EOIR Voluntary Departure: Legal Analysis and Procedural Framework

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FINDINGS

EOIR VOLUNTARY DEPARTURE: COMPREHENSIVE LEGAL ANALYSIS AND PROCEDURAL FRAMEWORK

Executive Summary and Key Findings

Voluntary departure represents a discretionary form of immigration relief permitting individuals facing removal proceedings to depart the United States at their own expense within a specified timeframe, thereby avoiding the entry of a formal order of removal into their immigration record.[1][4] Governed by INA § 240B and 8 CFR § 1240.26, voluntary departure operates as an alternative remedy that may substantially improve an individual's long-term immigration prospects compared to accepting a removal order. However, the procedural framework is layered with complexity, containing three distinct stages of eligibility with markedly different requirements, timeframes, and consequences. The Executive Office for Immigration Review (EOIR) administers the immigration court procedures governing voluntary departure requests, while the Department of Homeland Security retains authority to grant voluntary departure before removal proceedings commence.

A critical finding from recent case law and regulatory analysis is that voluntary departure orders automatically terminate upon filing certain motions or appeals, triggering an immediate alternate order of removal without the penalties for failure to depart applying in that specific context.[6][26][44] This termination rule, which became effective on January 20, 2009, fundamentally altered the strategic landscape by preventing individuals from using motions or appeals as a mechanism to extend their voluntary departure period. Additionally, failure to comply with a voluntary departure order triggers consequences substantially harsher than those accompanying a removal order in certain respects, including a ten-year bar from multiple forms of immigration relief.[12][50]

The current legal landscape as of early 2026 reflects continued reliance on the 2009 regulatory framework, though recent changes in the Trump administration's second term have intensified enforcement priorities and reduced prosecutorial discretion opportunities that previously existed.[51] This report provides comprehensive analysis of the statutory framework, procedural requirements across all three stages, eligibility restrictions, consequences of noncompliance, strategic considerations, and Northern California implementation details.

Statutory and Regulatory Framework for Voluntary Departure

Foundational Authority and Statutory Language

Voluntary departure exists within the intersection of two primary statutory provisions. INA § 240B, codified at 8 U.S.C. § 1229c, grants the Attorney General authority to permit aliens to depart voluntarily at their own expense "in lieu of being subject to proceedings under section 1229a or prior to the completion of such proceedings" if the individual is not deportable under INA § 237(a)(2)(A)(iii) (aggravated felony) or INA § 237(a)(4)(B) (terrorist activities).[1][23] The statutory framework distinguishes between two temporal contexts: voluntary departure "prior to completion of removal proceedings" under subsection (a) and voluntary departure "at conclusion of proceedings" under subsection (b).

The regulatory framework implementing INA § 240B is found primarily in 8 CFR § 1240.26, which provides detailed procedural requirements for immigration judges granting voluntary departure as well as Board of Immigration Appeals (BIA) authority to grant voluntary departure on appeal or in the first instance under specified circumstances.[1][7] The regulations also establish the bond requirements, proof obligations, and

automatic termination provisions that create strategic implications for individuals considering voluntary departure.

The statutory language in INA § 240B does not mandate that voluntary departure be granted; rather, it grants discretionary authority to the Attorney General (interpreted as delegated to EOIR immigration judges and DHS officials) to "permit" voluntary departure.[23] This discretionary character means that even when an individual meets all eligibility requirements, the immigration judge or DHS official may decline to grant voluntary departure based on discretionary factors. The "merit a favorable exercise of discretion" requirement appears throughout the regulatory and case law framework, requiring applicants to demonstrate factors supporting a favorable discretionary determination.[8][22][31]

Criminal Background and Terrorism Exclusions

The primary categorical prohibition on voluntary departure eligibility applies uniformly across all three stages: individuals convicted of aggravated felonies are categorically ineligible for voluntary departure.[1][4][8][22] An aggravated felony, as defined in INA § 101(a)(43), encompasses more than thirty types of offenses including crimes of violence, drug trafficking, money laundering, and certain theft, fraud, and firearm violations.[21] The operative question for aggravated felony eligibility is whether an individual has been "convicted of a crime described in section 101(a)(43) of the Act."[1] This determination requires analysis of the categorical approach established in case law, examining the elements of the offense of conviction rather than the specific facts of the individual case.

Additionally, at Stage 1 (pre-proceedings voluntary departure), individuals deportable under INA § 237(a)(4)(B), relating to terrorist activities, are ineligible.[1] However, 8 CFR § 1240.26(b)(1)(i) lists broader security concerns not authorized by the statute, and practitioners should note that regulations potentially exceeding statutory authority have been subject to ultra vires challenges.[8][27]

The Discretionary Determination Framework

Beyond categorical eligibility requirements, immigration judges must determine whether an individual "merits a favorable exercise of discretion" in granting voluntary departure.[8][22][31][46][49] The factors considered in this discretionary analysis generally include the individual's ties to the United States, family relationships (particularly with U.S. citizen or lawful permanent resident relatives), evidence of good moral character, humanitarian considerations, community contributions, and employment history.[4][8] The burden of proof on discretionary factors typically does not rise to "clear and convincing evidence" but rather requires presentation of evidence supporting a favorable discretion determination.

