# Motions to Continue: Efficiently Advancing Cases to Completion

**September 2, 2026**

U.S. Department of Justice
Executive Office for Immigration Review
Office of Policy, Legal Education and Research Services Division

*This training will be conducted through Webex. All sessions are mandatory for required attendees. Email EOIR.LERS@usdoj.gov with questions, comments, or suggestions.*

## Course Summary

The Executive Office for Immigration Review is tasked with adjudicating immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws. In light of this mission, in the context of motions for a continuance, it is important to identify whether a given motion contains an appropriate request for additional time or is an improper attempt to delay proceedings.

This course provides Immigration Judges and attorney advisors with a comprehensive overview of the legal standards relevant to continuance motions and the necessary tools needed to decide such motions. Participants will explore common continuance requests and examine Board of Immigration Appeals precedent, including the framework set forth in *Matter of L-A-B-R-*, 27 I&N Dec. 405 (A.G. 2018). Lastly, participants will evaluate various hypotheticals designed to provide attendees with a deeper understanding of factors to consider in evaluating continuance motions.

## Learning Objectives

Upon completion of this training, attendees will be able to:

- Discuss and apply the legal framework applicable to motions for a continuance;
- Analyze common types of continuance requests;
- Discern the appropriate use of continuances within the context of fundamental fairness and due process; and
- Identify and apply best practices when adjudicating motions for a continuance.

**Presenter Biography**

**APPELLATE IMMIGRATION JUDGE KEITH E. HUNSUCKER** was appointed as a member of the Board of Immigration Appeals in August 2019 by Attorney General William P. Barr. Judge Hunsucker earned a Bachelor of Arts, *cum laude*, in 1984 from the University of Akron and a Juris Doctorate, *cum laude*, in 1987 from the University of Akron School of Law. From January 2025 to May 2025, he served as the Acting Chief Immigration Judge. From August 2019 to January 2025, Judge Hunsucker served as an Appellate Immigration Judge. From September 2017 to August 2019, he served as an Immigration Judge at the Cleveland Immigration Court and from August 2010 to September 2017, he served as an Immigration Judge at the Port Isabel Immigration Court. From 2000 to August 2010, he worked as a senior instructor for the Federal Law Enforcement Training Center, Legal Division, Department of Homeland Security, in Glynco, Georgia. From 1992 to 2000, he worked as an attorney for the former Immigration and Naturalization Service (INS), in Atlanta. From 1989 to 1992, he was an attorney for the former INS in Harlingen, Texas. From April 1989 to September 1989, Judge Hunsucker was a law clerk for the Ohio Court of Appeals, 9th Judicial District. From 1988 to 1989, he was in private practice. From 1987 to 1988, Judge Hunsucker worked as an attorney for the former INS, entering on duty through the Attorney General's Honors Program, in San Francisco. Judge Hunsucker is a member of the Ohio State Bar and District of Columbia Bar.

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# Learning Objectives

01

Review standards for motions for continuance

02

Examine common types of continuance requests and new Board of Immigration Appeals precedent

03

Apply knowledge to hypotheticals

# Review Standards for Motions for Continuance

# Securing of Counsel in Removal Proceedings (1 of 3)

**INA § 239(b) - Securing of counsel:**

**(1) In general**

In order that an alien be permitted the opportunity to secure counsel before the first hearing date in proceedings under section 240, the hearing date shall not be scheduled earlier than 10 days after the service of the notice to appear, unless the alien requests in writing an earlier hearing date (emphasis added).

# Securing of Counsel in Removal Proceedings (2 of 3)

**INA § 239(b)** - (cont'd)

**(2) Current lists of counsel**

The Attorney General shall provide for lists (updated not less often than quarterly) of persons who have indicated their availability to represent pro bono aliens in proceedings under section 240. Such lists shall be provided under subsection (a)(1)(E) and otherwise made generally available.

# Securing of Counsel in Removal Proceedings (3 of 3)

**INA § 239(b)** - (cont'd)

**(3) Rule of construction**

Nothing in this subsection may be construed to prevent the Attorney General from proceeding against an alien pursuant to section 240 if the time period described in paragraph (1) has elapsed and the alien has failed to secure counsel.

