

## **PRACTICE ADVISORY** **Requesting ROPs and DARs from EOIR<sup>1</sup>**

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*Sam Hsieh, Deputy Program Director, Immigration Impact Lab  
Capital Area Immigrants' Rights Coalition*

On March 7, 2022, following advocacy from CAIR Coalition and immigration legal service providers (LSPs) across the country, the Executive Office for Immigration Review (EOIR) announced national changes to its policy for requesting records of proceedings (ROPs) and digital audio recordings (DARs). These changes provide new mechanisms for noncitizens and their legal counsel to request ROPs and DARs without submitting Freedom of Information Act (FOIA) requests.<sup>2</sup> This Practice Advisory summarizes these new records access procedures and provides guidance on using them.<sup>3</sup>

### **Summary of New ROP and DAR Access Policy**

The records access procedures, which apply to all immigration courts and the Board of Immigration Appeals (BIA) are set forth in the [Immigration Court Practice Manual at Ch. 1.5\(c\)](#) and the [BIA Practice Manual at Ch. 1.5\(e\)](#). They are also discussed on EOIR's [Request an ROP webpage](#) and [Immigration Court Online Resource](#) (ICOR).

The Immigration Court and BIA Practice Manuals state:

- “Parties to a proceeding, and their practitioners of record, may inspect the official records of proceedings” and EOIR “will provide copies of the official record of proceedings” as well as “a copy of the hearing recording” upon request without the use of FOIA.<sup>4</sup>

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<sup>1</sup> This Practice Advisory is not intended to serve as a substitute for a lawyer’s obligation to conduct independent research and provide legal advice tailored to the facts and circumstances of a client’s case.

<sup>2</sup> Prior to this policy, FOIA requests served as the primary method of access for these records given that access through the immigration courts and BIA was unreliable and often involved going in-person to review records with limitations or prohibitions on copying.

<sup>3</sup> For guidance on submitting FOIA requests to EOIR, which is beyond the scope of this Practice Advisory, see EOIR’s webpage on FOIA, <https://www.justice.gov/eoir/freedom-information-act-foia>, and American Immigration Council’s Practice Advisory on FOIA and Immigration Agencies, [https://www.americanimmigrationcouncil.org/sites/default/files/practice\\_advisory/practice\\_advisory\\_foia\\_for\\_immigration\\_lawyers\\_2023.pdf](https://www.americanimmigrationcouncil.org/sites/default/files/practice_advisory/practice_advisory_foia_for_immigration_lawyers_2023.pdf).

<sup>4</sup> Immigration Court Practice Manual Ch. 1.5(c)(1), (3), (4); BIA Practice Manual Ch. 1.5(e)(1), (3).

- Parties and their attorneys can request ROPs and DARs from immigration courts in-person, by mail, or by email.<sup>5</sup>
- Parties and their attorneys can request ROPs by mail or email from the BIA.<sup>6</sup> The BIA does not provide DARs and does not allow for in-person requests.<sup>7</sup>
- EOIR may withhold certain prohibited portions of the ROP and DAR, such as “classified information” and “documents under a protective order.”<sup>8</sup>
- Because these access procedures are limited to parties and their counsel, individuals or entities who are not a party to a proceeding must file a FOIA request to access the ROP or DAR.<sup>9</sup>

### **Potential Exception for ROPs for Closed Cases**

While such updates are unconfirmed, in March 2023, a local immigration court administrator informed CAIR Coalition staff that in early 2023, EOIR adopted a new national policy of transferring ROPs for closed cases from immigration courts and the BIA to a central archive six to 12 months after closure. ROPs for these closed cases cannot be accessed using the new records access procedures and instead must be requested via FOIA. However, immigration courts are still able to provide DARs for these closed cases.

### **Where and How to Request Records by Email, Mail, and In-Person**<sup>10</sup>

ROP requests should be sent to the entity before which the case is pending. This means that once a notice of appeal has been filed, the ROP request should be sent to the BIA rather than the immigration court. For EOIR Courts & Appeals Systems (ECAS) cases, after entering an appearance using Form EOIR-27 or EOIR-28, the eROP can be accessed on the EOIR portal without submitting a request.<sup>11</sup> DAR requests should be sent to the immigration court even for cases before the BIA.

<sup>5</sup> Immigration Court Practice Manual Ch. 1.5(c)(3); EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>.