In San Francisco's immigration courts, judges' approaches to discretionary factors may vary. Some judges apply restrictive standards, requiring substantial evidence of family separation or hardship, while others may weigh humanitarian factors more liberally. The absence of published decisions explaining individual judge's discretionary reasoning makes this a factual inquiry requiring consultation with practitioners experienced in the specific courthouse.

The Three-Stage Procedural Framework: Requirements and Distinctions

Stage 1: Pre-Proceedings Voluntary Departure Granted by DHS

Voluntary departure at Stage 1 occurs before removal proceedings formally commence-that is, before an individual receives a Notice to Appear initiating proceedings under INA § 239 or is placed into alternative proceedings.[2][15][27][31] The authority to grant Stage 1 voluntary departure belongs to Department of

Homeland Security officials, typically immigration officers or DHS district directors, rather than immigration judges.[2][31] An individual may request Stage 1 voluntary departure from an immigration officer prior to entering immigration court proceedings.

The eligibility requirements for Stage 1 voluntary departure are the least restrictive of the three stages. An individual qualifies for Stage 1 voluntary departure unless they have been convicted of an aggravated felony or are deportable due to terrorist activities.[2][8][27][31] Unlike Stage 3, no requirement exists to demonstrate one year of prior physical presence, good moral character, or clear and convincing evidence of ability to depart at this stage.[8][27] The applicant need only show that they are not in the categorical exclusion categories and can meet whatever conditions DHS imposes.

The departure timeframe for Stage 1 is up to 120 days, though DHS retains discretion to set shorter periods.[2][8][27][31] DHS may impose conditions on Stage 1 voluntary departure including posting a bond, presenting travel documents, demonstrating financial ability to pay for departure, and showing intent to depart.[2][15][27] These conditions are discretionary; DHS need not impose all of them in every case, and particular circumstances (such as immediate departure from DHS detention) may result in fewer conditions.

A critical procedural point: individuals cannot appeal DHS's denial of Stage 1 voluntary departure.[15][27] If DHS declines the request, the individual must wait until removal proceedings commence to request voluntary departure from an immigration judge at Stage 2. However, practitioners should understand that a DHS denial at Stage 1 does not preclude subsequent requests at Stage 2 or Stage 3 if eligibility requirements are met.

Stage 2: Pre-Conclusion Voluntary Departure at or Before Master Calendar Hearing

Stage 2 voluntary departure is requested during the pendency of removal proceedings but before the conclusion of those proceedings.[1][8][27][31][46] Specifically, an immigration judge may grant Stage 2 voluntary departure if the applicant requests it "on or before the date of the initial Master Calendar Hearing at which the case is initially scheduled for a merits hearing, or at any time before the conclusion of the removal proceedings if DHS stipulates to the voluntary departure order."[8][27] This temporal limitation is strict: after the initial Master Calendar Hearing (MCH) date, an immigration judge cannot grant voluntary departure beyond 30 days after that MCH date unless DHS provides written stipulation to extend the period.[8][27]

The eligibility requirements for Stage 2 are less demanding than Stage 3 but substantially more restrictive than Stage 1. An applicant must establish that they are not an aggravated felon, not deportable for terrorist activities, not deemed an arriving noncitizen, and not previously granted voluntary departure and found inadmissible under INA § 212(a)(6)(A) (entry without inspection).[8][27][31] Additionally, the applicant must demonstrate by clear and convincing evidence that they have "the intent and financial ability to depart the United States."[8][27][31]

The "clear and convincing evidence" standard for intent and financial ability at Stage 2 is substantial and represents the same standard required at Stage 3. Courts and immigration judges interpret this standard to mean evidence that produces in the mind of the trier of fact a firm belief as to the truth of the allegations sought to be established. In practical terms, this typically requires documentary evidence such as bank statements, proof of funds, evidence of plane tickets purchased or reserved, and testimony establishing genuine intent to depart. Some San Francisco-area judges require proof of a plane ticket purchase before granting Stage 2 voluntary departure, though this requirement exceeds the statutory standard and may be contested.[8][31]

A critical consequence of requesting Stage 2 voluntary departure is that the applicant must waive, withdraw, or abandon all other pending applications for relief. 8 CFR § 1240.26(b)(1)(i) requires that an applicant

requesting voluntary departure must have "waived or withdrawn all applications for relief."[8][27][31] This means that any pending asylum applications, cancellation of removal requests, adjustment of status petitions, or other relief applications must be formally withdrawn. An applicant cannot preserve the option to pursue other relief while requesting voluntary departure; the choice is essentially binary at this stage.

Additionally, at Stage 2, the applicant must concede removability (admit that they are deportable under the grounds charged) and waive the right to appeal.[8][27][31][46] The concession of removability typically means the applicant admits to the factual predicate for deportability (for example, admitting they entered without inspection or admitting a criminal conviction that triggers deportability). The waiver of appeal rights means the applicant cannot appeal the immigration judge's decision if the case concludes adversely to their interests; however, if voluntary departure is granted, the applicant generally does not appeal because they are accepting the grant of departure.

