

EOIR Court Pre-Hearing Statement: Overview, Requirements, and Implementation in Northern California Immigration Practice

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FINDINGS

EOIR COURT PRE-HEARING STATEMENT: OVERVIEW, REQUIREMENTS, AND STRATEGIC IMPLEMENTATION IN NORTHERN CALIFORNIA IMMIGRATION PRACTICE

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Executive Summary

A [pre-hearing statement is a written submission to the immigration court designed to narrow and reduce factual and legal issues before an individual calendar hearing][1][7]. Under [8 C.F.R. § 1003.21(b)][4][13], an immigration judge may order the parties to file a pre-hearing statement, though [parties are encouraged to file one voluntarily even absent such an order][1][7]. The pre-hearing statement serves critical strategic functions within removal proceedings: it memorializes which facts the parties agree upon, identifies contested issues that require evidentiary resolution, organizes witness and exhibit lists, and frames the legal arguments each party intends to present. For respondents in Northern California immigration courts, particularly those preparing asylum, withholding, cancellation of removal, or adjustment of status applications, the pre-hearing statement represents one of the most important case preparation documents available because it shapes the hearing record before any testimony is taken.

This report addresses the procedural requirements governing pre-hearing statements, the strategic considerations surrounding their preparation, the operational deadlines and filing procedures specific to the San Francisco and Northern California immigration courts, and the evidentiary implications when objections to evidence contained in pre-hearing statements are not timely filed. The research identifies that as of February 2026, pre-hearing conferences and statements have become increasingly important tools for case narrowing within the context of the Executive Office for Immigration Review's emphasis on efficient case and docket management, while simultaneously operating within a legal environment where prosecutorial discretion exercises have become significantly constrained. For Northern California practitioners, understanding how to effectively prepare and file a pre-hearing statement-and how to use the pre-hearing conference process when available-is essential to preserving appellate issues, building an adequate record, and managing client expectations regarding the scope of issues that will actually be litigated at the merits hearing.

The following report provides a comprehensive analysis of pre-hearing statements as a procedural and strategic tool, examining the controlling authority, the filing and content requirements, the procedural deadlines, the Northern California context, and the practical implementation considerations for immigration practitioners representing respondents in removal proceedings.

Legal Framework Governing Pre-Hearing Statements

Statutory Authority and Regulatory Foundation

Pre-hearing statements in immigration court proceedings derive their authority from [8 U.S.C. § 1229a, which governs the conduct of removal proceedings before immigration judges][30][59]. While the statute itself does

not explicitly mandate pre-hearing statements, [8 U.S.C. § 1229a(b)(1) authorizes immigration judges to administer oaths, receive evidence, interrogate and examine the respondent and witnesses, and issue subpoenas][30]. This foundational authority gives immigration judges the discretionary power to manage the conduct of proceedings and to establish procedures that serve the interests of justice and the efficient administration of the hearing process. The regulatory framework implementing this statutory authority, [8 C.F.R. § 1003.21][4][12][13], provides the specific procedural framework for pre-hearing conferences and statements that applies in the immigration courts.

[Regulation 8 C.F.R. § 1003.21(a) establishes that pre-hearing conferences may be scheduled at the discretion of the immigration judge][4][12][13]. The conference may be held to narrow issues, to obtain stipulations between the parties, to exchange information voluntarily, and otherwise to simplify and organize the proceeding. This provision creates a foundation for judicial management of the litigation process through conference procedures, though the initiation of such a conference is discretionary with the immigration judge or may be requested by either party. The regulation explicitly contemplates that pre-hearing conferences serve to facilitate narrowing of issues and obtaining stipulations, which are both foundational purposes that pre-hearing statements then document and memorialize.

[Regulation 8 C.F.R. § 1003.21(b) authorizes the immigration judge to order any party to file a pre-hearing statement of position][4][12][13][33]. The regulation does not require that a pre-hearing conference have been held before such an order can be issued. Rather, the immigration judge has independent authority to order pre-hearing statements as part of the case management function. The substantive content of the pre-hearing statement is not rigid; the regulation states that the statement "may include, but is not limited to" certain enumerated items. This permissive language creates flexibility in how parties structure their pre-hearing statements while establishing baseline expectations regarding what information should be included.

The specific content elements authorized by [8 C.F.R. § 1003.21(b)][13] are: a statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible; a list of proposed witnesses and what they will establish; a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction; the estimated time required to present the case; and a statement of unresolved issues involved in the proceedings. This enumeration reflects the regulatory framework's understanding that a pre-hearing statement should encompass both factual and procedural information necessary to organize the hearing while also identifying the specific legal and factual disputes that remain for adjudication.

Policy Guidance and Procedural Manuals

The [Executive Office for Immigration Review has codified detailed guidance on pre-hearing conferences and statements in Chapter 4.18 of the Immigration Court Practice Manual][1][7][14][21][25][31][43][49][55]. This guidance, while not independently binding authority equivalent to statute or regulation, represents the official policy interpretation of EOIR regarding how pre-hearing conferences and statements should be conducted. According to the Practice Manual, [the purpose of a pre-hearing statement is to narrow and reduce the factual and legal issues in advance of an individual calendar hearing][1][7]. The Practice Manual further emphasizes that [even if a pre-hearing conference is not held, the parties are strongly encouraged to confer prior to a hearing in order to narrow issues for litigation][1][7].

The Practice Manual guidance reflects an important principle: pre-hearing statements serve institutional and procedural interests that extend beyond any single party's litigation strategy. The statements facilitate case management by allowing the immigration judge to understand in advance what the disputed issues actually are, which facts are agreed, how much hearing time will be required, and what evidence the parties intend to

present. This administrative efficiency interest has become increasingly prominent within EOIR policy, particularly following the [May 2024 Efficient Case and Docket Management in Immigration Proceedings Final Rule][60], which codified expedited procedures for administrative closure and termination of removal proceedings. Within that context, pre-hearing statements and conferences serve as mechanisms for the parties to identify dispositive issues that might be resolved without full merits hearings, such as whether a particular ground of removability can be stipulated, whether certain applications for relief lack any factual or legal basis, or whether the case is suitable for administrative closure or dismissal.

The Practice Manual also notes that [parties are encouraged to file pre-hearing briefs addressing questions of law][2][10][18][29][46]. Unlike pre-hearing statements, which address factual organization and evidence, pre-hearing briefs focus on the legal arguments and authority that support each party's position. [Pre-hearing briefs should be clear, concise, and well-organized, cite the record as appropriate, cite legal authorities fully, fairly, and accurately, recite those facts that are appropriate and germane to the adjudication of the issue(s) at the individual calendar hearing, cite proper legal authority where such authority is available, and not belabor facts or law that are not in dispute][2][10][46]. Importantly, [the body of pre-hearing briefs must be limited to 25 pages, though a party may make a motion to increase the page limit if the party believes it cannot adequately address the issues within that constraint][2][10][46].

Evidentiary Objections and the Deemed Unopposed Provision

[8 C.F.R. § 1003.21(c) provides that if submission of a pre-hearing statement is ordered under paragraph (b) of that section, an immigration judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement][4][12][13][33]. This provision creates a specific procedure for parties to challenge evidence proposed by the opposing party before the hearing begins. The operative consequence of failing to file timely objections is significant: [if objections in writing are required but not received by the date for receipt set by the immigration judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed][4][12][13][33].

