudicator terminate removal proceedings under the regulations?

Termination is mandatory in the following circumstances:

- No charge of removability can be sustained;
- The noncitizen is mentally incompetent and proper safeguards pursuant to *Matter of M-A-M-,* 25 I&N Dec. 474 (BIA 2011) are not possible, thus rendering the proceedings fundamentally unfair;
- The noncitizen has obtained United States citizenship;
- The noncitizen has obtained lawful permanent resident status, refugee status, asylee status, or nonimmigrant status under INA § 101(a)(15)(S), (T), or (U);
- Termination is required under 8 CFR § 1245.13(l) (provisions related to adjustment of status for certain Cuban and Nicaraguan nationals);
- Termination is otherwise required by law; or
- The parties jointly filed a motion to terminate, or one party filed a motion to terminate and the other party affirmatively indicated its non-opposition, unless the adjudicator articulates "unusual, clearly identified, and supported reasons" for denying the motion.

8 CFR §§ 1003.1(m)(1)(i), 1003.18(d)(1)(i).

When may an EOIR adjudicator terminate removal proceedings under the regulations?

Termination is discretionary in the following circumstances:

- An unaccompanied child, as defined in 8 CFR § 1001.1(hh), has filed an asylum application with USCIS pursuant to INA § 208(b)(3)(C) (pertaining to unaccompanied children). USCIS has initial jurisdiction over asylum applications filed by unaccompanied children;
- The noncitizen demonstrates *prima facie* eligibility for relief from removal, or lawful status based on a petition, application, or other action over which USCIS would have jurisdiction were the noncitizen not in removal proceedings, such as naturalization or adjustment of status;
- The noncitizen is the beneficiary of Temporary Protected Status (TPS), deferred action, or Deferred Enforced Departure (DED). Note that since proceedings *may* be terminated under the regulations but are not *required* to be terminated in these circumstances, a beneficiary of TPS, deferred action,

or DED could continue to pursue relief before the immigration court, such as asylum, should they choose to do so;
- USCIS has granted the noncitizen's provisional unlawful presence waiver;
- Termination is authorized by 8 CFR §1216.4(a)(6) (relating to termination for adjudication of an I-751 petition) or 1238.1(e) (relating to termination for certain non-LPRs convicted of aggravated felonies); and
- In circumstances comparable to those above.

8 CFR §§ 1003.1(m)(1)(ii), 1003.18(d)(1)(ii).

In what situations must an applicant show proof that a petition or application has been filed with USCIS before seeking termination?

An unaccompanied child filing for asylum and any other applicant who is seeking termination to pursue an application with USCIS outside of proceedings should provide proof of that filing in the form of a receipt notice. 8 CFR § 1003.1(m)(1)(ii)(A), (B), 1003.18(d)(1)(ii)(A), (B).

However, a noncitizen seeking adjustment of status with USCIS does not need to show proof of filing to seek termination to apply for adjustment. 8 CFR §§ 1003.1(m)(1)(ii)(B), 1003.18(d)(1)(ii)(B). Typically, USCIS does not have jurisdiction over applications for adjustment of status for applicants in removal proceedings, with limited exceptions. Therefore it is logical that there is no requirement to first file the adjustment application with USCIS. In addition, a noncitizen does not need to submit proof of a pending naturalization application to seek termination for naturalization. 8 CFR § 1003.1(m)(1)(ii)(B), 1003.18(d)(1)(ii)(B). In these circumstances, therefore, the focus of the noncitizen seeking termination should provide proof of *prima facie* eligibility, such as a copy of the application to be filed with USCIS upon termination, with any supporting documentation.

> **Example.** Sonia is an unaccompanied child from Honduras. She applies for asylum with USCIS. Her representative seeks an exercise of prosecutorial discretion from DHS in the form of dismissal of proceedings, but they are slow to respond to her. Her representative decides to file a motion to terminate directly with the immigration court based on the new regulations, to provide a copy of the receipt from USCIS, and to note that USCIS has original jurisdiction over the asylum application. The IJ grants termination of proceedings.

> **Example.** Marvin, from Brazil, is seeking adjustment of status based on his marriage to a U.S. citizen. His attorney files the motion to terminate directly with the immigration court. The attorney provides a copy of the I-130 approval notice and proof of Marvin's lawful admission into the United States, thus establishing *prima facie* eligibility for adjustment of status. The attorney does not provide the I-485 receipt notice from USCIS because there is no requirement to do so under the regulations. The IJ grants termination of proceedings.

What do the regulations say about termination for noncitizens who are *prima facie* eligible for naturalization?

The new regulations establish that an EOIR adjudicator may terminate proceedings when the noncitizen is *prima facie* eligible for naturalization. 8 CFR §§ 1003.1(m)(1)(ii)(B), 1003.18(d)(1)(ii)(B). The noncitizen is not required to file for naturalization prior to seeking termination on this basis. However, the EOIR

adjudicator may not terminate for naturalization if DHS affirmatively opposes the motion for termination on this basis.