The departure timeframe for Stage 2 is up to 120 days, calculated from the date of the immigration judge's order granting voluntary departure.[8][27][31] However, the 30-day limit after the initial MCH date (absent DHS stipulation) significantly constrains the practical ability to obtain Stage 2 voluntary departure with a full 120-day departure period unless the initial MCH is set shortly after the NTA is issued.

Importantly, Stage 2 voluntary departure does not require bond posting in the regulations, though individual immigration judges may impose a bond as a condition of departure.[27] This contrasts with Stage 3, where a bond of at least $500 is statutorily required.[2][4][23]

Stage 3: Post-Conclusion Voluntary Departure After Adverse Decision

Stage 3 voluntary departure is available at the conclusion of removal proceedings-that is, after an immigration judge has issued a final decision denying all forms of relief and ordering removal.[2][4][23][27][31] An applicant must request Stage 3 voluntary departure at the time of the final hearing, typically when the immigration judge is announcing the decision and entering the removal order. While technically an applicant can request Stage 3 voluntary departure after the decision is rendered, practical considerations make requesting it at the hearing preferable.

The eligibility requirements for Stage 3 are substantially more demanding than Stages 1 and 2. An applicant must establish four core elements by clear and convincing evidence: (1) physical presence in the United States for at least one year immediately preceding the date the Notice to Appear was issued; (2) good moral character for the five years immediately preceding the application for voluntary departure; (3) the means to depart the United States and intent to do so; and (4) the applicant must not have been convicted of an aggravated felony and must not be deportable under terrorist activities grounds.[2][4][23][27][31]

The physical presence requirement is strictly one year before the NTA issuance, not one year from the date of the voluntary departure request.[4][23][27][31] This means an individual who has been in the United States for only eleven months at the time of removal proceedings cannot satisfy the physical presence requirement regardless of how much time passes during the proceeding. Additionally, this one-year period must be continuous; brief departures with advance parole or authorized returns may preserve the continuity depending on interpretation.[53][55]

The good moral character requirement for five years at Stage 3 is more expansive than at Stage 2 (which has no moral character requirement). Good moral character is defined in INA § 101(f), which provides that good moral character is established unless the individual has been convicted of certain crimes (crimes of moral turpitude, crimes of violence, drug trafficking, crimes of prostitution, certain fraud offenses, and crimes involving firearms or destructive devices, among others) or has engaged in certain conduct (prostitution,

polygamy, drunkenness, drug abuse, vagrancy, and gambling) within the relevant time period. The good moral character determination is generally favorable to applicants; most immigration judges find that an individual who has not been convicted of crimes within the five-year period and has maintained stable employment and family relationships satisfies this requirement.

The financial ability to depart requirement is typically satisfied through bank statements, tax returns showing income, employment verification, or evidence of family financial support.[4][8][31][46][49] Courts and immigration judges require "clear and convincing evidence," which again involves substantial documentary support. Many San Francisco immigration judges require evidence of funds sufficient to pay for travel and re-establishment in the country of origin, though the minimum is simply sufficient funds for the ticket.

Stage 3 voluntary departure carries a departure timeframe of up to 60 days from the date of the immigration judge's order.[2][4][23][27][31] This substantially shorter period reflects the reality that after an adverse final decision, the applicant's only remaining option is to accept departure rather than pursue appellate remedies.

Critically, at Stage 3, the applicant must post a voluntary departure bond in an amount determined by the immigration judge, with a statutory minimum of $500.[2][4][23][27] This bond must be posted with DHS (specifically, the ICE Field Office Director) within five business days of the immigration judge's order.[7][10] Failure to post the bond within the five-day window automatically converts the voluntary departure order into an alternate order of removal, with no penalty for failure to depart applying in that context because the voluntary departure order never became effective.[7][10][26][44] This is an exceptionally harsh consequence-an individual who cannot raise $500 within five business days loses the voluntary departure option entirely, and an alternate removal order becomes final.

Automatic Termination and Strategic Consequences of Filing Motions or Appeals

A transformative regulatory development, effective January 20, 2009, fundamentally altered the strategic landscape for voluntary departure: 8 CFR § 1240.26(i) and related sections provide that voluntary departure orders automatically terminate upon the filing of a petition for review, motion to reopen, or motion to reconsider.[6][26][29][44][56] Upon such automatic termination, an alternate order of removal takes effect immediately.[6][26][44]

The critical implication of this rule is that an individual with a granted voluntary departure order who subsequently decides to file a post-decision motion to challenge the underlying removal order cannot preserve the voluntary departure order during the pendency of that motion. The very act of filing the motion automatically converts the voluntary departure into a removal order. However, a crucial protection exists: when voluntary departure is terminated automatically upon filing a motion to reopen or reconsider, the penalties for failure to depart under INA § 240B(d) (the ten-year bar and civil penalties) do not apply.[6][26][44] This means an individual may file a motion to reopen or reconsider and lose the voluntary departure period without triggering the catastrophic ten-year bar consequences.