This "deemed unopposed" provision has substantial practical consequences for both respondents and the Department of Homeland Security. For respondents, failure to file timely objections to government evidence means that the immigration judge will admit that evidence without the respondent having an opportunity to challenge its authenticity, reliability, foundation, or relevance before the hearing begins. For DHS, failure to file objections to respondent evidence means that documents, affidavits, country conditions reports, and other exhibits will be admitted without the government having preserved objections that might otherwise have been available at the appellate level. The deemed unopposed provision thus creates a strong procedural incentive for both parties to carefully review opposing party submissions and file objections when appropriate, understanding that the objection deadline may be the only opportunity to contest the admissibility of particular evidence before the hearing occurs.

The evidentiary objections contemplated by the regulation should focus on matters of admissibility—that is, whether the evidence should be admitted into the record at all. [Common objections for evidence in immigration court include relevance challenges, challenges to foundation and authenticity, hearsay objections, reliability challenges, and arguments that evidence is more prejudicial than probative][11]. Objections directed at the weight or persuasiveness of evidence, as distinguished from objections to admissibility, are generally not appropriate for pre-hearing evidentiary objections; those are matters for argument at the hearing and in closing statements.

Current Legal Landscape and Procedural Context (February 2026)

Recent Developments in Case Management and Docket Efficiency

As of February 2026, the immigration court system operates under procedural rules significantly shaped by the [May 2024 Efficient Case and Docket Management in Immigration Proceedings Final Rule][60]. This rule codified expedited procedures for administrative closure and termination of removal proceedings, reflecting a policy emphasis on efficient use of limited judicial resources. Within this context, pre-hearing statements and pre-hearing conferences have taken on heightened strategic importance because they provide mechanisms for the parties to identify cases in which full merits hearings may not be necessary.

The rule [codifies the authority of immigration judges and Board members to administratively close and terminate removal proceedings when certain standards are met][57]. [Administrative closure places a case off the active docket while leaving the removal proceedings pending][51]. [Termination, by contrast, results in the removal proceedings themselves being terminated; the case ends, the noncitizen is no longer in removal proceedings, and any applications for relief which they had filed are terminated as well][51]. The distinction is critical for respondents: termination closes off future access to immigration court relief, while administrative closure may preserve the respondent's ability to reactivate the proceedings at a later date.

[The rule generally mandates administrative closure if based on a joint motion or a motion filed by one party where the other party "has affirmatively indicated its non-opposition"][51]. This provision creates an incentive for the parties to confer, identify areas of agreement, and potentially resolve cases through dispositive motions rather than full merits hearings. Pre-hearing conferences and statements serve as vehicles for such conferences and agreements.

Importantly, the rule [requires immigration judges and the BIA to "consider the reason termination is sought and the basis for any opposition to termination when adjudicating the motion to terminate"][51]. This prevents an earlier problematic practice where DHS would unilaterally move to terminate a case despite the noncitizen's desire to have the case adjudicated in court. Thus, respondents' opposition to termination is now explicitly required to be considered, and a respondent's interest in pursuing relief is now more adequately protected.

Status of Prosecutorial Discretion and DHS Enforcement Posture

As of February 2026, the exercise of prosecutorial discretion by DHS has become significantly constrained, though the precise contours of the current policy remain in flux. During the prior administration, prosecutorial discretion was regularly exercised to dismiss or administratively close cases for individuals who presented no public-safety concern. However, as of the present date, such exercises of prosecutorial discretion have become far less frequent and less predictable. Pre-hearing conferences, while technically not limited solely to prosecutorial discretion discussions, may provide opportunities for DHS counsel (OPLA attorneys) to signal whether discretionary relief might be available in a particular case.

The [2022 Pre-hearing Conferences in Immigration Proceedings Program memorandum][17][28], though from the prior administration, remains instructive regarding the proper structure of pre-hearing conferences. That memo identified prosecutorial discretion discussions as one permissible topic for pre-hearing conferences, though it cautioned that [pre-hearing conferences should not be scheduled for the sole purpose of issuing or resolving requests for prosecutorial discretion, and parties should identify the specific issues to narrow or specific goals to be accomplished at the pre-hearing conference][17][28]. Practitioners should be aware that current OPLA policy may be significantly more restrictive regarding discretionary relief exercises, and respondents should not assume that prosecutorial discretion mechanisms that operated in prior years will

be available.

San Francisco Immigration Court Procedural Tendencies

The San Francisco Immigration Court, located at 100 Montgomery Street, Suite 800, San Francisco, CA 94104, with an additional location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111, and a Concord hearing location at 1855 Gateway Blvd., Suite 850, Concord, CA 94520, operates within the Ninth Circuit's jurisdiction. Immigration judges assigned to the San Francisco court have varying approaches to pre-hearing statements and conferences, but the court as an institutional matter has embraced case management procedures that emphasize early issue identification and narrowing.

The San Francisco court follows the standard [Immigration Court Practice Manual deadlines for filing all documents][1][6][32]. For non-detained respondents in individual calendar hearings, [filings must be submitted at least thirty (30) days in advance of the individual calendar hearing, with responses to be filed within ten (10) days after the original filing with the immigration court][32]. This thirty-day deadline applies to amendments to applications for relief, additional supporting documents, updates to witness lists, and other such documents, though it does not apply to exhibits or witnesses offered solely to rebut and/or impeach.

Pre-hearing statements, when filed, should comply with these standard deadlines. Practitioners frequently file pre-hearing statements at the thirty-day mark before the individual hearing, allowing sufficient time for the opposing party to review and file any necessary objections. In the San Francisco court, practitioners have observed that immigration judges appreciate pre-hearing statements that are clearly organized, specific about what facts are stipulated versus disputed, and realistic about hearing time estimates. Submissions that merely reiterate all of the respondent's narrative without actually identifying what facts are agreed with DHS are less likely to facilitate meaningful issue narrowing.

Regulatory Framework for Filing and Content Requirements

Required Contents and Organization

[The Immigration Court Practice Manual specifies that a pre-hearing statement should be filed with a cover page with an appropriate label (e.g., "PARTIES' PRE-HEARING STATEMENT"), and comply with the deadlines and requirements for filing][1][7][31][43][49]. The cover page requirements are significant and specific. [All filings should include a cover page that includes a caption and contains information such as the full name for each alien covered by the filing (as it appears on the charging document), the A-number for each alien covered by the filing, the type of proceeding involved (such as removal, deportation, exclusion, or bond), the date and time of the hearing, and other relevant information][37]. If the filing involves special circumstances, that information should appear prominently on the cover page, preferably in the top right corner and highlighted (for example: "DETAINED," "JOINT MOTION," "EMERGENCY MOTION").

The substantive contents of the pre-hearing statement should follow the enumeration in [8 C.F.R. § 1003.21(b)][4][13][33]. While the regulation uses permissive language ("may include, but is not limited to"), the Immigration Court Practice Manual makes clear that the statement should include the following components unless otherwise directed by the immigration judge. First, [a statement of facts to which both parties have stipulated, together with a statement that the parties have communicated in good faith to stipulate to the fullest extent possible][1][7]. This component is critical and deserves careful drafting. The statement should specifically identify which facts both parties agree upon, using clear and unambiguous language. For example, rather than writing "the parties agree to the respondent's background," the statement should specify:

"The parties stipulate that the respondent was born in Guatemala on January 15, 1995; that the respondent entered the United States without inspection at the San Diego port of entry on July 3, 2023; and that the respondent has remained continuously in the United States since that date." Specificity matters because a subsequent dispute over the meaning of stipulated facts can consume hearing time and create appellate issues.

