

IMMIGRATION JUSTICE CAMPAIGN



DOJ Publishes Rule Permitting Limited Representation of Pro Se Individuals before the BIA and Immigration Courts

For many years, legal service providers practicing before the BIA and immigration courts have questioned what is legally and ethically permissible when providing limited assistance to pro se individuals. The Department of Justice’s final rule (“The Rule”) is welcome guidance for practitioners seeking to support unrepresented respondents with completing documents, but who do not wish to enter an appearance for full representation. With implementation of The Rule, practitioners now have a clear mechanism for providing limited assistance with document preparation without the risk of ongoing obligations.

1. What changes does The Rule impose?

The Department of Justice (DOJ) [final rule](#) (“The Rule”), effective November 14, 2022, now permits practitioners to provide document assistance to pro se individuals by entering a limited appearance using the new Forms [EOIR-60](#) (for the BIA) and [EOIR-61](#) (for the immigration courts). Entering a limited appearance carries no obligation or responsibility for the practitioner beyond providing document assistance in the specific proceeding. Previously, the only option for a practitioner to enter an appearance was using Forms EOIR-27 or EOIR-28, which commit the practitioner to full representation until subsequent action approved by the court releases the practitioner from the case. Appearances entered using EOIR-60 and EOIR-61 are limited to the specific document with which they are filed.

2. Who can enter a limited appearance using Forms EOIR-60 or EOIR-61?

The Rule permits for “practitioners” to enter limited appearances using EOIR-61 and EOIR-61. The Rule defines practitioners as “individuals authorized to provide representation” – *i.e.* attorneys, law students, law graduates, reputable individuals, accredited representatives, and accredited officials.¹ This differs from “practitioners of record” who have filed an EOIR-27 or EOIR-28 to appear for a specific proceeding. Unlike practitioners identified by The Rule for limited representation, the practitioner of record is authorized *and required* to appear before the BIA or immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the designated proceedings.²

3. What is considered “Document Assistance”?

Document assistance, for the purpose of entering a limited representation, is defined as “the drafting, completing, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court or BIA.”³ Examples of documents with which a limited-representation practitioner could assist include change of address, motion for change of venue,

¹ 8 C.F.R. §§ 1003.101(b), 1001.1(ff); see also 8 C.F.R. § 1292.1.

² 8 C.F.R. §§ 1003.17(a)(2), 1003.38(g)(1)(ii).

³ 8 C.F.R. §§ 1003.17(b), 1003.38(g)(2).

filing of timely asylum application, etc. Further, a practitioner who provides document assistance in the form of translation, even without exercising professional judgment or providing legal advice, must also file an EOIR-60 or EOIR-61.⁴ A practitioner who chooses to extend representation beyond document assistance must continue to use Forms EOIR-27 (for the BIA) or EOIR-28 (for the immigration courts).

4. What responsibilities do practitioners have who enter an EOIR-60 or EOIR-61?

A limited appearance entered with Form EOIR-60 or EOIR-61 imposes no continuing case-related obligations upon the practitioner.⁵ Practitioners entering a limited appearance do not become the practitioner of record and, as such, do not have the authorization, obligation, or responsibility to appear on behalf of the pro se respondent, to otherwise represent the pro se respondent in person before the immigration court or the BIA, or to move to substitute or withdraw from the proceeding. Further, the practitioner has no ongoing responsibility to the document with which they assisted or to the respondent once the assistance is completed.⁶

Technically speaking, the pro se respondent remains unrepresented even if a practitioner has provided them with document assistance and filed an EOIR-60 or EOIR-61.⁷ A respondent is only considered represented in a proceeding where a practitioner has filed an EOIR-27 or EOIR-28 with the BIA or immigration court, respectively. Only after filing an EOIR-27 or EOIR-28 is the practitioner obligated to perform the functions of full representation until withdrawal or substitution of counsel is granted.⁸

5. How does a practitioner file an EOIR-60 or EOIR-61?

The Form EOIR-60 or EOIR-61 must be filed in conjunction with the prepared document or set of documents.⁹ Because unrepresented respondents' cases are not eligible for ECAS (EOIR's electronic records and online filing platform), Forms EOIR-60 and EOIR-61, along with the prepared documents, must be filed in person or by mail. Either the practitioner or the pro se respondent may file the Form and documents with the BIA or immigration court. Note that it is not the practitioner's responsibility to arrange for filing of the Form and documents – the obligation lies with the pro se respondent. When the respondent and practitioner are not in the same location, the practitioner may email or mail the Form EOIR-60 or Form EOIR-61 to the pro se respondent so the pro se respondent may file it in conjunction with the prepared documents.¹⁰

Note that a practitioner must also file a new EOIR-60 or EOIR-61 for each document with which they assist.¹¹ In other words, practitioners must complete a Form EOIR-60 or Form EOIR-61 each and every time they provide document assistance to a pro se respondent. However, if a practitioner is assisting a pro se respondent with several documents filed simultaneously on the same day, they may all be included on one Form EOIR-60 or EOIR-61.¹²

⁴ See [Limited Appearance FAQ's-Department of Justice](#); note a "non-practitioner" providing translation does not need to file a limited appearance. See definition of "practitioner" above.

⁵ 8 C.F.R. §§ 1003.17(b)(2), 8 1003.38(g)(2)(ii).

⁶ See [Limited Appearance FAQ's-Department of Justice](#).

⁷ 8 C.F.R. §§ 1003.38(g)(2)(ii), 1003.17(b)(2).

⁸ 8 C.F.R. §§ 1003.17(a)(3), 1003.38(g)(1)(iii).

⁹ 8 C.F.R. §§ 1003.17(b)(1), 1003.38(g)(2)(i).

¹⁰ See 8 C.F.R. §§ 1003.17(b)(1), 1003.38(g)(2)(i).

¹¹ 8 C.F.R. §§ 1003.17(b)(1), 1003.38(g)(2)(i).

¹² See [Limited Appearance FAQ's-Department of Justice](#).