However, a different rule applies to petitions for review filed with the federal courts. 8 CFR § 1240.26(i) provides that a petition for review automatically terminates voluntary departure and activates an alternate removal order, but there is a narrow exception: if the individual departs within 30 days of filing the petition for review and provides DHS with proof of departure and evidence of remaining outside the United States, the departure is not deemed a "removal."[6][26][29][44][56] This 30-day window provides a strategic option for individuals who file federal court petitions to preserve a limited departure option.

An equally important protection applies when an appeal is filed with the Board of Immigration Appeals. When

an individual appeals an immigration judge's removal order to the BIA, the filing of the appeal automatically stays the execution of the removal order.[44][56] Critically, this stay also suspends the running of the voluntary departure period-the individual is not charged with failing to depart during the pendency of the appeal.[44][56] If the BIA dismisses the appeal, the Board's standard practice is to reinstate the voluntary departure order for the same amount of time originally ordered by the immigration judge.[44][56] This automatic reinstatement upon appeal dismissal represents a substantial protection for individuals pursuing appellate remedies.

However, a mechanical requirement applies: an individual who appeals with a granted voluntary departure order must provide proof of posting the voluntary departure bond to the BIA within 30 days of filing the notice of appeal.[44][56] If the individual fails to provide this proof within the 30-day window, the BIA will not reinstate the voluntary departure order.[44][56] Practitioners must calendar this deadline carefully, as missing it results in loss of the voluntary departure option entirely.

Consequences of Failure to Comply with Voluntary Departure Orders

The Ten-Year Bar and Statutory Penalties

The most severe consequence of failing to depart within the time specified in a voluntary departure order is codified in INA § 240B(d). An individual who is granted voluntary departure but fails to depart within the time period specified becomes ineligible for ten years for any of the following forms of relief: cancellation of removal under INA § 240A, adjustment of status under INA § 245, change of nonimmigrant status under INA § 248, registry under INA § 249, and voluntary departure itself.[2][12][22][26][31][44][50] This ten-year bar operates automatically upon the failure to depart; no separate adjudication is required to impose it.

Additionally, an individual who fails to depart is subject to a civil penalty of not less than $1,000 and not more than $5,000, plus an additional civil penalty of $3,000 under some interpretations.[22][31][46][49][50] These civil penalties are imposed administratively and may be assessed by DHS without requiring a formal hearing (though individuals should be given notice and opportunity to respond).

The ten-year bar represents a substantially more severe consequence than the ten-year bar associated with a standard removal order under INA § 212(a)(9)(A). Under the removal-order bar, certain waivers are available for spouses, parents, and adult children of U.S. citizens or lawful permanent residents. However, the INA § 240B(d) ten-year bar from voluntary departure contains no comparable waiver provision; it operates as an absolute bar.[12][50] This means an individual who fails to depart under a voluntary departure order is in a substantially worse position than someone who simply accepted a removal order and was deported.

Conversion to Removal Order and Subsequent Departure

Once an individual fails to depart within the specified voluntary departure period, the voluntary departure order automatically converts into an alternate order of removal that becomes final.[12][26][44][50] This conversion is not discretionary; it occurs automatically without any further action by the immigration court. The converted removal order then serves as a final order for purposes of removal proceedings and federal court jurisdiction.[12][50]

Critically, any subsequent departure after the voluntary departure period expires is considered a "self-removal" rather than departure pursuant to the voluntary departure grant.[12][26][44][50] The distinction is significant: a self-removal does not carry the formal legal status of compliance with a voluntary departure order and does not prevent the ten-year bar from applying. Instead, the individual is simply departing after a removal order is in effect, which carries all the standard consequences of being removed from the United States.

Accrual of Unlawful Presence During the Voluntary Departure Period

A frequently overlooked consequence occurs during the voluntary departure period itself. An individual who remains in the United States after the voluntary departure period expires and before actual departure continues to accrue unlawful presence.[12][26][44][50] This means that even if the individual eventually departs, they may trigger the three-year or ten-year bar under INA § 212(a)(9)(B) for accrual of unlawful presence.[12][26][44][50][53] Additionally, upon departure, the individual will be subject to both the INA § 240B(d) ten-year bar from failing to depart and potentially the INA § 212(a)(9)(B) ten-year bar from accruing one year of unlawful presence.

This layering of bars substantially complicates long-term immigration prospects. An individual who was granted a 60-day Stage 3 voluntary departure order but failed to depart, then remained in the United States for an additional year before eventually departing, would be subject to both bars simultaneously and would be ineligible for any relief for ten years from the date the voluntary departure period expired.

However, the statute provides a narrow exception for individuals granted voluntary departure in the former deportation proceedings (pre-April 1, 1997), which is no longer applicable to current cases.[12][50]

Exceptions Where Failure to Depart Consequences Do Not Apply

Recognizing the severity of the ten-year bar, the regulatory and case law framework provides limited exceptions where the consequences of failing to depart do not apply. 8 CFR § 1240.26(c)(4) and supporting case law establish that the consequences do not apply when an individual was "through no fault of his or her own, unaware of the voluntary departure order or is physically unable to depart."[9][50]

In Matter of Zmijewska, 24 I&N Dec. 87 (BIA 2007), the Board clarified that when an individual is "unaware of the voluntary departure order" or "physically unable to depart" through "no fault of his or her own," the penalties do not apply.[9][50] This exception has been narrowly construed in subsequent case law. The BIA has emphasized that the exception is not a substitute for the repealed "exceptional circumstances" standard and is not a general hardship waiver.[50]

Subsequent BIA precedent has imposed a "due diligence" requirement, requiring respondents to demonstrate that they acted with due diligence in attempting to depart despite their awareness of the order.[9][50] However, advocates have argued that imposing a due diligence requirement beyond the statutory language constitutes ultra vires action by the BIA, as the statute contains no such requirement.[9][50] The Due Process Clause and statutory interpretation principles may support arguments that the due diligence gloss is impermissible. Matter of Lozada-type arguments for ineffective assistance of counsel present another avenue for challenging failure-to-depart bars, though courts require substantial showing of deficient performance and prejudice.

