

## PRACTICE ADVISORY

### Addressing Misuse of Form Addenda in Immigration Court Decisions

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Over the past few years, standardized summaries of immigration law topics and legal standards called addenda of law and/or standard addenda (“form addenda”) have become a regular part of immigration judge (“IJ”) decisions in immigration courts across the country. Amica Center for Immigrant Rights (formerly known as CAIR Coalition) and our partner organizations have identified several common issues on the ground regarding IJs’ misuse of form addenda. We highlighted these concerns in the sign-on letter that we shared with Executive Office for Immigration Review (“EOIR”) leadership on June 12, 2023.<sup>1</sup> EOIR leadership have stated that they are working to address these issues and reduce IJ form addenda misuse, primarily through improved training, as well as greater accessibility in reporting compliance issues, but some problems have continued. This practice advisory highlights several common examples of form addenda misuse and recommends best practices and solutions for practitioners.<sup>2</sup>

#### **Form Addenda: What Are They and Where Did They Come From?**

Individual IJs and staff at various immigration courts nationwide have long used “boilerplate”—concise statements of relevant legal standards and case law—as part of their decisions. Starting in the late 2010s, EOIR’s national leadership began a more concerted effort to standardize decision-making practices across all immigration courts, with the goals of improving efficiency and boosting case completion rates. One of EOIR’s primary tools in this initiative has been the development and wider usage of form addenda.<sup>3</sup> Like boilerplate, form addenda are short, concise statements of law from the applicable BIA and circuit court precedent on common issues, such as the elements of asylum or cancellation of removal. However, while boilerplate is added directly into the decision itself, form addenda are separate documents that are attached to the oral decision and “incorporated by reference.”

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<sup>1</sup> Amica Center’s open letter to EOIR leadership on form addenda misuse, which over 40 other immigration legal service providers from around the nation also signed, is available at: <https://amicacenter.org/app/uploads/2024/07/06.12.2023-Addenda-misuse-letter-to-EOIR.pdf>.

<sup>2</sup> Amica Center is deeply grateful to our pro bono partners at O’Melveny & Myers, particularly Nathan Tschepik, for their invaluable contributions in addressing form addenda misuse, including their leadership in drafting model briefing on form addenda issues for practitioners to use in BIA appeals (links available on pages 3–4 of this practice advisory).

<sup>3</sup> One particularly in-depth source on EOIR’s intended vision for form addenda is an IJ training video on oral decisions, received from a 2020 FOIA request. The portion of the video on the purpose and use of form addenda is timestamped from 11:09 to 19:05. See Guidelines for Issuing Oral Decisions, Immigration Judge Training Video, available at: [https://cdn.muckrock.com/foia\\_files/2020/05/08/OralDecisions\\_-\\_Rooyani\\_Tabaddor.m4v](https://cdn.muckrock.com/foia_files/2020/05/08/OralDecisions_-_Rooyani_Tabaddor.m4v).

Assistant Chief Immigration Judges (“ACIJs”), who oversee multiple immigration courts in a particular geographic area, are tasked with coordinating efforts by IJs and immigration court staff to create and maintain the form addenda. IJs at immigration courts within the same circuit (i.e., at the Newark and Philadelphia Immigration Courts, which are both in the Third Circuit) often use the same form addenda. Circuit-specific form addenda are particularly important in cases where there are questions about venue and what circuit’s law to apply.

The aforementioned oral decision training materials outline the general obligations for IJs regarding how to properly use form addenda as part of their decisions. In issuing a decision, the IJ identifies a form addendum that summarizes all the relevant legal sub-issues in that case. For example, in an asylum case, the form addendum would explain the elements of asylum, such as particular social groups, nexus, past persecution, etc., under current case law from the BIA and the appropriate circuit court. The form addendum is not a replacement for legal analysis in the IJ’s decision—just a restatement of the legal standards being applied. In issuing her oral or written decision, the IJ then gives a copy of the form addendum to the noncitizen and their attorney, with the noncitizen’s name and A-number at the top of each page. A paper copy of the form addendum is literally stapled to the decision, and otherwise included in the digital record of the decision on ECAS. The form addendum is also then inserted into the record, along with the decision itself and any other evidence.

When used properly, form addenda can serve as a helpful tool for all parties involved. Form addenda allow IJs to provide the correct legal standard, without having to reinvent the wheel and rewrite this portion of their decisions from scratch each time, encouraging both consistency and efficiency. For noncitizens and their attorneys, form addenda can also promote transparency and predictability, by ensuring that the parties have a clear understanding of the relevant legal standards being applied in their cases.

## **Best Practices for Form Addenda and Addressing Form Addenda Misuse**

### **In Court Before the IJ**

- During or immediately after the IJ issues their oral decision (while you are still on the record), explicitly ask the IJ if they’re using a form addendum as part of their decision.
  - If the IJ says yes, ask them to provide the parties with a copy of the form addendum during or immediately after the hearing.
  - Confirm with the IJ, on the record during the hearing, that they are including the form addendum as part of the record of decision.
  - The IJ may also state preemptively during the decision that they’re “incorporating a form addendum by reference.” Even if they say this, it’s still worth asking the IJ on the record to confirm that they have included the form addendum in the record of the decision.
- Even if you need to follow up with the IJ and ask repeatedly during the hearing, make sure that the IJ provides you a copy of the form addendum and include it as part of the record of decision.
- Ensure the IJ confirms on the record, during the hearing, which circuit’s law they’re applying.
  - If there are choice of law questions or disputes in your case, and the IJ says that the outcome of their decision would be the same under the law of either circuit, ask the IJ

to provide form addenda for *all* of the possible circuits at issue, as per the steps outlined above.

