



# Removal Defense

## Online Course

American Immigration Lawyers Association

### **Module 3: Pretrial Practice and Motions**

#### **Hypotheticals**

#### **Faculty Response**

##### **Hypothetical A:**

Juan has asked you to represent him in removal proceedings. He is from Mexico, having entered the U.S. without inspection. He has lived in Charleston, SC for the past 13 years. He was detained by ICE after being arrested and transferred to Folkston Detention Center in Georgia. He was released on bond from Folkston, but he was given a Notice of Master Calendar Hearing scheduled in two weeks in Atlanta. He is married to a US citizen. She filed an I-130 for his benefit, which was recently approved. He also has 3 US citizen children, ages 15, 13, and 11. The 11-year-old has severe epilepsy. What motions should you consider?

##### **Faculty Response:**

You will need to file a Motion for Change of Venue immediately with the court in Atlanta. You will need to include written pleadings with the Motion. You should also file a Motion for telephonic appearance at the Master Calendar Hearing. You should also file your FOIA requests to USCIS, ICE and OBIM. You should talk to Juan and his wife about the pros and cons of filing for Cancellation of Removal versus proceeding with consular processing on the approved visa petition. When the court in Atlanta denies your motion for change of venue, Juan will need to appear in person for the motion hearing. Since you filed your appearance, when the court denies your request for telephonic appearance, you will also need to appear in person or retain an Atlanta attorney to appear on your behalf.



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### **Hypothetical B:**

Juan and his wife have decided to move forward with Cancellation of Removal since it appears to them to be a better option than Juan leaving the U.S. to consular process. Unfortunately, after retaining you and the IJ scheduling his case for an individual hearing, Juan and his wife have not returned your attempts to contact them. You let time slip by and noticed that his individual hearing is coming up for trial in 3 months and you have not provided any supporting documents to the court. You have spoken to the 11-year-old's pediatric neurologist about her condition, and the doctor gave a wonderful explanation of the diagnosis, prognosis for the future and current physical needs; however, she is entirely too busy to appear in court in Charlotte. What do you do?

### **Faculty Response:**

First, ask the doctor for a detailed letter explaining everything she told you in your telephone conversation. If the letter is not as detailed as you like, ask her if she would agree to give her testimony telephonically; if so, you need to make a motion for telephonic testimony by the pediatric neurologist. If she is concerned that she would not be able to be available at the court's disposal because of her busy schedule and her inability to leave her patients without notice, then you might ask her to give her testimony by deposition. In that case you would need to motion the court to be able to take the deposition of a witness.