The phrase "the parties have communicated in good faith to stipulate to the fullest extent possible" serves a protective function. By including this language, counsel is informing the immigration judge that the parties actually conferred, that the respondent's counsel explained the consequences of stipulations to the respondent, and that the parties made genuine efforts to identify additional areas of agreement. This language also signals to the immigration judge that if the parties have not stipulated to additional facts, it is because there are genuine disputes, not because counsel failed to adequately communicate or explore opportunities for agreement.

Second, [the pre-hearing statement should include a list of proposed witnesses and what they will establish][1][7]. Unlike a witness list (which identifies witnesses and their contact information), a pre-hearing statement's witness component should provide a brief narrative of what each witness will testify to. For example: "Respondent will testify regarding the circumstances of her departure from El Salvador, the persecution she experienced from local gang members, her relocation attempts, and her fear of return to El Salvador." This component helps the immigration judge understand why the witness is necessary and what evidentiary function the witness will serve.

Third, [the pre-hearing statement should include a list of exhibits, copies of exhibits to be introduced, and a statement of the reason for their introduction][1][7]. Each exhibit should be identified (for example, "Country Conditions Report from Human Rights Watch regarding gang violence in Honduras, dated 2025"), and the statement should explain why the exhibit is being offered (for example, "to demonstrate country conditions supporting applicant's well-founded fear of persecution by non-state actors"). When copies of exhibits are submitted with the pre-hearing statement, they should be organized with a table of contents indicating page numbers, making it easy for the immigration judge and the opposing party to locate specific documents.

Fourth, [the pre-hearing statement should include the estimated time required to present the case][1][7]. Practitioners sometimes underestimate the time required; the immigration judge should have realistic expectations. If a respondent's case involves a complex asylum claim based on multiple grounds of persecution, expert testimony regarding country conditions, and multiple supporting documents, counsel should estimate the time accurately rather than minimizing the estimate to make the case appear less burdensome. Immigration judges appreciate honesty and planning; a case that is estimated to take two hours but actually requires four hours will frustrate the court's schedule and may compromise the hearing quality.

Fifth, [the pre-hearing statement should include a statement of unresolved issues in the proceeding][1][7]. This component directly addresses the purpose of the pre-hearing statement-to narrow issues. By identifying which issues remain genuinely disputed, counsel focuses the immigration judge's attention on the actual matters that require evidentiary resolution. For example, a statement might indicate: "The parties stipulate to removability on the ground of unauthorized entry. The unresolved issues are: (1) whether the respondent has established a well-founded fear of persecution on account of political opinion; (2) whether the respondent qualifies for withholding of removal; and (3) whether the respondent is eligible for cancellation of removal based on demonstrated continuous physical presence in the United States."

Document Formatting and Technical Requirements

[All documents submitted to the immigration court should comply with specific formatting requirements to

ensure they fit properly in the Record of Proceedings][37]. [Documents should be submitted on standard 8½" x 11" paper; the use of paper of other sizes, including legal-size paper (8½" x 14"), is discouraged][37]. [If a document is smaller than 8½" x 11", it should be affixed to an 8½" x 11" sheet of paper or enlarged to 8½" x 11"][37]. [If a document is larger than 8½" x 11", it should be reduced in size by photocopying or other appropriate means][37].

[All documents must be legible, and copies that are so poor in quality as to be illegible may be rejected or excluded from evidence][37]. [Paper should be of standard stock white, opaque, and unglazed][37]. [Ink should be dark, preferably black][37]. [Briefs, motions, and supporting documentation should be single-sided][37].

[All documents, including briefs, motions, and exhibits, should always be paginated by consecutive numbers placed at the bottom center or bottom right hand corner of each page][37]. [Whenever proposed exhibits or supporting documents are submitted, the filing party should include a table of contents with page numbers identified][37]. [Font and type size must be easily readable; "Times Roman 12 point" font is preferred][37]. [Double-spaced text and single-spaced footnotes are also preferred, though both proportionally spaced and monospaced fonts are acceptable][37].

[The immigration court uses a two-hole punch system to maintain paper files, so all forms, motions, briefs, and other submissions should always be pre-punched with holes along the top (centered and 2¾" apart)][37]. [Submissions may be stapled in the top left corner][37].

Purpose and Strategic Significance of Pre-Hearing Statements

Narrowing and Organizing Issues for Efficient Adjudication

[The primary purpose of a pre-hearing statement is to narrow and reduce the factual and legal issues in advance of an individual calendar hearing][1][7][49]. This purpose serves multiple institutional interests. For the immigration judge, a well-crafted pre-hearing statement allows for more efficient case management. By identifying which facts are stipulated, the immigration judge need not listen to testimony regarding those facts. By identifying which issues are genuinely disputed, the immigration judge can focus the hearing on the matters that actually require evidentiary resolution. By receiving advance notice of witness lists and exhibit lists, the immigration judge can plan the hearing schedule, estimate the necessary hearing time, and manage the court's calendar more effectively.

For respondents and their counsel, the pre-hearing statement serves critical case-preparation functions. By conferring with DHS counsel and identifying stipulations, respondent's counsel gains insight into the government's position and can refocus litigation strategy accordingly. If the government stipulates to certain elements of removability, the respondent's efforts at the hearing can focus on demonstrating eligibility for relief rather than on refuting the government's proof. If the government indicates that it disputes the respondent's date of entry, the respondent's counsel can gather additional evidence and witnesses to establish that date conclusively.

The pre-hearing statement also memorializes the parties' positions at the time the statement is filed. If a party subsequently changes its position regarding a stipulated fact, the immigration judge and the opposing party have a record of the prior agreement. This can be helpful if one party attempts to renege on a stipulation or introduces contradictory evidence at the hearing.

Building the Appellate Record and Preserving Issues

From an appellate perspective, the pre-hearing statement serves as an important record-building device. The [Board of Immigration Appeals, when reviewing a decision by an immigration judge, considers only the evidence produced at the hearing, except in limited circumstances where new evidence is introduced on appeal under a motion to reopen][30][59]. If a party fails to raise an issue at the immigration court level, that issue is generally forfeited on appeal. The pre-hearing statement, by identifying the unresolved issues, creates a record that particular legal or factual matters were genuinely at issue in the case.

Additionally, if the immigration judge fails to address a matter identified in the pre-hearing statement as an unresolved issue, the failure to address that issue may constitute reversible error. An immigration judge who renders a decision without addressing a claim or issue that was clearly identified in advance filings may be reversed on appeal for failure to provide adequate reasoning or for failure to address a legally cognizable claim.

Strategic Considerations for Respondents

For respondents in Northern California, pre-hearing statements present strategic opportunities that should be carefully evaluated in consultation with counsel. First, the pre-hearing statement provides an opportunity to affirmatively set out the respondent's legal theories and arguments in advance of the hearing, allowing the immigration judge to consider those arguments before hearing testimony. Unlike a brief, which focuses on legal arguments, the pre-hearing statement includes factual details and evidence organization, which may help the immigration judge understand the respondent's narrative before the hearing begins.

Second, the pre-hearing statement creates an opportunity to propose witness testimony in a way that frames that testimony before the opposing party presents cross-examination. By describing what each witness will establish, counsel can guide the immigration judge's expectations regarding the witness's testimony and ensure that the judge understands the connection between the witness and the respondent's legal claims.

Third, pre-hearing statements provide an opportunity to identify exhibits and explain their significance before the hearing. Complex documentary evidence—such as country conditions reports, medical evaluations, police records from the respondent's country of origin, or expert declarations—can be introduced and explained in a pre-hearing statement, allowing the immigration judge to understand why those documents matter and how they relate to the respondent's claims.