Additionally, when voluntary departure orders are automatically terminated by the filing of motions to reopen or reconsider, the consequences for failure to depart do not apply because the voluntary departure order ceases to exist.[6][26][44] In such cases, individuals cannot be charged with failing to depart under a departed order because the order was terminated prior to any failure.

Unlawful Presence and Bars to Reentry: Distinguishing Multiple Consequences

A critical distinction must be drawn between the INA § 240B(d) ten-year bar from failure to depart and the INA § 212(a)(9)(B) three- and ten-year unlawful presence bars that operate independently. An individual granted voluntary departure does not automatically avoid the unlawful presence bars by accepting and complying with the voluntary departure order.[22][31][46][49][53] If an individual accrued unlawful presence

before the voluntary departure order was granted, that unlawful presence continues to count toward the bars even if voluntary departure is granted and complied with.

For example, an individual who entered without inspection in 2020, remained unlawfully present until March 2026 (six years of unlawful presence), and was granted 60-day voluntary departure in June 2026, would face a ten-year unlawful presence bar upon departure under INA § 212(a)(9)(B)(i)(II) due to accruing more than one year of unlawful presence. This ten-year bar operates independently of whether the individual timely complied with the voluntary departure order. The voluntary departure order merely prevents the INA § 240B(d) bar from applying; it does not erase the consequences of the unlawful presence itself.

However, the three-year unlawful presence bar under INA § 212(a)(9)(B)(i)(I) operates with a different rule in the context of removal proceedings. An individual who is placed in removal proceedings, is granted voluntary departure, and departs before accruing one year of unlawful presence total avoids triggering the three-year bar.[53] This exception applies only when the individual was in removal proceedings at the time of the departure; if an individual accrued more than 180 days of unlawful presence and then was placed in removal proceedings, the three-year bar would not apply if they departed before one year total.[53]

The practical implication is that voluntary departure is of limited benefit for individuals who have already accrued substantial unlawful presence before removal proceedings commenced, because they will face the long-term unlawful presence bars regardless of compliance with the voluntary departure order.[22][31][46][49] In such cases, voluntary departure's primary benefit is avoiding the permanent bar under INA § 212(a)(9)(C) and the additional ten-year bar from failure to depart.

San Francisco Immigration Court and Northern California Implementation

San Francisco Immigration Court Locations and Procedures

The Executive Office for Immigration Review operates multiple locations where San Francisco-area immigration court proceedings occur. The primary San Francisco Immigration Court location is at 100 Montgomery Street, Suite 800, San Francisco, California 94104, with an additional location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, California 94111. Additionally, removal proceedings may be heard at the Concord Hearing Location, 1855 Gateway Blvd., Suite 850, Concord, California 94520, which serves cases from Northern California counties beyond the immediate San Francisco Bay area.[52]

San Francisco Immigration Court operates under the EOIR's standard procedures and rules of practice, codified in 8 CFR Part 1003, along with any local administrative orders issued by the court's administrative judge. The San Francisco court's specific local rules regarding continuances, motion practice, and evidence submission may be requested from the court clerk's office. As of early 2026, the court maintains the eRegistry system for tracking cases, allowing practitioners to monitor case status and filing deadlines electronically.

Immigration Judge Tendencies and Voluntary Departure Practices

Individual immigration judges assigned to San Francisco cases have established patterns regarding voluntary departure requests, though practitioners should recognize that these patterns may vary over time as judicial assignments change. Some San Francisco immigration judges liberally grant voluntary departure when eligibility requirements are satisfied, viewing it as a beneficial alternative to removal that allows individuals to maintain long-term immigration prospects. Other judges require substantial evidence of intent and financial ability, may demand proof of purchased airplane tickets (beyond the statutory requirement), and scrutinize discretionary factors carefully.

The critical procedural point specific to San Francisco is that judges will not grant voluntary departure beyond 30 days after the initial Master Calendar Hearing date unless DHS provides written stipulation.[8][27] This means that individuals must request voluntary departure at or before the initial MCH date if they wish to obtain the full 120-day departure period. Requests made at the merits hearing after an initial MCH has already occurred will be limited to 30 days from the MCH date (or from the merits hearing date if less than 30 days have elapsed).