# 8 C.F.R § 1003.29: The Good-Cause Standard (1 of 2)

**8 C.F.R. § 1003.29 - An Immigration Judge may grant a motion for continuance for good cause shown.**

- Exception: nothing in this section shall authorize a continuance that causes the adjudication of an asylum application to exceed 180 days in the absence of exceptional circumstances, consistent with INA § 208(d)(5)(A)(iii) of the Act and 8 C.F.R. § 1003.10(b).

# 8 C.F.R § 1003.29: The Good-Cause Standard (2 of 2)

"The good-cause standard is not a mere formality that permits immigration judges to grant continuances for any reason or no reason at all. Rather, the good-cause requirement is an important check on immigration judges' authority that reflects the public interest in expeditious enforcement of the immigration laws, as well as the tendency of unjustified continuances to undermine the proper functioning of our immigration system." Matter of L-A-B-R-, 27 I&N Dec. 405, 406 (A.G. 2018).

# Continuances in Context (1 of 3)

- Fundamental fairness and due process may require proceedings be postponed in certain circumstances. The appropriate use of continuances serves to protect due process.

- But we must also recognize that some continuances are sought solely for the purpose of delay. As the Supreme Court itself has observed, persons illegally present in the United States who wish to remain have a substantial incentive to prolong litigation so they may avoid deportation as long as possible. *INS v. Rios-Pineda*, 471 U.S. 444, 450 (1985).

# Continuances in Context (2 of 3)

- All continuance requests should be adjudicated based on the record and in accordance with applicable law.

- A continuance request must be supported by a legitimate reason(s) and not based on convenience or speculation.

# Continuances in Context (3 of 3)

- In ruling on a motion to continue, the Immigration Judge should clearly identify the cause stated and determine whether it constitutes "good cause."
- The Immigration Judge's reasoning should be clear on the record or in a written order.
- The Immigration Judge should avoid denying a motion with a conclusory statement, such as "denied for lack of good cause" without any explanation or reference to the record. The Immigration Judge must articulate the factual and legal basis for his or her decision ("The motion is denied *because* . . .").

# Policy Guidance (1 of 4)

PM 21-13 Continuances

- Provides a non-exhaustive list of relevant legal and policy principles as an aid to adjudicators considering common types of continuance requests.

- Emphasizes EOIR has no policy mandating or requiring Immigration Judges to grant a continuance for any reason in any particular case or circumstance, except where a continuance is required by controlling law.

# Policy Guidance (2 of 4)

PM 21-13 Continuances - (cont'd)

- Discusses DOJ Notice of Proposed Rulemaking (NPRM), Good Cause for a Continuance in Immigration Proceedings, 85 Fed. Reg. 75925 (Nov. 7, 2020).

- NPRM not finalized but provides potentially helpful information for adjudicators regarding continuance requests, including a useful summary of relevant caselaw.