Strategic Considerations for DHS

For DHS counsel (OPLA attorneys), the pre-hearing statement serves different strategic purposes. First, it provides an opportunity to signal which facts the government is willing to stipulate and which facts the government intends to contest. By clearly identifying the government's position in advance, DHS counsel can influence the parties' trial preparation and potentially narrow the issues in a way that serves the government's interests.

Second, the pre-hearing statement allows DHS to identify potential legal or factual weaknesses in the respondent's case before the hearing begins. If the respondent's exhibit list includes documents that DHS believes are inadmissible, unreliable, or legally irrelevant, the pre-hearing statement filing provides an opportunity to preserve objections by filing timely written evidentiary objections. Under [8 C.F.R. § 1003.21(c)][4][13], if the immigration judge requires written objections and DHS fails to file them by the deadline, admission of the respondent's evidence is deemed unopposed, preventing DHS from raising admissibility objections at the appellate level.

Third, the pre-hearing statement allows DHS to present arguments regarding the legal standards applicable to the respondent's claims. While the pre-hearing brief is the more appropriate vehicle for legal arguments, the pre-hearing statement can include factual context that supports the government's legal position.

Pre-Hearing Conferences and Their Relationship to Pre-Hearing Statements

Authority and Purpose of Pre-Hearing Conferences

[Pre-hearing conferences are held between the parties and the immigration judge to narrow issues, obtain stipulations between the parties, exchange information voluntarily, and otherwise simplify and organize the proceeding][1][7][14][21][25][31][43][49][55]. [Pre-hearing conferences may be requested by a party or initiated by the immigration judge][1][7]. [A party's request for a pre-hearing conference may be made orally or by written motion; if in writing, the motion should be filed with a cover page labeled "MOTION FOR A PRE-HEARING CONFERENCE," and comply with the deadlines and requirements for filing][1][7].

The pre-hearing conference provides an opportunity for face-to-face or telephonic discussion between counsel for the respondent, counsel for DHS, and the immigration judge. During the conference, the parties can discuss the specific issues that are genuinely disputed, identify facts that both parties agree upon, discuss the manner in which evidence will be presented, and potentially identify cases that might be suitable for early resolution through administrative closure, dismissal, or stipulated removal.

Importantly, [pre-hearing conferences are not forums for litigation, and the respondent may not provide testimony or submit to cross-examination during the conference][17][28]. The purpose is for counsel to confer and to assist the immigration judge in understanding the issues. Respondents' presence at pre-hearing conferences is optional, though [immigration judges can order a respondent to attend the pre-hearing conference, though the presumption is that the respondent's presence is waived][17][28].

The 2022 Pre-Hearing Conferences in Immigration Proceedings Program Memorandum

The [June 2022 Pre-Hearing Conferences in Immigration Proceedings Program memorandum][17][28], issued by the Office of the Chief Immigration Judge, provides detailed guidance on how pre-hearing conferences should be conducted and structured. While this guidance originates from the prior administration, it remains instructive regarding best practices. According to that memo, pre-hearing conferences should serve one or more of the following purposes: (a) provide parties with an opportunity to resolve cases prior to an individual hearing (e.g., administrative closure, voluntary departure, stipulating to relief, etc.); (b) provide parties with an opportunity to narrow issues prior to the individual hearing; (c) provide parties with an opportunity to discuss manner of presenting evidence at the individual hearing; and (d) provide parties with an opportunity to identify contested issues in the respondent's applications.

The memo identifies qualifying cases for pre-hearing conferences as those involving represented respondents proceeding to a merits hearing on the non-detained docket. Immigration judges should consider the following factors when identifying qualifying cases: (a) whether the respondent has filed an application for relief from removal; (b) whether the respondent has any applications or petitions pending with DHS; and (c) other relevant factors indicating that a pre-hearing conference might be productive.

Critically, [the immigration judge, the party ordering the conference sua sponte, or the party requesting the conference should identify the specific issues to narrow, or specific goals to be accomplished, at the pre-hearing conference; a mere statement that the parties should discuss the pending application(s) for relief

will not suffice][17][28]. Additionally, [pre-hearing conferences should not be scheduled for the sole purpose of issuing or resolving requests for prosecutorial discretion][17][28].

Outcomes of Pre-Hearing Conferences and Connection to Pre-Hearing Statements

The memo indicates that [the immigration judge's order for a pre-hearing conference must set clear expectations for what the parties should achieve at the pre-hearing conference, and the immigration judge should identify the specific issues to narrow and goals to accomplish at the pre-hearing conference][17][28]. Following the pre-hearing conference, the parties may file written work products describing what transpired. [The filing may take a variety of forms, but should refrain from overburdening the parties; for instance, the immigration judge may order the parties to file a Joint Pre-Hearing Statement, outlining the issues that the parties discussed and any outcomes that the parties achieved][17][28]. [The parties may file any statements or motions that are appropriate based on the pre-hearing conference, such as joint or unopposed motions for docket management or adjudication][17][28].

The memo provides illustrative examples. In one example, six weeks prior to an individual hearing on a cancellation of removal application, the parties convene for a pre-hearing conference. The parties discuss the case, review the record, and agree that the only disputed issue is whether the respondent provided evidence of the requisite continuous physical presence in the United States. The parties also agree that written affidavits from witnesses would be a sufficient substitute to witness testimony. The parties file a Joint Pre-Hearing Statement explaining that the parties convened, narrowed the issue to physical presence, and anticipate resolving the matter on written record without live testimony. In another example, the immigration judge orders a pre-hearing conference for the parties to identify contested issues in the respondent's asylum application. The parties file a Pre-Hearing Conference Statement in which DHS indicates that the only statutory bar to relief is the one-year bar.

These examples illustrate how pre-hearing conferences and pre-hearing statements work together as complementary procedural tools. The conference provides an opportunity for the parties to communicate and identify areas of agreement. The statement documents what was agreed and what remains in dispute, creating a written record that guides the immigration judge and structures the hearing.

Evidentiary Objections, Deemed Unopposed Status, and Strategic Implications

Framework for Evidentiary Objections to Pre-Hearing Statement Evidence

[8 C.F.R. § 1003.21(c) provides that if submission of a pre-hearing statement is ordered under paragraph (b), an immigration judge also may require both parties, in writing prior to the hearing, to make any evidentiary objections regarding matters contained in the pre-hearing statement][4][13]. The operative word is "may"-the immigration judge has discretion to order written objections or to permit objections to be raised orally at the hearing. When an immigration judge issues an order requiring written objections, the order typically specifies a deadline for filing those objections, such as "written objections, if any, must be filed no later than [date], seven days prior to the individual calendar hearing."

The objections contemplated by this provision are objections to the admissibility of evidence, not objections to the substance or conclusions suggested by the evidence. [Common objections to evidence in immigration court include relevance challenges, compound questions, ambiguous or vague questions, argumentative or badgering conduct, asked and answered matters, speculation or legal conclusions, lack of foundation, assumptions of facts not in evidence, lack of authentication, absence of original documents, no chain of

custody, unreliability, hearsay without applicable exception, multiple levels of hearsay, no opportunity for cross-examination, lack of corroboration, untimeliness with prejudice, and matters more prejudicial than probative][11].

For documentary evidence proposed in a pre-hearing statement, common objections include challenges to authenticity and foundation (for example, "The document is unauthenticated and contains no attestation establishing that it is a true and accurate copy of an official record"), challenges to reliability (for example, "The document relies on hearsay without adequate foundation, is internally inconsistent, and contains information that lacks corroboration"), and challenges to relevance (for example, "While the document purports to describe gang activity in El Salvador, it is not relevant to the respondent's specific claim of persecution by the government").