San Francisco Asylum Office and Voluntary Departure Integration

The San Francisco Asylum Office, which conducts asylum interviews and credible fear screening, operates independently of the immigration courts but intersects with voluntary departure in specific contexts. An individual who is placed in removal proceedings, granted voluntary departure, and departs the United States before exhausting their voluntary departure period does not trigger any bar to future asylum claims based on the voluntary departure itself. However, if the individual departed following a removal order (rather than a voluntary departure grant) or failed to comply with the voluntary departure order, subsequent asylum applications would be barred or severely limited.

Northern California individuals seeking asylum protection after previously being in removal proceedings should be aware that the decision to accept or reject voluntary departure will significantly impact their future asylum eligibility. Consultation with counsel experienced in both removal proceedings and asylum law is essential.

Northern California ICE Enforcement and Voluntary Departure Coordination

ICE's Northern California Field Office (ERO Field Office 1) operates detention facilities and coordinates enforcement activities throughout Northern California. Detainees granted voluntary departure from ICE custody must coordinate their departure arrangements with ICE, post the required bond if applicable, and maintain regular contact with their case managers. The detention facility's voluntary departure coordinator will typically provide information about posting bonds, obtaining travel documents, and arranging departure.

A significant practical consideration for detained individuals granted voluntary departure is that they remain in ICE custody pending departure. Many facilities do not automatically release individuals upon grant of voluntary departure; instead, the individuals remain detained until the bond is posted, travel is arranged, and the departure date arrives. This can result in additional detention time even after voluntary departure is granted. Some individuals negotiate release on their own recognizance pending departure, but this requires a motion to DHS or the immigration judge and is not guaranteed.

Recent Developments and Current Legal Landscape (2025-2026)

Trump Administration Changes and Enforcement Priorities

As of early 2026, the second Trump administration has fundamentally altered the immigration enforcement landscape, with consequences affecting voluntary departure practice. The Trump administration announced elimination of prosecutorial discretion and the Doyle memo framework that previously governed enforcement priorities and case closure decisions.[51] This means that voluntary departure requests are no longer evaluated through the lens of prosecutorial discretion considerations; instead, all individuals are treated as removable unless they qualify for affirmative relief.

Additionally, the Trump administration has implemented aggressive enforcement policies including expanded use of expedited removal at ports of entry, prioritization of criminal deportations, and pressure on state and

local governments to cooperate with federal enforcement.[51] These enforcement intensifications do not directly change the legal standards for voluntary departure but do affect the political and practical environment in which voluntary departure requests are evaluated.

Recent BIA Decision on Detention Authority and Bond Determinations

In a development relevant to the Northern California practice environment, the BIA issued a decision on September 5, 2025, clarifying (and substantially narrowing) immigration judge authority to release individuals on bond in certain contexts.[41] This decision overturned previous precedent permitting immigration judges to hold bond hearings for individuals who entered without inspection. The September 2025 decision means that immigration judges no longer possess authority to release such individuals on bond, which will require those individuals to remain detained throughout removal proceedings absent administrative release by DHS.[41]

This development affects voluntary departure practice primarily by eliminating the possibility that an individual detained pending removal could secure bond release to arrange departure more conveniently. Individuals granted voluntary departure while in detention will remain detained during their voluntary departure period unless they can post a voluntary departure bond (which typically requires representation and advance financial arrangements).

Strategic Analysis: When Voluntary Departure Is Appropriate and When to Decline

Eligibility Assessment and Strategic Calculus

Determining whether to accept or pursue voluntary departure requires careful assessment of the individual's specific circumstances, including criminal history, family relationships, unlawful presence accrual, and long-term immigration goals. An individual convicted of an aggravated felony has no choice-they are categorically ineligible and must either appeal the removal order or accept removal. Similarly, an arriving noncitizen with certain prior removals lacks eligibility and must pursue other options.

For individuals who qualify for other forms of relief (asylum, cancellation of removal, withholding of removal, VAWA protection), the decision to accept voluntary departure is essentially irreversible-accepting voluntary departure requires waiving other relief and the right to appeal. This waiver should never be accepted unless counsel has thoroughly investigated all available relief options and determined with reasonable confidence that no viable path exists. Even weak asylum or cancellation claims may warrant pursuing rather than accepting voluntary departure, because losing the voluntary departure option eliminates future flexibility.

Conversely, an individual with no viable relief options, no immigration history allowing for future adjustment, and substantial unlawful presence accrual may find voluntary departure advantageous compared to accepting a removal order, because it avoids entry of a formal removal order into their record and may facilitate future visa applications or family sponsorship. The benefit varies significantly based on whether the individual has U.S. citizen or lawful permanent resident relatives who could eventually sponsor them or whether they have modest lawful presence prospects through other channels.

The Failure to Depart Risk

A critical factor in the voluntary departure calculus is the risk that the individual will not actually depart within the specified timeframe. If there is any substantial doubt about the individual's actual willingness or ability to depart, accepting voluntary departure is inadvisable. Immigration judges are aware that some individuals accept voluntary departure with no genuine intent to depart, and they may be skeptical of voluntary departure requests from individuals with strong family ties or community connections.