# Policy Guidance (3 of 4)

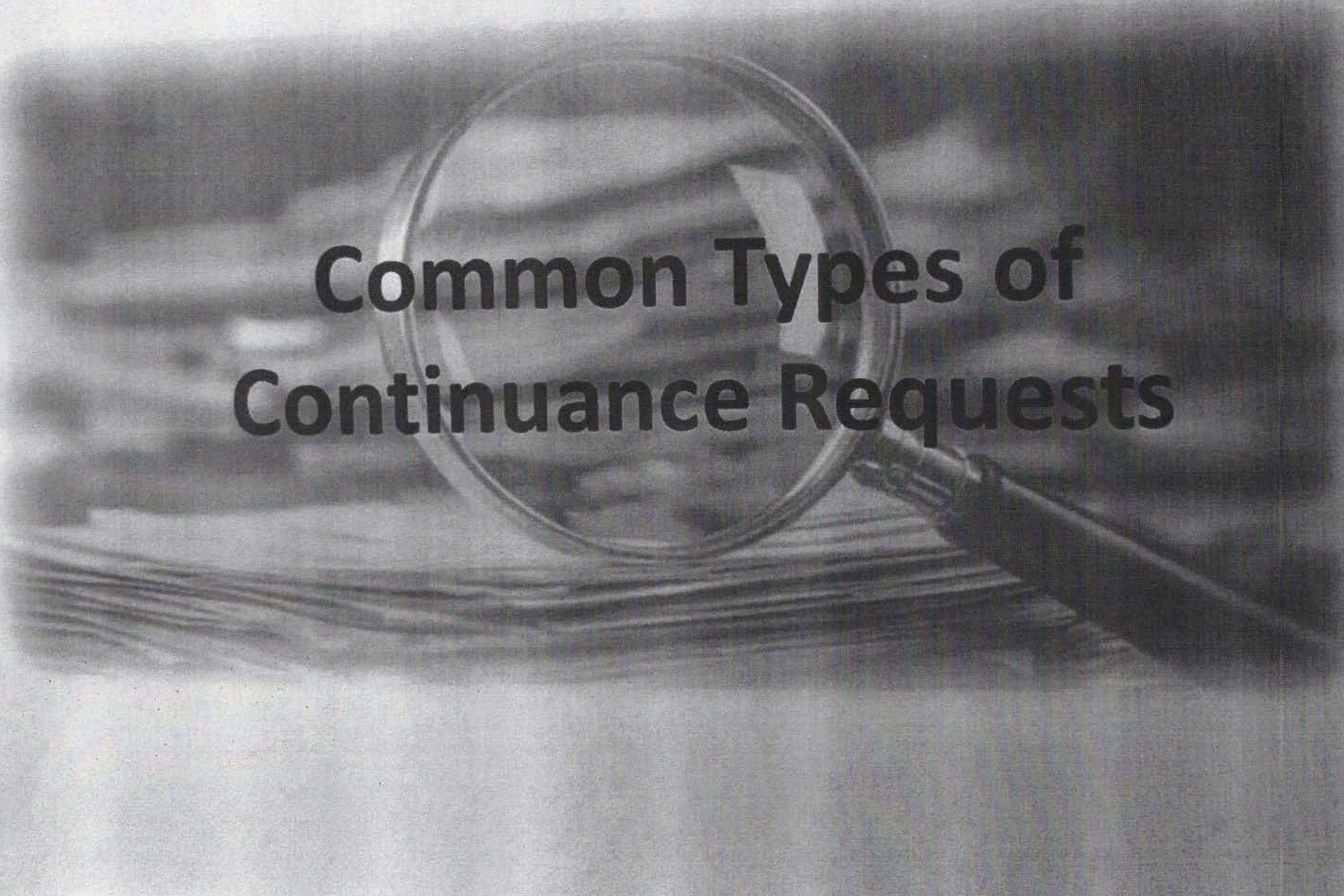
PM 25-21 Cancellation of Director's Memorandum 22-04

- The default deadline for filings before an individual hearing in non-detained cases is 30 days. This includes motions to continue.
- *See* EOIR Policy Manual, Part II-OCIJ Practice Manual § 2.1(a)(2)(A)-(B).

# Policy Guidance (4 of 4)

<u>EOIR Policy Manual, Part II-OCIJ Practice Manual, 4.10(a) Motion to Continue</u>

- A request for a continuance of any hearing should be made by written motion. Oral motions to continue are discouraged.
- Parties should be mindful that the immigration court retains discretion to schedule continued cases on dates that the court deems appropriate.
- The filing of a motion to continue does not excuse the appearance of an alien or practitioner of record at any scheduled hearing until the motion is granted.



# Common Types of Continuance Requests

Common Preliminary Continuance Requests

Common Pre-Hearing Continuance Requests

Common Merits Hearing Continuance Requests

# Common Preliminary Continuance Requests (1 of 3)

- Request to obtain counsel
  - The only statutory or regulatory time requirement that is necessary to safeguard an alien's privilege of legal counsel is that the first hearing may not be scheduled earlier than 10 days after service of the notice to appear as set forth in INA § 239(b)(1). *Matter of A-K-R-, 29 I&N Dec. 839 (BIA 2026)* (modifying *Matter of C-B-*, 25 I&N Dec. 888 (BIA 2012)).

- Request for time to speak with client
  - Counsel should speak to client prior to the hearing.

# Common Preliminary Continuance Requests (2 of 3)

- Request for attorney preparation time
  - Assertion alone that more preparation time is needed does not establish good cause for a continuance.
  - An alien seeking a continuance based on an asserted lack of attorney preparation "at least must make a reasonable showing that the lack of preparation occurred despite a diligent good faith effort to be ready to proceed." *Matter of Sibrun*, 18 I&N Dec. 354 (BIA 1983).