The Deemed Unopposed Provision and Its Consequences

[If objections in writing are required but not received by the date for receipt set by the immigration judge, admission of all evidence described in the pre-hearing statement shall be deemed unopposed][4][13][33]. This provision means that if a party fails to file timely objections to evidence described in the opposing party's pre-hearing statement, the failure to object operates as a waiver of any objection to that evidence. The evidence will be admitted and will be part of the record before the immigration judge without any objection being preserved.

The consequences of this deemed unopposed provision are significant, particularly at the appellate level. The Board of Immigration Appeals, when reviewing a decision by an immigration judge, generally considers only the evidence produced at the hearing. [The determination of the immigration judge shall be based only on the evidence produced at the hearing][30][59]. If evidence was admitted without objection-either because no objection was filed timely or because an objection was made orally but not preserved in the record-the Board will consider that evidence on appeal. An appellant challenging the immigration judge's decision on appeal cannot argue that certain evidence should not have been admitted if that objection was not preserved through a timely objection in the immigration court.

For respondents in particular, the deemed unopposed provision creates a risk that unfavorable government evidence will be admitted without the respondent having an opportunity to challenge its admissibility. For example, if DHS includes in its pre-hearing statement a police report from the respondent's country of origin documenting a criminal conviction, and the respondent's counsel fails to file a timely objection challenging the authenticity of the document, the reliability of the document given concerns about corruption in the country's law enforcement system, or the relevance of the conviction to the respondent's asylum claim, that evidence will be deemed unopposed and will be admitted. The respondent will then be unable to challenge the admissibility of that evidence on appeal.

Conversely, for DHS, the deemed unopposed provision creates an incentive to file timely objections to respondent evidence that the government believes is inadmissible or unreliable. If DHS believes that country conditions reports submitted by the respondent lack sufficient foundation, are overly general, or contain inadmissible hearsay, DHS must file objections before the deadline. Failure to file objections will result in the evidence being admitted, and DHS will be unable to challenge the admissibility of that evidence on appeal.

Practice Considerations for Filing Evidentiary Objections

Immigration practitioners should carefully review opposing party pre-hearing statements upon receipt and promptly begin analyzing whether objections should be filed. The deadlines for objections can be relatively tight-often no more than seven to ten days-so counsel must prioritize this review. For respondents' counsel, the

review should focus on whether government evidence is properly authenticated, whether documentary evidence is reliable, whether expert reports have adequate foundation, and whether exhibits are relevant to the issues the immigration judge must decide.

Objections should be filed with a cover page labeled "RESPONDENT'S OBJECTIONS TO GOVERNMENT PRE-HEARING STATEMENT" or similar caption, should be served on opposing counsel, and should comply with all filing requirements. Each objection should be stated with specificity. Rather than filing a blanket objection such as "Respondent objects to all exhibits in the government's pre-hearing statement," counsel should identify specific exhibits and state the specific grounds for objection. For example: "Respondent objects to Exhibit 4 (Police Report from Tegucigalpa Police Department dated January 15, 2022) on the grounds that: (1) the document is not authenticated and contains no certification establishing it is a true copy of an official record; (2) the document is unreliable given documented corruption in the Honduran law enforcement system; and (3) the document is more prejudicial than probative because it purports to establish a criminal charge but includes no information regarding the accuracy of that charge or the respondent's opportunity to contest the charge."

Northern California Implementation: San Francisco Immigration Court Procedures and Practices

San Francisco Immigration Court Locations and Administrative Structure

The San Francisco Immigration Court operates multiple hearing locations to serve Northern California's geographic expanse. The primary location is [100 Montgomery Street, Suite 800, San Francisco, CA 94104][1][7]. An additional location is [630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111][1][7]. For respondents in the greater East Bay and North Bay regions, the court operates a [Concord hearing location at 1855 Gateway Blvd., Suite 850, Concord, CA 94520][1][7]. The court is part of EOIR's San Francisco Asylum Office district and operates under the Ninth Circuit Court of Appeals' jurisdiction.

Filing Procedures for Pre-Hearing Statements in the San Francisco Court

The San Francisco Immigration Court requires that all filings, including pre-hearing statements, comply with the standard [Immigration Court Practice Manual deadlines and requirements for filing][1][6][32][53]. For non-detained respondents in individual calendar hearings, [filings must be submitted at least thirty (30) days in advance of the individual calendar hearing][32][53]. This thirty-day deadline applies to amendments to applications for relief, additional supporting documents, updates to witness lists, and other such documents.

Pre-hearing statements, when filed, should be submitted within this thirty-day window. Many practitioners in the San Francisco court file pre-hearing statements between thirty and forty-five days before the individual hearing, providing sufficient time for opposing counsel to review and file objections, with a margin for scheduling adjustments. The [San Francisco court maintains an electronic filing system (ECAS) through which practitioners file documents, and parties must be registered with eRegistry to file electronically][5][22].

Practitioners should be aware that the San Francisco court has experienced significant case backlogs. As a result, immigration judges in that court may have heavy dockets and limited time available for detailed case-by-case individualized management. Practitioners who file clear, well-organized pre-hearing statements that genuinely narrow issues are more likely to receive favorable judicial attention than those who file voluminous statements that merely restate the respondent's narrative without identifying what facts are actually stipulated.

Service Requirements and Proof of Service

[All filings must be served on the opposing party][6][20]. In the San Francisco court, this typically means serving DHS at the Office of the Chief Counsel's San Francisco location, which is [P.O. Box 26449, San Francisco, CA 94126-6449][34], or through the electronic filing system if the opposing party has ECAS access. [Service may be accomplished by mail, email, or hand delivery][6][32].

Practitioners must file a proof of service with the immigration court indicating how and when service was accomplished. The proof of service should identify the recipient (for example, "Office of the Chief Counsel, Department of Homeland Security, San Francisco, California"), the date of service, the method of service (mail, email, or hand delivery), and the name of the person serving the document.

San Francisco Asylum Office Interview Considerations

While pre-hearing statements are filed with the immigration court in defensive removal proceedings, respondents who file affirmative asylum applications with the San Francisco Asylum Office may also benefit from understanding how asylum interviews are conducted at that office. The San Francisco Asylum Office has specific interview procedures and officer tendencies. [Asylum officers at the San Francisco Asylum Office conduct credible fear screening and initial asylum interviews][1][7]. The office is known for relatively robust credible fear determinations and has demonstrated receptiveness to asylum claims based on gang and cartel violence, gender-based persecution, and persecution by non-state actors when adequate evidence of country conditions and personal circumstances is presented.

Respondents who have received positive credible fear determinations from the San Francisco Asylum Office and who proceed to the immigration court in defensive proceedings will have already received one positive assessment from a government asylum officer. That prior credible fear determination, while not binding on the immigration judge, may influence the judge's approach to the case. In preparing a pre-hearing statement, respondent's counsel should consider whether to reference the credible fear determination and, if appropriate, explain how the immigration judge's analysis should build upon the prior screening.

Northern California Criminal Justice System Interactions

Practitioners in Northern California must be sensitive to interactions between state criminal law and immigration consequences, particularly where criminal convictions can trigger immigration consequences. California Penal Code § 1473.7 permits respondents to challenge prior convictions if the conviction had immigration consequences that were not adequately explained at sentencing. [California Penal Code § 1473.7 permits vacatur of convictions if counsel failed to advise the defendant of immigration consequences, the defendant now disputes the factual basis for the conviction, or the defendant establishes that the conviction was imposed without lawful authority][1][7]. Similarly, [California Penal Code § 1203.43 permits post-conviction relief for convictions with immigration consequences][1][7], and [California Penal Code § 18.5 permits Proposition 47 reductions and addresses immigration impact of reductions][1][7].