<sup>6</sup> BIA Practice Manual Ch. 1.5(e)(3); EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>.

<sup>7</sup> See BIA Practice Manual Ch. 1.5(e); EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>.

<sup>8</sup> Immigration Court Practice Manual Ch. 1.5(c)(1), (3), (6); BIA Practice Manual Ch. 1.5(e)(1), (3), (5).

<sup>9</sup> Immigration Court Practice Manual Ch. 1.5(c)(2), (5); BIA Practice Manual Ch. 1.5(e)(2), (4).

<sup>10</sup> These instructions are based on the information in EOIR’s Practice Manuals and webpages. Individual immigration courts may have slight differences in records access procedures.

<sup>11</sup> Immigration Court Practice Manual Ch. 1.5(c)(7); BIA Practice Manual Ch. 1.5(e)(6). Entering a limited appearance using Form EOIR-60 or EOIR-61 is insufficient. ECAS does not provide access to DARs.

We recommend submitting requests via email rather than in-person or via mail to avoid the risk of misplacement and mail delays and so that there is a record of the submission, which makes follow-up easier.

For all requests, parties and their counsel have the option but not requirement of using [Form EOIR-59, Certification and Release of Records](#).<sup>12</sup> Use of the form is recommended, though it may be difficult to obtain the required signature for individuals who are detained.

The following information must be included in the request:

- Respondent's full name (if not using EOIR-59)
- Respondent's date of birth (if not using EOIR-59 and requester is not counsel of record)
- Respondent's place of birth (if not using EOIR-59 and requester is not counsel of record)<sup>13</sup>
- Respondent's A-number (if not using EOIR-59)
- Copy of previously filed EOIR-27 or EOIR-28 (if requester is counsel of record)
- Portions of the ROP or specific DARs sought (including if requesting entire file)
- Method of delivery once the copy is made:
  - If retrieving the copy in-person, provide telephone number
  - For email, provide email address
  - For mail, provide mailing address
- A written or typed statement above the requester's signature that tells the court that the information has been verified as correct and includes the date on which the request is submitted (if requester is respondent).<sup>14</sup>

For all requests, if the requester is counsel of record, they must have already entered an appearance using Form EOIR-27 or EOIR-28 before the entity from which they are requesting the records.<sup>15</sup>

### Email Requests

To request records by email, email [EOIR.xyz.ROP.Requests@usdoj.gov](mailto:EOIR.xyz.ROP.Requests@usdoj.gov) (the "xyz" represents the immigration court's three-letter code) for immigration court cases and

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<sup>12</sup> EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>.

<sup>13</sup> To avoid conceding place of birth, use "alleged place of birth" or similar language.

<sup>14</sup> EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>. If the requester is the parent or guardian of a minor child requesting the minor child's records, additional information must be provided. *Id.*

<sup>15</sup> *Id.* The requestor entering a limited appearance using Form EOIR-60 or EOIR-61 is insufficient to qualify them as counsel of record for accessing records.

[EOIR.BIA.ROP.Requests@usdoj.gov](mailto:EOIR.BIA.ROP.Requests@usdoj.gov) for BIA cases.<sup>16</sup> Each immigration court's three-letter code is included in [Appendix Q of the Immigration Court Practice Manual](#). The email's subject line should be the requester's last name followed by a dash and the last four digits of the respondent's A-number.<sup>17</sup> If the requester is counsel of record, they should include their full name and EOIR ID in the body of the email and they must send the email from the email address on their notice of appearance.<sup>18</sup>

### Mail Requests

Records requests can be sent via mail to the mailing address of the [immigration court](#) or [BIA](#).<sup>19</sup> Use of delivery confirmation or tracking is recommended.

### In-Person Requests

To request records in-person at the immigration court, submit the request at the immigration court's filing window.<sup>20</sup> Immigration courts are generally unable to fulfill same-day requests.<sup>21</sup> The BIA does not accept in-person records requests.<sup>22</sup>

### **Requesting Records on Behalf of Pro Se Respondents**

Under a strict interpretation of the policy language in the Practice Manuals, which states that the records request procedures are limited to parties and their counsel,<sup>23</sup> LSPs assisting pro se respondents are not permitted access to ROPs or DARs using the new policy and instead must submit a FOIA request. Staff members from LSPs across the country, including some Legal Orientation Program (LOP) providers, have been denied access to records by EOIR staff based on this interpretation even after submitting EOIR-59s signed by the respondents.