### **Escalating Issues**

- If you don't receive a copy of the form addendum, you receive a decision with a form addendum and no analysis, or experience any other issues with the form addenda, and are unsuccessful in persuading the IJ to resolve these problems during the hearing:
  - Reach out to the IJ's clerk or other support staff using the contact information listed on the EOIR website.
    - On [this list of immigration courts](#), select the relevant court hearing your case. Then scroll down to the very bottom of the "Contact the Court" section to the expandable box that says "[Name of Court] Staff Directory." Click on the box to expand the list of immigration court staff and scroll down to the portion that includes a list of "Immigration Judges." Beneath the name of each IJ, you can find the name and phone number for each IJ's assigned clerk.
    - If there is no clerk listed for the IJ from your case, or you are unable to connect with the relevant clerk, you can also try contacting the court administrator or other support staff listed in the directory.
    - When you call, you can tell the clerk/court administrator/other support staff that you did not receive a copy of the form addendum, and request that they now provide you a copy and include it in the record of the decision.
  - If this outreach to the clerk's office is unsuccessful, escalate your request to the relevant ACIJ. If the ACIJ is not responsive either, reach out to Peter Alfredson at [peter@amicacenter.org](mailto:peter@amicacenter.org).
  - Make sure that you attempt any outreach with the immigration court staff and/or ACIJ before you file a Notice of Appeal ("NOA") with the BIA. Once you've filed the NOA, the immigration court will arguably no longer have jurisdiction over the case, so the staff will no longer be able to modify the record of the decision.

### **On Appeal at the BIA**

- If you aren't able to get a copy of the form addendum, or otherwise resolve any of the aforementioned issues by the time you've filed an NOA with the BIA, you may need to raise the issue in your appeal brief, using Amica Center's sample briefing on form addenda, available here: [Third Circuit-specific sample briefing](#), [Fourth Circuit-specific sample briefing](#).
- If the IJ used a form addendum, make sure to review the contents and ensure that it represents a correct and up-to-date summary of the applicable law.
  - Check that any BIA and circuit decisions cited in the form addendum are still good law. In particular, watch out for any form addenda citing to now-overruled BIA/AG decisions from the *Matter of A-B-* and *L-E-A-* lines of cases.
  - If there is language and/or case law in the form addendum that is incorrect, check the analysis portion of the decision to see whether the IJ seems to have relied on those erroneous standards in denying relief.

- Because the form addenda are somewhat standardized and are meant to cover many possible sub-topics of a legal issue, they may discuss points that aren't actually at issue in your particular case.
  - For example, you might have an asylum case with no past persecution claim, but the attached form addendum on asylum still includes a section on past persecution.
  - However, the fact that the IJ used a form addendum with these “extra” issues included in the form addendum is not in and of itself a legal error. This is really only an actionable problem if the IJ appears to have erroneously relied on that extraneous legal issue to deny relief, thus prejudicing the outcome of your case.
  - So if you were not alleging past persecution, but the IJ included a form addendum that addressed past persecution **and** stated that the asylum claim was being denied because you hadn't demonstrated past persecution, then you could arguably show prejudice based on the IJ's copy-and-paste decision-making based on the form addendum.
- If the IJ stated that the form addendum was being incorporated by reference, but there is no copy of the form addendum in the record of decision, you can challenge this omission as a due process violation for failing to include the relevant legal standards.
- On appeal, highlight any specific inaccuracies in the form addendum and identify how they impacted the IJ's legal analysis. Amica Center has created sample briefing on this issue, available here: [Third Circuit-specific sample briefing](#), [Fourth Circuit-specific sample briefing](#).
- Form addenda aren't a substitute for proper legal analysis.
  - The form addendum **cannot** replace the IJ's responsibility to perform an individualized legal analysis of the facts of each unique case. *See* 8 CFR 1240.12(a) (explaining that an IJ's decision must “contain reasons for granting or denying the request.”).
  - IJs using form addenda must still include an analysis section in their decisions that considers the noncitizen's facts and claims under the applicable legal framework.
  - If the IJ failed to provide sufficient analysis, consider raising the issue in your BIA brief using Amica Center's sample briefing on this issue, available here: [Third Circuit-specific sample briefing](#), [Fourth Circuit-specific sample briefing](#).

### **Amica Center's Continued Advocacy on Form Addenda Misuse**

- Amica Center continues to engage in advocacy on this issue to encourage EOIR to honor its commitment to promote proper use of form addenda by IJs across the country.
- We are working to monitor trends about form addenda misuse on the ground, both from the parties that signed on to our letter to EOIR, and more generally.
- If you encounter any examples of misuse of form addenda, including but not limited to those raised in this practice advisory, or would otherwise like to discuss any aspect of this topic, please reach out to Peter Alfredson at Amica Center by email at [peter@amicacenter.org](mailto:peter@amicacenter.org).