When respondents in removal proceedings have prior criminal convictions, respondent's counsel should evaluate whether any of those convictions are subject to post-conviction relief under California law. If a conviction can be vacated or reduced under state law, that may eliminate a ground of removability or may convert an aggravated felony into a crime of moral turpitude or a simple conviction with fewer immigration consequences. Such criminal justice modifications should be documented and referenced in the pre-hearing statement if relevant, because they may affect the factual and legal posture of the removal case.

San Francisco Specific Judge Preferences and Tendencies

Immigration judges assigned to the San Francisco court have varying approaches to case management and pre-hearing statements. While it would be inappropriate to identify specific judges by name in a general research report, practitioners working in the San Francisco court are encouraged to speak with colleagues, to review past decisions by judges assigned to their cases, and to understand each judge's individual preferences regarding motion practice, evidence presentation, and case organization.

Some San Francisco judges have expressed appreciation for pre-hearing statements that genuinely narrow issues and that provide realistic assessments of the parties' positions. Judges appreciate honesty about disputed issues and accurate time estimates. Judges do not appreciate pre-hearing statements that appear designed primarily to advocate for one party's position rather than to organize the case objectively.

Sample Content and Organization of Pre-Hearing Statements

Components of an Effective Pre-Hearing Statement

To illustrate how pre-hearing statements are organized, it is useful to consider the structure that an effective pre-hearing statement typically follows. The statement should begin with a caption identifying the respondent, the A-number, the immigration court, and the immigration judge's name. The statement should then include an introduction explaining that the statement is submitted pursuant to [8 C.F.R. § 1003.21(b) and the Immigration Court Practice Manual § 4.18(b)][1][7][34].

The statement should then address stipulated facts. This section should be specific and detailed. Rather than writing "The parties agree to the respondent's background," the statement should write: "The parties stipulate to the following facts: (1) The respondent, [NAME], is a national of Guatemala; (2) The respondent was born on [DATE]; (3) The respondent entered the United States at the San Ysidro port of entry on [DATE] without inspection; (4) The respondent has not departed the United States since that date; (5) The respondent is neither a permanent resident nor a conditional resident; and (6) The respondent has no status to remain in the United States. The parties further stipulate that the respondent is therefore removable from the United States pursuant to 8 U.S.C. § 1227(a)(1)(B) as an alien who was not inspected and admitted or paroled at a port of entry."

After stipulated facts, the statement should address contested issues and unresolved legal and factual matters. This section might read: "The parties have not stipulated to the following matters, which remain in dispute: (1) Whether the respondent has established a well-founded fear of persecution on account of a particular social group, specifically persons who have opposed gang recruitment in Guatemala; (2) Whether the respondent is eligible for withholding of removal under 8 U.S.C. § 1231(b)(3) and 8 C.F.R. § 1208.16; and (3) Whether the respondent is eligible for relief under the Convention Against Torture." This section clearly identifies what the immigration judge will actually need to decide based on testimony and evidence, rather than based on stipulations.

The statement should then include witness lists with brief descriptions. For example: "Respondent proposes to present testimony from: (1) [RESPONDENT'S NAME], the respondent, who will testify regarding her persecution experiences in Guatemala, her attempts to relocate within Guatemala, her family members' experiences with gang recruitment, and her fear of return to Guatemala; (2) [MOTHER'S NAME], respondent's mother, who will testify via telephone from Guatemala regarding gang activity in respondent's municipality, family members' involvement with gangs, and threats received by family members; and (3) [EXPERT], a country conditions expert, who will testify regarding gang recruitment practices, the Guatemalan government's inability to protect citizens from gang violence, and country conditions affecting persons who

have resisted gang recruitment."

The statement should then address exhibits, organized by category. For example: "Respondent proposes to introduce the following exhibits: (A) Documents regarding respondent's identity and background: (1) Respondent's passport (Exhibit 1); (2) Birth certificate from Guatemala (Exhibit 2); (B) Documentation regarding persecution experiences and family circumstances: (1) Police report filed by respondent's mother (Exhibit 3); (2) Photographs of threats painted on respondent's family's residence (Exhibit 4); (3) Medical records documenting respondent's psychological response to trauma (Exhibit 5); (C) Country conditions evidence: (1) State Department Country Report on Human Rights Practices-Guatemala, 2024 (Exhibit 6); (2) Human Rights Watch report on Gang Violence in Guatemala, 2024 (Exhibit 7); (3) Expert declaration by [EXPERT NAME], a country conditions expert (Exhibit 8)."

Each exhibit should include a brief explanation of why it is being offered. For example: "The medical records (Exhibit 5) are offered to demonstrate respondent's credibility and the veracity of her persecution account, as they document medical treatment consistent with trauma resulting from the persecution experiences respondent describes."

The statement should conclude with a section addressing unresolved issues and an estimate of hearing time. For example: "The parties estimate that the respondent's case will require approximately three hours of hearing time, including opening statements, respondent's direct testimony, cross-examination, witness testimony, expert testimony, argument, and the immigration judge's oral decision. This estimate assumes that the parties will not need to litigate additional matters regarding removability, as the parties have stipulated to removability. Should the immigration judge require additional evidence regarding removability or should additional issues arise, the parties may request a continuation."

Sample Language and Practical Drafting Considerations

When drafting a pre-hearing statement, counsel should use clear, direct language that explains the respondent's position without excessive advocacy or rhetorical flourish. The statement should be organized logically, with clear headings and subheadings that guide the reader through the document. [According to the Immigration Court Practice Manual, pre-hearing statements should employ headings, sub-headings, and spacing to make the statement more readable, and short paragraphs with topic sentences and proper headings facilitate the coherence and cohesiveness of arguments][2][10][46].

Counsel should avoid restating the entire application for relief in the pre-hearing statement. The application itself is already part of the record. Instead, the pre-hearing statement should organize the case at a higher level, identifying which legal and factual elements the respondent will need to prove and which elements are conceded or stipulated.

Counsel should be scrupulously honest about what facts are stipulated. Overstating the areas of agreement or mischaracterizing the government's position will damage credibility with the immigration judge. If the government has not expressly agreed to a particular fact in writing or in prior conversations, counsel should not represent that the fact is stipulated.

Interplay Between Pre-Hearing Statements and Pre-Hearing Briefs

Distinct Purposes and Complementary Functions

Pre-hearing statements and pre-hearing briefs, while related, serve distinct purposes and should be drafted

separately and filed as distinct documents. [Pre-hearing statements organize factual matters, identify witnesses and exhibits, and specify which issues are stipulated versus disputed][1][7][34]. [Pre-hearing briefs, by contrast, address legal questions and provide legal arguments supporting each party's position on the unresolved legal issues in the case][2][10][18][29][46].

A well-executed case preparation strategy often involves filing both a pre-hearing statement and a pre-hearing brief. The statement organizes the facts and identifies the issues. The brief then addresses the legal standards applicable to those issues and provides the legal authority supporting the respondent's position.

Content and Format of Pre-Hearing Briefs

[An immigration judge may order the parties to file pre-hearing briefs, or parties are encouraged to file pre-hearing briefs even if not ordered to do so by the immigration judge][2][10][18][29][46]. [Pre-hearing briefs advise the immigration judge of a party's positions and arguments on questions of law][2][10][46]. [A well-written pre-hearing brief is in the party's best interest and is of great importance to the immigration judge][2][10][46].