- Attorney payment
  - The payment of attorney fees is not a valid reason for a continuance.

# Common Preliminary Continuance Requests (3 of 3)

- Attorney workload
  - Where a practitioner takes on more cases than he or she can responsibly and professionally handle, it may be appropriate for an Immigration Judge to consider referral to EOIR disciplinary counsel for further action and possible sanction for a violation. *See* PM 21-13 at 5; 8 C.F.R. § 1003.102(q)(1) (practitioner workload management).
  - *See also* 8 C.F.R. § 1003.102(j)(1) (improper delay).

# Common Pre-Hearing Continuance Requests (1 of 2)

- Attorneys appearing at a master calendar hearing should be prepared to plead to the notice to appear, address any legal issues regarding removability, and identify the relief being sought. *See* EOIR Policy Manual, Part II-OCIJ Immigration Court Practice Manual § 3.14 – Master Calendar Hearing.

- However, in **complex** cases, there may be legitimate reasons why counsel needs additional time to examine removability or relief issues.

- The Immigration Judge must state the basis of the motion for continuance with specificity on the record.

# Common Pre-Hearing Continuance Requests (2 of 2)

- Case Management Prior to Merits Hearing
  - 8 C.F.R. § 1003.31(h) – The immigration judge may set and extend time limits for the filing of applications and related documents and responses thereto, if any. If an application or document is not filed within the time set by the immigration judge, the opportunity to file that application or document shall be deemed waived.

- Where a party lacks diligence and "sleeps on their rights," a continuance is unwarranted.

# Common Merits Hearing Continuance Requests (1 of 4)

- Immigration Judges should closely scrutinize any request for a continuance that is made close to or on the day of an individual hearing. *Matter of J-A-F-S-*, 29 I&N Dec. 195, 197 (BIA 2025).

- "Having certainty in individual hearing dates is important, as it allows the parties and court staff to plan and prepare for the hearing and promotes timely adjudication of applications for relief." *Id.*

- "Individual hearings that are continued close to or on the date they are scheduled often cannot be replaced with other cases and may result in wasting valuable resources." *Id.*

## Common Merits Hearing Continuance Requests (2 of 4)

- Unavailable evidence
  - Immigration Judges should give a reasonable time for the parties to gather and produce evidence. *See* INA § 240(b)(4)(B); 8 C.F.R. § 1240.10(a)(4). But Immigration Judges should consider if a particular piece of evidence is so critical that it justifies continuing the merits hearing.
  - *See* *Matter of G-C-I-*, 29 I&N Dec. 176 (BIA 2025) (an Immigration Judge is not required to provide an automatic continuance for a respondent to obtain corroborative evidence in support of application for asylum and related relief from removal).

# Common Merits Hearing Continuance Requests (3 of 4)

- Unavailable witness
  - Consider if a witness statement can be submitted in lieu of testimony.