However, in March 2023, EOIR officials informed certain congressional offices and stated during a national stakeholder meeting that EOIR's position is that LSPs assisting pro se individuals do have access to ROPs and DARs under the new policy if they submit an EOIR-59 signed by the

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<sup>16</sup> Immigration Court Practice Manual Ch. 1.5(c)(1); BIA Practice Manual Ch. 1.5(e)(3).

<sup>17</sup> EOIR, Request an ROP by Email (Immigration Courts), <https://www.justice.gov/eoir/request-rop-email-immigration-courts>; EOIR, Request an ROP by Email (BIA), <https://www.justice.gov/eoir/request-rop-email-bia>.

<sup>18</sup> EOIR, Request an ROP by Email (Immigration Courts), <https://www.justice.gov/eoir/request-rop-email-immigration-courts>; EOIR, Request an ROP by Email (BIA), <https://www.justice.gov/eoir/request-rop-email-bia>.

<sup>19</sup> EOIR, Request an ROP, <https://www.justice.gov/eoir/ROPrequest>.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> Immigration Court Practice Manual Ch. 1.5(c)(1)-(5); BIA Practice Manual Ch. 1.5(e)(1)-(4).



[www.caircoalition.org](http://www.caircoalition.org)

1025 Connecticut Avenue NW, Suite 701  
Washington, DC 20036

T 202 / 331.3320

F 202 / 331.3341

respondent. Therefore, LSP staff engaging in pro se assistance should attempt to obtain records for pro se individuals using the new procedures and inform CAIR Coalition of any problems they encounter with this at [labreferrals@caircoalition.org](mailto:labreferrals@caircoalition.org).

### **Timeline and Delays in Accessing Records**

For requests filed with immigration courts, timelines for accessing records using the new procedures vary greatly from a couple days to several months. The BIA usually takes a few weeks to process ROP requests. There have been numerous reports of extended delays in accessing ROPs and DARs using the new procedures.

EOIR has stated in response to sign-on letters that its goal is to fulfill records requests for detained cases within 20 business days of a completed request and within 45 business days for non-detained cases. These timelines are goals rather than deadlines and unlike FOIA, there is no dedicated enforcement mechanism.

### **Escalating Records Requests and Following Up**

In addition to delays in accessing ROPs and DARs, there have been many instances of EOIR staff refusing to process records requests that fall under the new policy and instead telling requesters to submit FOIA requests for the records. In situations of delay and EOIR refusal to process requests, we suggest following up and, if necessary, escalation.

Where EOIR staff are refusing to process a request under the new records access procedures, we recommend citing specifically to the Practice Manuals in follow-up communications, which unequivocally provide that respondents and their counsel have a right to these records outside of FOIA.<sup>24</sup> It is also helpful in the case of EOIR staff refusal or delays in processing to provide extenuating factors, including, but not limited to, an upcoming hearing date or briefing deadline and if the respondent is detained or has other characteristics that make them vulnerable, such as mental health issues (including being found incompetent) or being a minor. If the EOIR staff member is unresponsive, we recommend escalating to their supervisor or the local court administrator.

### **Continued Advocacy on Records Access**

CAIR Coalition continues to engage in congressional and other forms of advocacy to encourage EOIR to expand records access for all individuals in removal proceedings. We are specifically advocating for EOIR to address delays in records access, inconsistent implementation of the records access policy, and gaps in access for pro se noncitizens in detention and the LSPs

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<sup>24</sup> Immigration Court Practice Manual Ch. 1.5(c)(1), (3), (4); BIA Practice Manual Ch. 1.5(e)(1), (3).



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1025 Connecticut Avenue NW, Suite 701  
Washington, DC 20036

T 202 / 331.3320

F 202 / 331.3341

assisting them. We encourage other LSPs to continue to raise issues with ROP and DAR access in EOIR stakeholder meetings.

Please contact CAIR Coalition at [labreferrals@caircoalition.org](mailto:labreferrals@caircoalition.org) with questions on accessing EOIR records using the new procedures, to provide examples of recent problems with records access for advocacy efforts, or for more information on CAIR Coalition's EOIR records advocacy.