

July 27, 2016

**SAFE PASSAGE PROJECT MEMORANDUM
NEW PROSECUTORIAL DISCRETION FINGERPRINTING POLICY**

For prosecutorial discretion (“PD”) requests, the ICE Office of Chief Counsel (“OCC” or simply “ICE”) in NYC requires that children 14+ years old be fingerprinted to run criminal and national security background checks.

On April 20, 2016, ICE released a memorandum outlining the newest fingerprinting procedures for respondents in removal proceedings. The majority of the April 20th Memo deals with refreshing or renewing fingerprints and background checks for cases that pend longer than 15 months (e.g., cancellation of removal cases).

However, relevant for PD requests, paragraph 5 of the April 20th Memo indicates that *initial* fingerprints for PD purposes “will be handled similarly.”

After clarifying with Deputy Chief Counsel and Senior Attorneys in the NYC-OCC, see the current procedure:

Respondent’s counsel should submit **a single written request** for PD directly to ICE.
Respondent’s counsel **must indicate that Respondent has never been printed**, and therefore should be scheduled for a biometrics appointment.

ICE counsel will then review the file and verify that there are no prints already taken for any prior application. **ICE counsel will request the biometrics appointment** through DHS channels, triggering the biometrics appointment notice to be generated.

Respondent will receive an appointment notice in the mail for the fingerprinting appointment.
Counsel should receive a copy of this notice also.

Please note that ICE counsel asks for 120 days to complete this process. Keep that in mind when requesting continuances and following up with ICE counsel.

For example, if the Immigration Judge is suggesting a short continuance, you might note that the April 20th Memo asks for a minimum of 120 days, and ask for a longer continuance or that ICE submit a check in status report to the court and to you rather than require a formal hearing.

CASES WITH PENDING REQUESTS PRIOR TO APRIL 20, 2016

For cases that were filed under the old rules before April 20, 2016, but still have not received their fingerprint appointments, Respondent’s counsel needs to reach out to reach out to the ICE counterpart directly. To get the name and contact information of your ICE counterpart, the Office of Chief Counsel number and email can be found [here](#).

Counsel should refile the PD request according to the new rules and include information about the date of the original request and that fingerprints have yet to be scheduled. If counsel does not have the name of the ICE counterpart, Safe Passage Project can help.

The NYC-OCC has indicated that their attorneys are still adjusting to the new procedures, but this is the way the process *should* be as of the Summer of 2016.