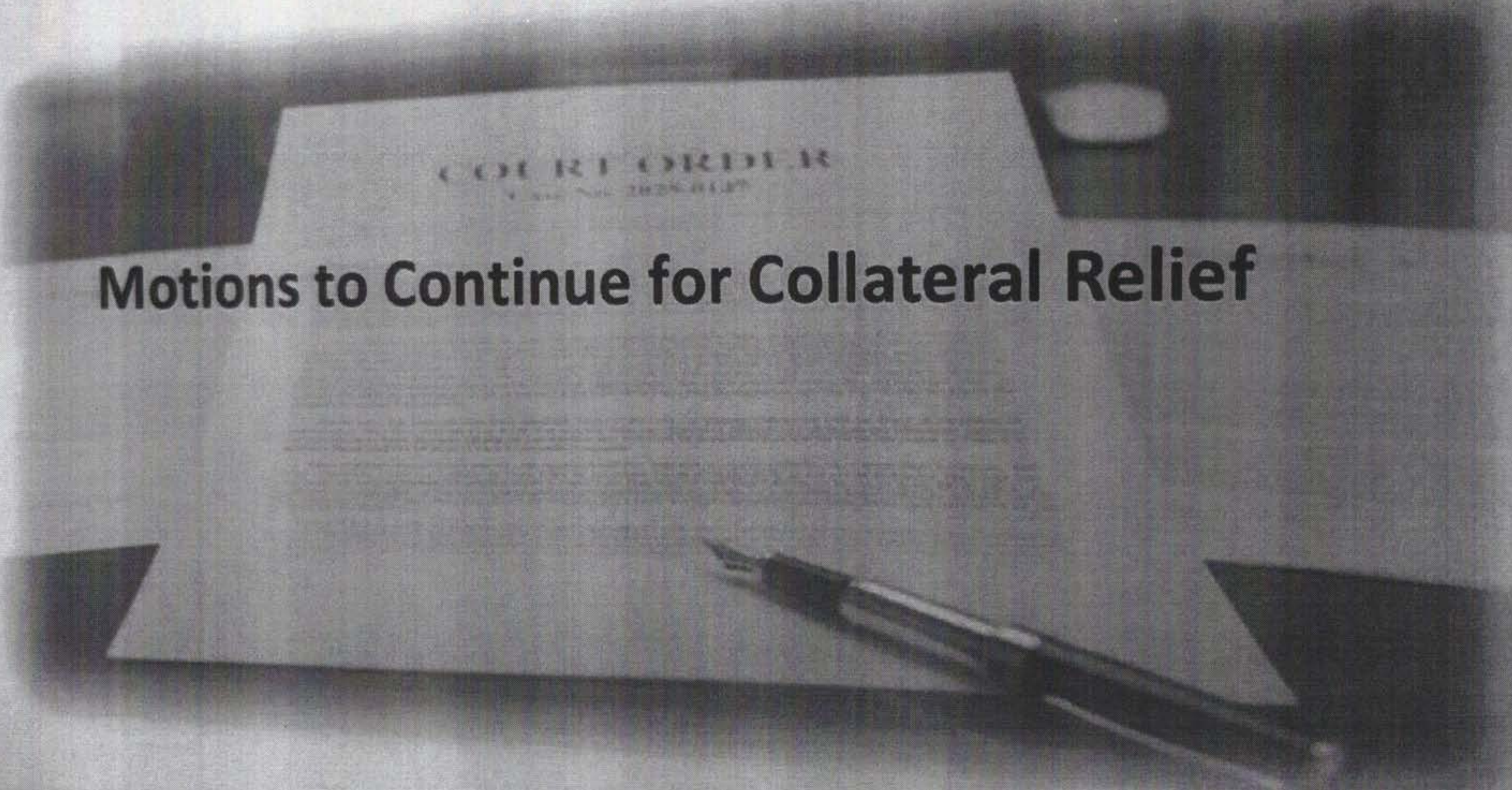
- Counsel/respondent availability
  - Good cause may be established in the case of acute or serious illness or family emergency.
  - A discretionary grant of continuance is inappropriate when the statutory *in absentia* elements are satisfied. *Matter of Laurent Castro*, 20 I&N Dec. 419 (BIA 2026).
  - Unexpected non-appearance of counsel should be carefully considered.

# Common Merits Hearing Continuance Requests (4 of 4)

- Credibility issues or revelations of statutory ineligibility
  - Is good cause shown where alien's counsel moves to continue after an issue of credibility or statutory ineligibility arises during the merits hearing?
  - Consider if a continuance would impact the Immigration Judge's ultimate finding on these issues.

- Continuances based solely on speculative or late-stage assertions of new relief, lacking evidentiary proof or filed applications, should be denied to ensure the public interest in expeditious proceedings. *Matter of J-A-F-S-*, 29 I&N Dec. at 198-99.

# Motions to Continue for Collateral Relief



# Duty to Resolve Immigration Proceedings

- "Immigration Judges and the Board have a duty to promptly and fairly bring removal proceedings to a close." *Matter of B-N-K-, 29 I&N Dec. 96, 100 (BIA 2025)*.

- Immigration Judges must always consider whether a motion to continue to pursue collateral relief will affect an application(a) at issue in the proceedings before the Immigration Court.

# The *L-A-B-R-* Framework (1 of 3)

- In *Matter of L-A-B-R-*, the Attorney General specified that the **primary factors** an Immigration Judge should consider in assessing whether good cause exists to grant a continuance to seek additional relief are:
  (1) The likelihood of success on the collateral relief, and
  (2) Whether the relief will materially affect the outcome of the removal proceedings.