More importantly, the consequences of failing to depart are catastrophically severe. The ten-year bar from all forms of relief is nearly absolute and provides no waiver mechanism. An individual who accepts voluntary departure but then fails to depart is in a substantially worse position than someone who simply accepted a removal order. This risk is sufficiently severe that practitioners should counsel clients only to pursue voluntary departure if there is genuine confidence they will actually depart. The financial aspects of departure (airfare, moving expenses, re-establishment costs) should be thoroughly explored and documented before accepting voluntary departure.

Appeals Considerations and Federal Court Strategy

An individual who has been granted voluntary departure but wishes to pursue appellate remedies faces distinct strategic considerations. If they file an appeal to the BIA, the appeal automatically stays the removal order and suspends the voluntary departure period, providing appellate protection without triggering the consequences of the voluntary departure order. However, if the appeal is dismissed, the voluntary departure order is automatically reinstated (if proof of bond posting was provided to the BIA).

Alternatively, if an individual wishes to file a petition for review in federal court challenging the underlying removal order, the filing will automatically terminate the voluntary departure order and activate an alternate removal order. However, a narrow 30-day window exists to depart before the alternate removal order becomes fully effective, providing a limited departure option even while pursuing federal court remedies.

The strategic question becomes whether the individual prefers to pursue appeals while maintaining the voluntary departure option (by appealing to the BIA) or whether federal court review is necessary. This decision should be made in consultation with immigration counsel and appellate specialists.

Comparative Advantages and Disadvantages Relative to Removal Orders

Benefits of Voluntary Departure Compared to Removal

When an individual complies with a voluntary departure order and actually departs the United States within the time specified, they avoid entry of a formal removal order into their immigration record.[4][16][34][43] This distinction produces several substantial benefits. First, the individual is not subject to the removal-order bar under INA § 212(a)(9)(A), which typically imposes a ten-year bar to reentry after removal.[35][43] While individuals with one year or more of unlawful presence will still face the INA § 212(a)(9)(B) ten-year unlawful presence bar, avoiding the removal-order bar is a meaningful advantage.

Second, an individual with a voluntary departure (rather than a removal order) on their immigration record has substantially more flexibility for future immigration benefits. An individual who departs under voluntary departure and later has a U.S. citizen child reach age 21, or who marries a U.S. citizen, may be eligible to obtain a Form I-212 waiver for permission to reapply and then adjust status. Individuals with removal orders face substantially higher barriers to overcoming the removal-order inadmissibility bar.

Third, the lack of a removal order in the record may facilitate future visa applications, including tourist visas, business visas, or temporary work visas to third countries. Immigration officers reviewing visa applications for countries other than the United States may not view a voluntary departure as harshly as a formal removal order, potentially increasing approval prospects.

Drawbacks of Voluntary Departure Compared to Removal

Conversely, voluntary departure carries significant drawbacks compared to accepting a removal order that should not be minimized. Most critically, acceptance of voluntary departure requires waiving all other forms

of relief and waiving the right to appeal (at Stages 2 and 3). This means an individual cannot pursue asylum, cancellation of removal, withholding of removal, VAWA protection, or any other relief if they accept voluntary departure. For individuals with viable relief claims, this waiver is typically unjustifiable.

Second, an individual who accepts voluntary departure remains in the United States for the duration of the voluntary departure period, continuing to accrue unlawful presence. If the individual has already accrued substantial unlawful presence, the additional accrual during the voluntary departure period may trigger or extend the INA § 212(a)(9)(B) bars, creating cumulative barriers.

Third, the consequences of failure to depart-the ten-year bar from multiple forms of relief-are harsher than the consequences of accepting a removal order. An individual with a removal order maintains the ability to file a motion to reopen if new circumstances arise (successful asylum claim, cancellation eligibility, visa sponsorship opportunity). An individual who fails to depart under voluntary departure is barred from those options for ten years. This locked-in consequence is a substantial disadvantage.

Practical Procedural Requirements and Compliance Mechanics

Bond Posting and Proof of Posting Requirements

For Stage 3 voluntary departure, a bond of at least $500 must be posted with DHS within five business days of the immigration judge's order.[7][10] The bond is typically posted with the local ICE Field Office Director or, for detained individuals, coordinated through the detention facility. Proof of posting must be provided to the immigration court and, if an appeal is filed, to the BIA within 30 days of filing the appeal.[7][10][44][56]

Failure to post the bond within five business days automatically converts the voluntary departure order to an alternate removal order without requiring any formal action by the court.[7][10][26][44] This automatic conversion is mechanical and does not provide opportunity for explanation or hardship waiver. An individual who cannot raise $500 within five business days will lose the voluntary departure option entirely. Some practitioners have explored whether this five-day deadline can be extended by motion or whether inability to post the bond provides a basis for seeking reconsideration, but the regulations provide limited flexibility.[7][10]

Proof of Departure and Maintaining Records

An individual granted voluntary departure must maintain proof of timely departure. 8 CFR § 1240.26(f) and DOJ guidance recommend obtaining proof through passport stamps, border officer document copies, or sworn affidavits from the U.S. consulate in the country of destination.[4][15] These documents should be preserved and may be required if the individual seeks to return to the United States or if the government challenges whether departure actually occurred.

The standard for "timely departure" is departure before the end of the voluntary departure period specified in the order. If an order grants 60 days of voluntary departure from the date of the order (for example, June 1 through July 31), departure must occur by July 31. Departure on August 1 constitutes failure to depart and triggers all penalties.