This new standard is relatively favorable to noncitizens in proceedings who are *prima facie* eligible for naturalization and seeking termination on this basis. It replaces the former 8 CFR § 1239.2(f), which the Board had interpreted to require an affirmative communication from DHS. This confirms the noncitizen's *prima facie* eligibility for naturalization before an EOIR adjudicator could terminate removal proceedings. *See Matter of Acosta Hidalgo*, 24 I&N Dec. 103 (BIA 2007); *Matter of Cruz*, 15 I&N Dec. 236 (BIA 1975). Practically speaking, this prior standard was almost impossible to meet, and cases were almost never terminated for naturalization. The new regulation will allow the EOIR adjudicator to evaluate whether a noncitizen is *prima facie* eligible for naturalization, despite lacking jurisdiction to adjudicate such applications, and to terminate proceedings on that basis if termination is not affirmatively opposed by DHS.

> **Example.** Williams is a lawful permanent resident who was issued a Notice to Appear in 2020 based on his conviction in 2005 for possession of a controlled substance. Williams has no other convictions and has been a person of good moral character during the five-year statutory period. His representative files a motion to terminate for naturalization, showing that Williams is *prima facie* eligible for naturalization and should be allowed to present his N-400 to USCIS. DHS does not respond within the required period to the motion filed by Williams's representative. The IJ grants termination of proceedings because Williams has shown *prima facie* eligibility for naturalization and DHS has not affirmatively opposed the motion for termination on this basis.

What do the regulations say about termination for asylum?

The EOIR adjudicator should not terminate removal proceedings solely for the noncitizen to pursue asylum before USCIS, except for termination for unaccompanied children where USCIS has original jurisdiction over the asylum application. 8 CFR §§ 1003.1(m)(1)(ii)(B), 1003.18(d)(1)(ii)(B). However, the parties may jointly move to terminate proceedings. Once proceedings are terminated, the noncitizen may then choose to affirmatively refile the application for asylum with USCIS. So, while the regulations do not provide explicit authority for the EOIR adjudicator to unilaterally terminate solely to seek asylum before USCIS, many noncitizens will continue to benefit from jointly filed or affirmatively unopposed motions to terminate that will then allow them to pursue asylum with USCIS in the first instance.

> **Example.** Ahmed is a citizen of Afghanistan. He wishes to seek asylum before USCIS in the first instance to give him two opportunities to present his case. He cannot file a motion to terminate directly with the immigration court to seek termination based on eligibility for asylum. However, he can ask that DHS agree to terminate proceedings. Should DHS agree or affirmatively indicate non-opposition and the IJ terminate proceedings, Ahmed may file for asylum affirmatively.

What do the regulations say about termination for purely humanitarian reasons?

The regulations do not allow for termination of cases for purely humanitarian reasons if DHS does not agree to termination. 8 CFR § 1003.1(m)(1)(ii)(F), 1003.18(d)(1)(ii)(F). Thus, an IJ cannot unilaterally decide to terminate removal proceedings for purely humanitarian reasons. However, an IJ or the BIA may terminate for humanitarian reasons if DHS expressly consents to termination, joins in a motion to terminate, or affirmatively indicates its non-opposition to a noncitizen's motion.

Example. Nassim is a citizen of Algeria who has a U.S. citizen child with a serious medical condition. Nassim is the sole provider for his child. Nassim should not file a motion to terminate directly with the immigration court based solely on humanitarian reasons. However, he should consider whether there are other bases for termination under the regulations, such as a jointly filed motion with DHS.

What is *Matter of Thomas & Thompson*?

In *Matter of Thomas & Thompson,* 27 I&N Dec. 674 (A.G. 2019), former Attorney General Barr overruled three precedential BIA decisions: *Matter of Cota-Vargas,* 37 I&N Dec. 849 (BIA 2005); *Matter of Song,* 23 I&N Dec. 173 (BIA 2001); and *Matter of Estrada,* 26 I&N Dec. 749 (BIA 2016). The Attorney General held that state-court orders that modify a noncitizen's criminal sentence will be given effect for immigration purposes only when they are based on a substantive or procedural defect in the underlying criminal proceeding. In so doing, the Attorney General disrupted decades of precedent and unsettled the expectations of noncitizens and their legal representatives.

Following the decision in *Thomas & Thompson*, a circuit split developed as to whether the decision would apply retroactively to sentencing modifications entered prior to the effective date of the decision. *Compare Zaragoza* v. *Garland,* 52 F.4th 1006, 1010 (7th Cir. 2022) (finding that applying *Thomas & Thompson* to prior sentencing modification created an impermissible retroactive effect) with *Edwards v. U.S. Attorney General*, 56 F.4th 951 (11th Cir. 2022) (finding no retroactivity problem because *Thomas & Thompson* merely clarified a law that was already in effect).