# The *L-A-B-R-* Framework (2 of 3)

- Immigration Judges must also consider relevant **secondary factors**, which include, but are not limited to:
  (1) The alien's diligence in seeking collateral relief
  (2) DHS's position on the motion for continuance
  (3) administrative efficiency
  (4) the length of the continuance requested
  (5) the number of hearings held and continuances granted previously
  (6) the timing of the continuance motion
- It is also relevant to consider whether the respondent merits a favorable exercise of discretion. *See* *Matter of Hashmi*, 24 I&N Dec. 785, 790 (BIA 2009).

# The *L-A-B-R-* Framework (3 of 3)

- After *Matter of L-A-B-R-*, the Board published *Matter of L-N-Y-*, 27 I&N Dec. 755 (BIA 2020) to provide additional guidance.
- The Board held that in assessing whether to grant an alien's request for a continuance regarding an application for collateral relief, the alien's prima facie eligibility for relief and whether it will materially affect the outcome of proceedings are not dispositive, especially where other factors—including the uncertainty as to when the relief will be approved or become available—weigh against granting a continuance.

# Collateral Relief as a Basis (1 of 3)

- Potential Visa Eligibility
  - Matter of Hashmi, 24 I&N Dec. 785 (BIA 2009) discusses factors that may be considered in determining whether to continue proceedings to afford an alien an opportunity to apply for adjustment of status based on a family-based visa petition.
  - In the context of family-based visa petitions, consider whether the marriage existed prior to the alien being placed in removal proceedings.

| Marriage before the service of NTA | Marriage after the service of NTA |
|---|---|
| • presumptively bona fide<br>• Matter of Garcia, 16 I&N Dec. 653 (BIA 1978) | • need clear and convincing evidence indicating strong likelihood marriage is bona fide.<br>• Matter of Velarde, 23 I&N Dec. 785 (BIA 2002) |

# Collateral Relief as a Basis (2 of 3)

- Remoteness of Priority Date
  - Family based, non-immediate relative cases – a factor relevant to a showing of good cause is whether "the alien's visa priority date is too remote to raise the prospect of adjustment of status above the speculative level". *See* *Matter of L-A-B-R-*, 27 I&N Dec. at 418.
  - *Matter of Quintero*, 18 I&N Dec. 348, 350 (BIA 1982) ("Once deportation proceedings have been initiated by the District Director, the immigration judge may not review the wisdom of the District Director's action, but must execute his duty to determine whether the deportation charge is sustained by the requisite evidence in an expeditious manner. . . . In any case, the fact that the respondent has an approved visa petition does not entitle him to delay the completion of deportation proceedings pending availability of a visa number.").

# Collateral Relief as a Basis (3 of 3)

- U non-immigrant visa, SIJ visas, etc.
  - "[A] continuance to await the availability of a visa, where the respondent's priority date will not be current for an uncertain and lengthy period of time" should not be granted. Matter of Pinzon Rozo, 29 I&N Dec. 507, 510 (BIA 2026). *See also* Matter of Quintero, 18 I&N Dec. at 350.

# Miscellaneous Continuance Issues (1 of 2)

- Cases in which an Immigration Judge intends to grant cancellation of removal for certain nonpermanent residents pursuant to INA § 240A(b) should be continued if the 4000 annual statutory cap has been reached for the year and that application is the only one the alien has filed. 8 C.F.R. § 1240.21(c)(1); *see* PM 19-13 Use of Status Dockets.

- Cases in which a confirmed unaccompanied alien child (UAC) has filed an asylum application with the Department of Homeland Security (DHS) must be continued while that application is pending adjudication with DHS because DHS has initial jurisdiction. INA § 208(b)(3)(C). Note: check for any applicable settlement agreements and policy guidance for continued impact of UAC designation. *See* OPPM 17-03, PM 25-10.

