



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

October 31, 2006

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Judicial Law Clerks
All Immigration Court Staff

FROM: The Office of the Chief Immigration Judge

SUBJECT: Interim Operating Policies and Procedures Memorandum 06-03:
Procedures for Automatic Stay Cases

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I. INTRODUCTION

On October 2, 2006, the Executive Office for Immigration Review (EOIR) published a final rule entitled, *Review of Custody Determinations*. This final rule is effective November 1, 2006. The rule adopts, with changes, an interim rule published in the Federal Register on October 31, 2001 pertaining to the review of custody decisions by Immigration Judges with respect to aliens being detained by the Department of Homeland Security (DHS). The rule retains the existing automatic stay provision at 8 C.F.R. § 1003.19(i)(2). The final rule directs Immigration Judges to issue written custody decisions in automatic stay cases in five business days. The rule also provides that an additional five-day extension can be requested from the Board of Immigration Appeals (Board). This document sets forth procedures for handling automatic stay cases pursuant to the final rule.

II. CHANGES MADE BY THE FINAL AUTOMATIC STAY RULE

The final automatic stay rule retains the existing provision at 8 C.F.R. § 1003.19(i)(2) which allows DHS to invoke a temporary automatic stay of an Immigration Judge's decision ordering an alien's release in any case in which a DHS official has ordered that the alien be held without bond or has set a bond of \$10,000 or more. The final rule clarifies the basis on which the DHS may invoke the automatic stay provision by requiring that a senior legal official of DHS certify that the official has approved the filing of the Notice of Appeal to the Board and that there is factual and legal support justifying the continued detention of the alien. The final rule also provides that the automatic stay will lapse 90 days after the filing of the Notice of Appeal unless DHS seeks a discretionary stay.

The final automatic stay rule sets forth specific time frames for automatic stay cases. First, the final rule directs Immigration Judges to issue written custody decisions in automatic stay cases within five business days after the Immigration Judge is advised that DHS has filed a Notice of Appeal with the Board. *See* 8 C.F.R. § 1003.6(c)(2).¹ The rule states that the Immigration Judge may request an extension of the five-day deadline for filing the written custody decision, but that an extension cannot exceed five additional business days. *See id.* The rule also directs the immigration court to prepare and submit the record of proceedings on the custody decision "without delay." *Id.* The following procedures shall be applicable with respect to custody appeals in which DHS has invoked an automatic stay.

III. PROCEDURES FOR AUTOMATIC STAY CASES

In any case in which DHS intends to invoke an automatic stay, DHS will file a Notice of ICE Intent to Appeal Custody Redetermination (EOIR-43) with the immigration court within one business day of the Immigration Judge's order. *See* 8 C.F.R. § 1003.19(i)(2). The Court Administrator or designee shall enter a notation in the Remarks section of ANSIR or the Comment section of CASE that Form EOIR-43 has been filed in the case and the date that it was filed. The Court Administrator or designee shall also notify the Immigration Judge as soon as an EOIR-43 is filed.

The automatic stay will lapse ten business days after the issuance of the Immigration Judge's decision unless DHS files within that time a Notice of Appeal with the Board.² *See* 8 C.F.R.

¹ This rule is similar to OPPM 96-4, Processing of Motions and Appeals, which provides that the Immigration Judge "will have five business days from the date of receipt of the notification to prepare and submit a bond memorandum to the Board . . . unless the Immigration Judge requests an extension of time."

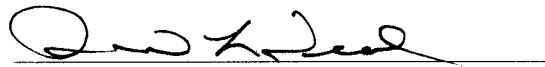
² If DHS files a Notice of Appeal more than ten business days after the issuance of the Immigration Judge's decision, the case is not an automatic stay case and the procedures set forth in this OPPM are not applicable.

§ 1003.6(c)(1). The Clerk's Office of the Board will notify the immigration court via an e-mail to the Court Administrator when a Notice of Appeal is filed in an automatic stay case. The e-mail will indicate in the subject line that a Notice of Appeal has been filed in an automatic stay case. The Immigration Judge must submit to the Board a written custody decision (also known as a bond memorandum) within five business days after notification by the Board, or notification by other means, that a Notice of Appeal has been filed in an automatic stay case. The Court Administrator or designee will forward the written custody decision and the record of proceedings for the custody decision to the Board.³

An Immigration Judge may request that the Board grant an extension of the five-day deadline for filing the written custody decision "in exigent circumstances." *See* 8 C.F.R. § 1003.6(c)(2). The extension, however, cannot exceed five additional business days. *See id.* In light of these time frames, any request to extend the five-day deadline set forth in 8 C.F.R. § 1003.6(c)(2) must be transmitted via e-mail to the individuals on the distribution list which is appended to this OPPM as Attachment A. The Board will respond to the extension request only if the request is denied and will do so within one business day. If the Board does not respond within one business day, the extension request is automatically granted. In such cases, the Immigration Judge has five additional days from the original deadline to submit a written custody decision to the Board. As noted above, the Court Administrator or designee will forward the written custody decision and the record of proceedings for the custody decision to the Board.

IX. CONCLUSION

This Interim OPPM is intended to provide guidance in implementing the final automatic stay rule, effective November 1, 2006. If you have any questions regarding this OPPM, please contact Mark Pasierb, Chief Clerk of the Court at (703) 305-1247 or your Assistant Chief Immigration Judge.



David I. Neal
Acting Chief Immigration Judge

³ The Uniform Docketing System Manual, Chapter VIII, Section IV B sets forth procedures for transmitting bond records and bond memoranda to the Board.

ATTACHMENT A

E-mail Distribution List for Requests to Extend Five-Day Deadline Set Forth in 8 C.F.R. § 1003.6(c)(2)*

Senior Legal Advisor – Jean King

Chief Clerk – Donna Carr (Acting)

Acting Deputy Chief Clerk – Dee Andrews

Priority Case Management Team Leader – John Seiler

Assistant Chief Immigration Judge

* This distribution list is in effect as of October 31, 2006 and is subject to change. This attachment will be updated as needed.