What do the regulations say about *Matter of Thomas & Thompson?*

DOJ requested comment during the notice and comment period on whether *Thomas & Thompson* should be applied retroactively. After reviewing the comments, DOJ determined that *Thompson & Thompson* should not be applied retroactively, and it set out a two-part framework for considering sentencing modifications.

First, the Attorney General's decision in *Matter of Thomas & Thompson* will not apply retroactively to sentencing modifications sought prior to the effective date of the decision (October 25, 2019). There is no requirement that the sentencing modification was granted prior to October 25, 2019. As long as the *request itself was filed* on or before October 25, 2019, *Thomas & Thompson* will not apply. 8 CFR § 1003.55(a)(1)(i).

Consider this example of a noncitizen granted a sentencing modification prior to October 25, 2019.

Example. Maria is a citizen of El Salvador and has been an LPR since 1995. In 2018, she was convicted of theft and sentenced to a year in prison. Later that year, Maria was placed into removal proceedings and charged with being removable based on a conviction for an aggravated felony under INA § 101(a)(43)(G) (theft offense in which a term of imprisonment of at least a year is imposed). In September 2019, Maria received a sentencing modification, reducing her sentence to 364 days in prison. Maria is no longer subject to deportability based on the aggravated felony ground of removability. Under the standard in *Matter of Cota-Vargas,* 37 I&N Dec. 849 (BIA 2005), *Matter of Song,* 23 I&N Dec. 173 (BIA 2001), and *Matter of Estrada,* 26 I&N Dec. 749 (BIA 2016), the sentencing modification is given full effect even if it was done for purely rehabilitative reasons.

Matter of Thomas & Thompson does not apply because the sentencing modification was entered prior to the effective date of the decision.

Now, consider this example with a slight change in facts.

Example. Maria is a citizen of El Salvador and has been an LPR since 1995. In 2018, she was convicted of theft and sentenced to a year in prison. Later that year, Maria was placed into removal proceedings and charged with being removable based on a conviction for an aggravated felony under INA § 101(a)(43)(G) (theft offense in which a term of imprisonment of at least a year is imposed). In September 2019, she filed a request for a sentencing modification with the state court to reduce her sentence to 364 days in prison. The court granted that request in November 2019. Maria is no longer subject to deportability based on this aggravated felony conviction. Under the standard in *Matter of Cota-Vargas,* 37 I&N Dec. 849 (BIA 2005), *Matter of Song,* 23 I&N Dec. 173 (BIA 2001), and *Matter of Estrada,* 26 I&N Dec. 749 (BIA 2016), the sentencing modification is given full effect even if it was done for purely rehabilitative reasons. *Matter of Thomas & Thompson* does not apply because the request for the sentencing modification was filed prior to the effective date of the decision (even though the court order was issued after the effective date of the decision).

Second, *Matter of Thomas & Thompson* will not apply in situations where the noncitizen reasonably and detrimentally relied on the availability of a sentencing modification to ameliorate immigration consequences on or before October 25, 2019, even if the sentencing modification was not filed until after the effective date of the decision. 8 CFR § 1003.55(a)(1)(i). This is a much higher standard to meet, and its applicability may be limited.

Example. Maria is a citizen of El Salvador. In 2018, she was convicted of theft and sentenced to a year in prison. At the time of her conviction, her attorney advised her to accept the year-long sentence because it was likely that the judge would suspend the entire sentence and she would not have to serve any time in jail. The attorney told her that he had a good relationship with the prosecutor and that once Maria finished her suspended sentence, he and the prosecutor could file a joint motion for a sentence reduction to help reduce the adverse immigration consequences. Maria was placed into removal proceedings and charged with being removable based on a conviction for an aggravated felony under INA § 101(a)(43)(G) (theft offense in which a term of imprisonment of at least a year is imposed). In November 2019, she filed a request for a sentencing modification with the state court to reduce her sentence to 364 days in prison. The court granted that request in the same month. Maria can make the argument that the decisions in *Matter of Cota-Vargas,* 37 I&N Dec. 849 (BIA 2005), *Matter of Song,* 23 I&N Dec. 173 (BIA 2001), and *Matter of Estrada,* 26 I&N Dec. 749 (BIA 2016), should apply and that the sentencing modification should be given effect even if it was done for purely rehabilitative reasons. This is because she can show actual and detrimental reliance prior to October 25, 2019, on the availability of a sentencing modification process that would have protected her from adverse immigration consequences.

What do the regulations say about the effect of modified orders in criminal court?

The regulations state that an EOIR adjudicator should give effect to state court orders that correct a genuine mistake, ambiguity, or typographical error in a criminal court order intended to effectuate the

original order. 8 CFR § 1003.55(b). Many commenters had asked the agency to commit to recognizing certain specific state court orders. While the DOJ declined to do so for now, it left open the possibility for future rulemaking on this topic.