Evidence and Documentation for Voluntary Departure Requests

Evidentiary Showing for Intent and Financial Ability

Applicants requesting voluntary departure must present clear and convincing evidence of intent and financial ability to depart (at Stages 2 and 3).[8][27][31][46][49] "Clear and convincing evidence" is a demanding

standard requiring evidence that produces in the mind of the trier of fact a firm belief as to the truth of the allegations. Documentary evidence carries more weight than testimony alone.

For financial ability, acceptable evidence includes bank statements showing current balances (typically at least sufficient to pay for airfare), tax returns documenting income, employment verification letters, loan documentation showing access to funds, or family support letters with accompanying financial documentation showing a relative's willingness and ability to provide funds. Evidence that the individual has already purchased an airline ticket, while not statutorily required, is persuasive on both intent and financial ability.

For intent to depart, relevant evidence includes the individual's testimony regarding plans for departure, identification of the country to which they will depart, any job prospects or family waiting in that country, and residence arrangements in the destination country. Evidence of strong U.S. ties (U.S. citizen children, spouse, stable employment, home ownership) cuts against demonstrating intent to depart, and immigration judges may scrutinize intent claims from individuals with substantial U.S. roots.

Good Moral Character Evidence for Stage 3

At Stage 3, applicants must establish good moral character for the five-year period preceding the voluntary departure application. Relevant evidence includes the absence of criminal convictions (demonstrated by FBI fingerprint records and state criminal histories), stable employment records showing tax returns and employment verification, community ties demonstrated through letters of support, absence of immigration violations such as unlawful work or benefit fraud, and family relationships.

Letters of support from employers, religious leaders, community organizations, family members, and others familiar with the individual's character are valuable but should be genuine-form letters or perfunctory statements carry minimal weight. These letters should specifically address the individual's moral character, lawfulness, and community contributions during the relevant five-year period.

Documentation of Physical Presence and Unlawful Presence Duration

Evidence of one-year continuous physical presence before the Notice to Appear is issued (required at Stage 3) should include employment records, utility bills, lease agreements, school enrollment, medical records, or testimony from individuals familiar with the applicant's presence. The key question is whether the one-year period is continuous-brief departures with advance parole or authorized returns may preserve continuity depending on judicial interpretation.

Additionally, applicants should be prepared to address the extent of their unlawful presence, as this directly impacts the future advisability of voluntary departure compared to other options. If an individual has accrued significant unlawful presence, the voluntary departure benefit (avoiding removal order) becomes less meaningful because the unlawful presence bars will apply regardless.

Conclusion: Synthesis of Legal Framework and Strategic Recommendations

Voluntary departure, governed by INA § 240B and 8 CFR § 1240.26, presents a complex relief option with substantial benefits in certain circumstances and severe consequences if misapplied. The three-stage framework-Stage 1 (pre-proceedings DHS grant), Stage 2 (pre-conclusion immigration judge grant), and Stage 3 (post-conclusion immigration judge grant)-provides multiple opportunities for individuals facing removal to depart in a manner that avoids formal removal orders and associated bars.

However, voluntary departure is not appropriate for all individuals. Those with viable relief options (asylum, cancellation of removal, withholding, family sponsorship) should pursue those options rather than accepting

voluntary departure, because acceptance requires waiving all other relief and the right to appeal. The consequence of this waiver is irreversible-once accepted, an individual cannot later change course and pursue relief if circumstances change.

The severity of the failure-to-depart consequences-a ten-year bar from multiple forms of relief with no waiver mechanism-demands that practitioners counsel clients to accept voluntary departure only when they are genuinely confident of actual compliance. The financial requirements (board payments, travel costs, re-establishment expenses) and emotional challenges of departure should be thoroughly explored before acceptance.

For individuals with no viable relief options and long-term immigration prospects dependent on avoiding a removal order, voluntary departure offers meaningful advantages. Avoidance of the removal-order bar under INA § 212(a)(9)(A), while not eliminating the INA § 212(a)(9)(B) unlawful presence bars, may facilitate future immigration benefits through visa applications, family sponsorship, or third-country travel.

The Northern California implementation of these standards reflects the broader EOIR regulatory framework, with San Francisco immigration judges applying consistent legal standards while exercising discretion over individual cases in ways that may reflect varying approaches to humanitarian factors and family ties. Practitioners practicing before San Francisco courts should be aware of the 30-day limitation after the initial Master Calendar Hearing date and should ensure that voluntary departure requests are made at or before that MCH date if the full 120-day departure period is desired.

As of early 2026, the Trump administration's enforcement priorities and elimination of prosecutorial discretion have intensified removal proceedings but have not altered the substantive legal standards governing voluntary departure. The framework established in 2009 regarding automatic termination of voluntary departure upon filing motions and appeals remains the controlling standard, providing limited appellate protection while substantially constraining the ability to preserve departure options during federal court litigation.

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This report was generated as a comprehensive legal analysis of EOIR voluntary departure procedures and should not be construed as legal advice. Individuals facing immigration proceedings should consult with qualified immigration counsel regarding their specific circumstances and available options.