# Miscellaneous Continuance Issues (2 of 2)

- In cases of conditional permanent residence, where an alien is prima facie eligible for a waiver under section 216(c)(4) of the Act and wishes to have DHS adjudicate an application for such waiver, proceedings should be continued to allow DHS to adjudicate the application. See *Matter of Stowers*, 22 I&N Dec. 605, 613-14 (BIA 1999).
- An alien whose priority date was current when he or she submitted an adjustment of status application to the Immigration Judge is not ineligible for relief by virtue of subsequent retrogression of the priority date. *Matter of Briones*, 24 I&N Dec. 355, 357 n.3 (BIA 2007).
- The final approval of the adjustment application should be held in abeyance. *Id.*

# Caution: Case Completion Goals

- The decision about whether to grant or deny a motion for a continuance cannot be based solely on case-completion goals or an immigration judge's individual performance appraisal. _Matter of L-A-B-R-, 27 I&N Dec. at 416-17_; *see also* PM 21-13 at 6.*
  - * *Such goals do not currently exist and are not a part of an Immigration Judge's performance appraisal.*

- Immigration Judges should consider the number of previous requests and the impact on the efficient determination of the case. *Id.*

# Caution: Dilatory Tactics

- Continuance requests solely for dilatory purposes should not be countenanced by Immigration Judges. *See* PM 21-13 at 6.
- Dilatory tactics constitute grounds for disciplinary sanctions under 8 C.F.R. § 1003.102(j)(1).
- The risk of continuances used as a dilatory tactic is greater when a continuance is requested at the time of the individual hearing. *Matter of J-A-F-S-*, 29 I&N Dec. at 198.

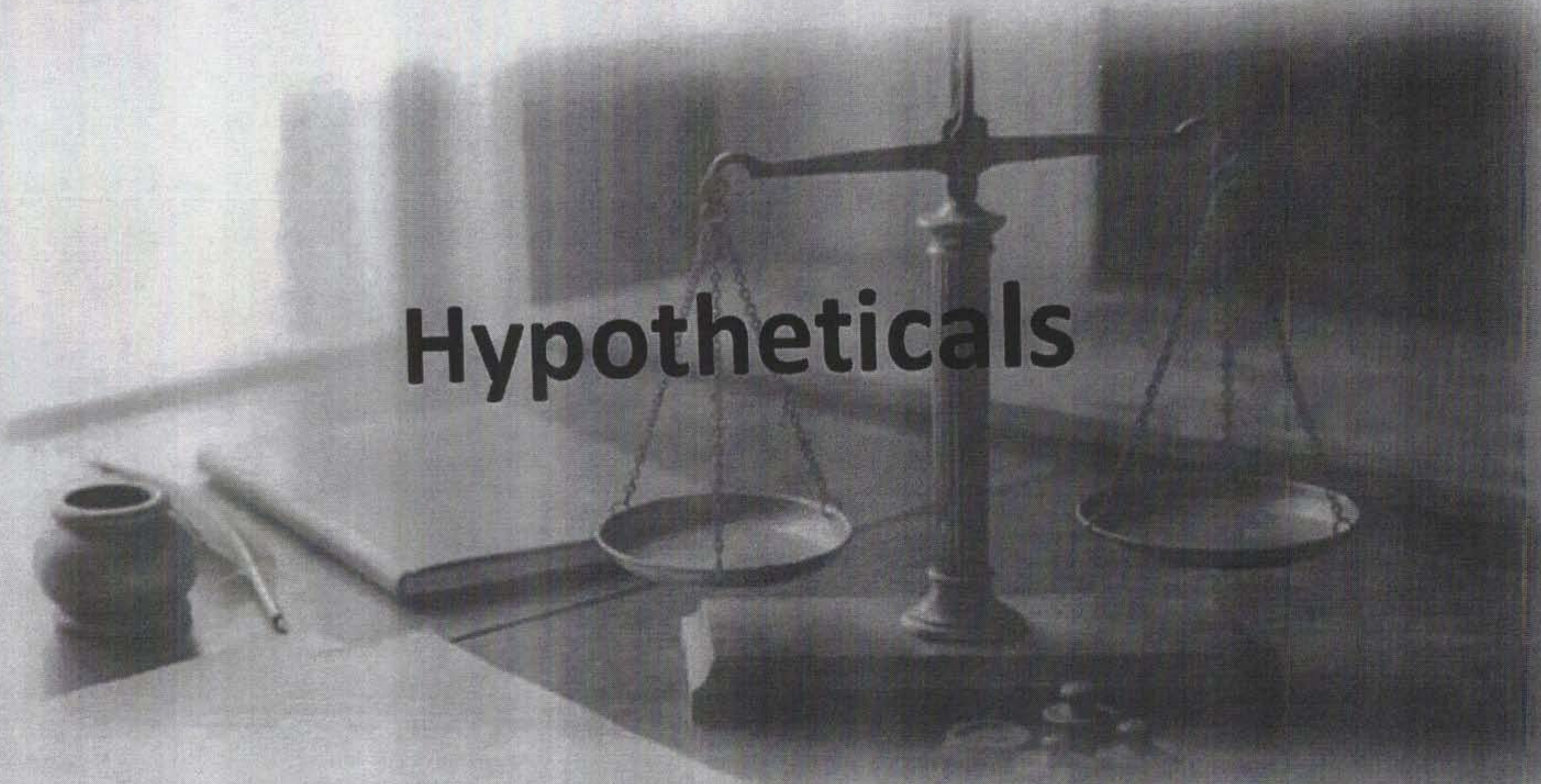
# Key Takeaways and Practice Tips (1 of 2)