[Pre-hearing briefs should be clear, concise, and well-organized; should cite the record as appropriate; and should cite legal authorities fully, fairly, and accurately][2][10][46]. [Pre-hearing briefs should always recite those facts that are appropriate and germane to the adjudication of the issue(s) at the individual calendar hearing; should cite proper legal authority where such authority is available; and should not belabor facts or law that are not in dispute][2][10][46]. [Parties are encouraged to expressly identify in their pre-hearing briefs those facts or law that are not in dispute][2][10][46].

[Unless otherwise directed by the immigration judge, pre-hearing briefs should include: a concise statement of facts; a statement of issues; a statement of the burden of proof; a summary of the argument; the argument; and a short conclusion stating the precise relief or remedy sought][2][10][46].

The concise statement of facts in a pre-hearing brief should be significantly shorter than a full narrative statement. The facts should be set out clearly, and points of contention and points of agreement should be expressly identified. For example, rather than providing a multi-page narrative of the respondent's persecution experiences, the brief might state: "Respondent is a 28-year-old Guatemalan national who opposed gang recruitment efforts in her municipality. Respondent's family has been threatened and some family members have been killed as a result of respondent's and her family's refusal to participate in gang activities. These facts are not in dispute. The disputed question is whether respondent has established a well-founded fear of persecution on account of membership in a particular social group."

[Facts, like case law, require citation; parties should support factual assertions by citing to any supporting documentation or exhibits, whether in the record or accompanying the brief][2][10][46]. [Parties must not misstate or misrepresent the facts or omit unfavorable facts that are relevant to the legal issue; a brief's accuracy and integrity are paramount to the persuasiveness of the argument and the decision regarding the legal issue(s) addressed in the brief][2][10][46].

[Substantive arguments should be restricted to the text of pre-hearing briefs; the excessive use of footnotes is discouraged][2][10][46]. [Pre-hearing briefs should contain a chronology of the facts, especially where the facts are complicated or involve several events; charts or similar graphic representations that chronicle events are welcome][2][10][46].

[The body of pre-hearing briefs must be limited to 25 pages, though if a party believes it cannot adequately address the issues in the case within the page limit, the party may make a motion to increase the page

limit][2][10][46]. [Pre-hearing briefs must be signed by a pro se respondent, the respondent's practitioner of record, or a representative of the Department of Homeland Security][2][10][29][46].

Response Briefs and Reply Submissions

[When a party files a pre-hearing brief, the other party may file a response brief; a response brief should be filed with a cover page with an appropriate label (e.g., "DHS RESPONSE TO PRE-HEARING BRIEF"), and comply with the deadlines and requirements for filing][2][10][46]. The response brief allows the opposing party to respond to arguments raised in the initial brief, to present its own legal arguments, and to correct any factual mischaracterizations in the initial brief.

In Northern California immigration practice, pre-hearing briefs and response briefs have become important tools for developing the appellate record. Practitioners are encouraged to file thorough, well-reasoned pre-hearing briefs even when such filings are not ordered by the immigration judge, because the pre-hearing brief becomes part of the administrative record that the Board of Immigration Appeals reviews on appeal.

Procedural Deadlines, Filing Procedures, and Compliance Requirements

Standard Filing Deadlines in San Francisco Immigration Court

For non-detained respondents in individual calendar hearings before the San Francisco Immigration Court, [filings must be submitted at least thirty (30) days in advance of the individual calendar hearing][32][53]. [Responses to filings must be filed within ten (10) days after the original filing with the immigration court][32][53]. [Objections to evidence may be made at any time, including at the hearing][32][53], though as discussed above, objections to evidence described in pre-hearing statements are more effective if filed in writing prior to the hearing when the immigration judge has ordered written objections.

The thirty-day deadline is calculated in a specific manner. [A filing may be due a specific period of time prior to a hearing; for example, if a filing is due 15 days prior to a hearing, the day of the hearing counts as "day 0" and the day before the hearing counts as "day 1"]][6][32]. [Because deadlines are calculated using calendar days, Saturdays, Sundays, and legal holidays are counted; if such a deadline falls on a Saturday, Sunday, or legal holiday, the deadline is construed to fall on the next business day][6][32].

Electronic Filing Requirements and eRegistry

The San Francisco Immigration Court uses EOIR's electronic case filing system (ECAS). [Attorneys and accredited representatives must electronically file documents through ECAS after registering with EOIR's eRegistry][20]. [A properly filed Form EOIR-28 provides a practitioner with access to the record of proceedings during the course of proceedings, and a respondent is considered to be represented for the proceeding in which a Form EOIR-28 has been properly filed and accepted][20].

Practitioners unfamiliar with electronic filing in immigration court should contact the San Francisco court's information line or file office to obtain guidance on how to register with eRegistry and how to file documents electronically. The electronic filing system has become the standard method for filing in immigration courts, and practitioners should ensure they have reliable access to the system before their client's hearing date approaches.

Untimeliness and Consequences of Late Filing

The consequences of filing documents late are significant. [If an application for relief is untimely, the alien's

interest in that relief is deemed waived or abandoned; if a motion is untimely, it is denied; if a brief or pre-trial statement is untimely, the issues in question are deemed waived or conceded; if an exhibit is untimely, it is not entered into evidence or it is given less weight][32].

Pre-hearing statements filed after the thirty-day deadline will not be accepted by the immigration court, or will be accepted only if the respondent or counsel can demonstrate good cause for the late filing. "Good cause" typically means extraordinary circumstances—for example, counsel's serious illness, unexpected technical failure of the electronic filing system, or other circumstances genuinely beyond counsel's control. Mere lack of diligence or counsel's busy schedule do not constitute good cause.

Substantive Application: Asylum, Withholding, and Other Relief Claims

How Pre-Hearing Statements Structure Asylum and Withholding Claims

Pre-hearing statements are particularly important in cases involving asylum, withholding of removal, or Convention Against Torture claims, as these claims typically involve complex factual narratives, substantial documentary evidence, and significant expert testimony regarding country conditions. In structuring a pre-hearing statement for an asylum or withholding case, respondent's counsel should organize the statement around the legal elements that must be established.

For asylum claims, [respondents must establish that they have suffered past persecution on account of a protected ground (race, religion, nationality, membership in a particular social group, or political opinion), or have a well-founded fear of future persecution on account of a protected ground, or both][1][7]. The pre-hearing statement should identify which elements the respondent will establish through which witnesses and exhibits. For example, the statement might indicate: "Respondent's testimony will establish past persecution on account of her membership in a particular social group. Country conditions evidence (Exhibits 1-5) will establish that the Guatemalan government is unable to protect citizens from gang violence. Expert testimony will address the legal standards for establishing membership in a particular social group and will analyze whether respondent's circumstances fit within the particular social group of 'persons who have refused gang recruitment in her municipality.'"

For withholding claims, [respondents must establish that their life or freedom would be threatened on account of a protected ground][1][7][34]. This standard is more demanding than the well-founded fear standard for asylum. The pre-hearing statement should clearly indicate whether the respondent is pursuing withholding in addition to or as an alternative to asylum, and what evidence will be presented to establish withholding eligibility.

Country Conditions Evidence and Expert Testimony

Pre-hearing statements in asylum and withholding cases typically include substantial reference to country conditions evidence and expert testimony. [Country conditions evidence addresses the security situation, gang and cartel activity documentation, gender-based violence statistics, LGBTQ+ persecution evidence, political repression, judicial system reliability, police corruption and impunity, and other conditions affecting whether persecution is likely][1][7]. This evidence comes from multiple sources, including [the State Department Country Report on Human Rights Practices, Human Rights Watch reports, Amnesty International country analysis, UN human rights monitoring reports, Trafficking in Persons Reports, academic research and publications, and Spanish-language news sources][1][7].

In preparing a pre-hearing statement, respondent's counsel should identify country conditions evidence and should explain how that evidence relates to the respondent's specific circumstances. For example, rather than simply listing "State Department Country Report on Human Rights Practices-Guatemala 2025" as an exhibit, the statement should explain: "The State Department Country Report establishes that gang violence is widespread in Guatemala, that the government is unable to control gang activities in certain municipalities, and that persons who refuse gang recruitment face serious risk of harm. Respondent's municipality is specifically identified in the report as an area with endemic gang violence and government inability to protect citizens."

Expert testimony regarding country conditions should be proposed with clear explanation of the expert's qualifications and the issues on which the expert will opine. The pre-hearing statement might indicate: "Dr. [NAME], an expert on Central American gang activity and government capacity in Guatemala, will testify regarding: (1) the operational structure and recruitment practices of gangs in Respondent's municipality; (2) the Guatemalan government's capacity and willingness to protect citizens from gang violence; (3) the typical consequences for persons who refuse gang recruitment; and (4) whether the circumstances described by Respondent are consistent with patterns Dr. [NAME] has documented in his research."

Conclusion and Practical Recommendations for Practitioners

Summary of Key Principles

The pre-hearing statement is a critical procedural tool in immigration court proceedings, serving to organize cases, narrow issues, identify stipulated facts, and provide the immigration judge with advance notice of witnesses, exhibits, and legal arguments. [The Immigration Judge may order the parties to file a pre-hearing statement, and parties are encouraged to file one even if not ordered to do so][1][7]. [The purpose of a pre-hearing statement is to narrow and reduce the factual and legal issues in advance of an individual calendar hearing][1][7]. Pre-hearing statements are governed by [8 C.F.R. § 1003.21(b)][4][13] and are detailed in the [Immigration Court Practice Manual Chapter 4.18][1][7].

For Northern California practitioners in the San Francisco and other courts within the Ninth Circuit, understanding how to prepare effective pre-hearing statements, how to comply with the thirty-day filing deadline, how to coordinate with DHS counsel regarding stipulations, and how to structure pre-hearing statements around the legal elements of specific relief claims is essential to competent practice.

Recommendations for Effective Practice

First, respondent's counsel should develop a pre-hearing conference strategy early in case preparation. Counsel should contact DHS counsel and request a pre-hearing conference, if one has not been ordered, when counsel believes such a conference would be productive. During the conference, counsel should candidly discuss the case, identify areas of potential agreement, and explore whether the case might be suitable for early resolution through administrative closure or dismissal. If a pre-hearing conference occurs, counsel should document the results in a joint or separate pre-hearing statement filed with the immigration court.

Second, counsel should prepare a comprehensive pre-hearing statement well in advance of the thirty-day deadline. Rushing to prepare the statement immediately before the deadline increases the risk of errors, omissions, and ineffective organization. Early preparation allows time for careful review, for coordination with opposing counsel regarding stipulations, and for substantive refinement of the statement's content.

Third, counsel should be scrupulously honest in pre-hearing statements. Overstating areas of agreement, mischaracterizing the government's position, or presenting incomplete or misleading factual narratives will undermine counsel's credibility with the immigration judge and may result in less favorable treatment of the case. Immigration judges appreciate candor and accuracy.

Fourth, counsel should carefully review opposing party pre-hearing statements for purposes of identifying evidentiary objections. If the immigration judge has ordered written objections, counsel must file those objections by the deadline specified. Counsel should not assume that objections can be made orally at the hearing; timely written objections are essential to preserving appellate claims.

Fifth, counsel should file a pre-hearing brief even when not ordered to do so. A well-crafted brief that clearly articulates the legal standards, identifies the legal authorities supporting the respondent's position, and explains how the evidence will satisfy those standards provides substantial value to the immigration judge and creates a critical appellate record.

Sixth, counsel should ensure that pre-hearing statements and pre-hearing briefs are formatted according to all Immigration Court Practice Manual requirements, including correct font, spacing, pagination, cover page information, and service requirements. Counsel should ensure that documents are properly served on the Department of Homeland Security and that proof of service is filed with the immigration court.

Forward-Looking Considerations

As of February 2026, the immigration court system continues to operate under significant case backlogs and resource constraints. The emphasis on efficient case and docket management through administrative closure, termination, and early resolution of cases is likely to continue. Pre-hearing statements and conferences will remain important tools for identifying cases that can be resolved without full merits hearings. Practitioners who develop skills in case narrowing, issue identification, and building agreement with opposing counsel will be well-positioned to represent clients effectively within this procedural environment.

Additionally, the scope of prosecutorial discretion continues to be constrained, and the policy environment regarding DHS enforcement priorities remains uncertain. Practitioners should not assume that prosecutorial discretion exercises will be available and should focus instead on building strong legal claims for relief based on the statutory and regulatory standards applicable to their clients' cases.

The pre-hearing statement, while sometimes overlooked by less experienced practitioners, remains a valuable and underutilized tool for organizing cases, building appellate records, and facilitating fair and efficient adjudication of removal proceedings. Practitioners who master the preparation of effective pre-hearing statements will enhance their clients' prospects for successful outcomes in immigration court and before appellate bodies.

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Statutes and Regulatory Authority

1. 8 U.S.C. § 1229a - Removal Proceedings
2. 8 C.F.R. § 1003.21 - Pre-hearing Conferences and Statements
3. 8 C.F.R. § 1003.25 - Form of the Proceeding

Executive Office for Immigration Review (EOIR) Policy Guidance

4. Immigration Court Practice Manual, Chapter 4.18 - Pre-Hearing Conferences and Statements
5. Immigration Court Practice Manual, Chapter 4.19 - Pre-Hearing Briefs
6. Immigration Court Practice Manual, Chapter 3.1 - Delivery and Receipt
7. Immigration Court Practice Manual, Chapter 3.3 - Documents
8. Immigration Court Practice Manual, Chapter 4.15 - Master Calendar Hearing
9. Immigration Court Practice Manual, Chapter 4.16 - Individual Calendar Hearing
10. EOIR Policy Manual - Efficient Case and Docket Management in Immigration Proceedings (Final Rule, May 16, 2024)
11. Office of the Chief Immigration Judge - Pre-Hearing Conferences in Immigration Proceedings Program Memorandum (June 3, 2022)

Secondary Legal Resources

12. Human Rights First - Immigration Court Practice Manual (January 2025)
13. CLINIC - Immigration Court Practice Manual Updates
14. CLINIC - Frequently Asked Questions: New DOJ Regulations on Efficient Case and Docket Management
15. NIPNLG - Administrative Closure Regulation Practice Alert (June 2024)
16. Immigration Court Objection Cheat Sheet (Vera Institute)
17. The Advocates for Human Rights - Immigration Court Deadline Checklist
18. CILA Academy - Sample Respondent's Pre-Hearing Statement (Political Opinion)
19. CLINIC - Sample Respondent's Witness List and Supporting Evidence
20. Federal Rules of Evidence, Rule 104 - Preliminary Questions
21. Prosecutorial Discretion in Immigration Cases - Immigration Justice Clinic
22. 2025 Immigration Court: DHS Dismissals & How to Protect Your Rights - JLW Immigration Law Group

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