- An Immigration Judge may grant a motion for continuance for good cause shown.
- All continuance requests should be adjudicated based on the specific facts and evidence in the record and in accordance with applicable law, including statutes, regulations, and binding precedents or court orders.
- Rescheduling of hearings has a significant adverse ripple effect on the ability to schedule other hearings across an Immigration Judge's docket.

# Key Takeaways and Practice Tips (2 of 2)

- Apply the *L-A-B-R-* framework when the basis of continuance involves collateral matters.
- The Immigration Judge's reasoning should be clear on the record or in a written order.
- **The Immigration Judge must use the proper (and correct) adjournment code without manipulation.**
- Continuances should not be used to merely to delay a case or to delay a case unrelated to the adjudication at issue in Immigration Court.

# Hypotheticals



# Hypothetical #1 – The Case of Mr. Jones

**August 1, 2026**

Mr. Jones entered the U.S. without inspection. He was apprehended and served with an NTA.

**August 9, 2026**

Mr. Jones appeared pro se for his master calendar hearing.

He requested a continuance to secure counsel.

**How should the Immigration Judge rule on the motion?**

# Hypothetical #2 – The Case of Ms. Smith (Part 1)

- **Initial Master Calendar Hearing:**
  - Ms. Smith appeared pro se at the New York Immigration Court
  - IJ advised her of her rights, including the right to be represented
  - IJ granted her a 60-day continuance to obtain counsel
- **Interim Period:**
  - Ms. Smith moved to Dallas for a new job
  - She then filed a written motion to change venue
  - DHS did not oppose and the IJ granted her motion
- **Subsequent Master Calendar Hearing:**
  - Ms. Smith appeared pro se at the Dallas Immigration Court
  - She requested a second continuance to obtain counsel due to relocation
  - DHS objected, citing to the prior 60-day continuance

**How should the Immigration Judge rule on the motion?**

# Hypothetical #3 – The Case of Ms. Smith (Part 2)

- **Initial Master Calendar Hearing (2020):**
  - Ms. Smith appeared pro se at the New York Immigration Court
  - IJ advised her of her rights, including the right to be represented
  - IJ granted her a 60-day continuance to obtain counsel
- **Interim Period:**
  - Ms. Smith moved to Dallas for a new job
  - She then filed a written motion to change venue
  - DHS did not oppose and the IJ granted her motion
- **Subsequent Master Calendar Hearing (2024):**
  - Ms. Smith appeared pro se at the Dallas Immigration Court
  - She requested a continuance to file an I-130 based on a marriage to a United States

**How should the Immigration Judge rule on the motion?**

# Hypothetical #4 – The Case of Mr. Edwards

- **Current Case Status:** Individual hearing for asylum and cancellation of removal
- **Procedural History:** Mr. Edwards entered without inspection. Two prior continuances were granted: (1) for securing an attorney and (2) DHS failed to secure fingerprint on time.
- **Motion:** Written motion for a six-month continuance was filed by Mr. Edwards's attorney 10 days before the hearing.
- **Basis:** Mr. Edwards's attorney plans to file a post-conviction motion to vacate his plea for cocaine possession due to ineffective assistance of counsel.
- **DHS Position:** Strongly opposes the continuance because the case has been on the docket for over 3 years and Mr. Edwards was convicted of cocaine possession 6 months ago and sentenced to 90 days in jail.

**How should the Immigration Judge rule on the motion?**

Please see your ACIJ or supervisor for questions.

Thank you for your attention.