Motion to Reopen in Executive Office for Immigration Review Proceedings: Legal Framework and Procedural Guide

Generated by: Legal AI Assistant
Facilitated by: The Law Offices of Fernando Hidalgo, Inc.
February 2, 2026

FINDINGS

MOTION TO REOPEN IN EXECUTIVE OFFICE FOR IMMIGRATION REVIEW PROCEEDINGS: COMPREHENSIVE LEGAL FRAMEWORK AND PROCEDURAL GUIDE

A motion to reopen represents one of the most important procedural mechanisms available to immigration respondents seeking to challenge or reconsider final removal orders issued by the Executive Office for Immigration Review[1][16][22]. This comprehensive report examines the statutory authority, regulatory framework, procedural requirements, strategic considerations, and current legal landscape governing motions to reopen in immigration court and Board of Immigration Appeals proceedings. The analysis addresses both the general framework applicable nationwide and specific considerations for Northern California immigration practice, including San Francisco Immigration Court procedures and local enforcement patterns. Understanding motion to reopen procedures is critical because these motions constitute a respondent's primary vehicle for presenting new evidence, seeking different relief, or challenging decisions entered without proper notice-yet they are subject to strict deadlines and numerical limitations that practitioners and respondents must navigate with precision.

Statutory and Regulatory Foundation for Motions to Reopen

The legal authority governing motions to reopen derives from the Immigration and Nationality Act and implementing regulations that establish both the substantive grounds and procedural requirements for reopening removal proceedings. The governing statute, codified at [8 U.S.C. § 1229a(c)(7)][https://www.law.cornell.edu/uscode/text/8/1229a], provides that any noncitizen ordered removed has the right to file one motion to reopen removal proceedings within specific timeframes and subject to specific conditions[19][43]. The corresponding regulatory provisions are found in [8 C.F.R. § 1003.2 (for Board of Immigration Appeals proceedings)][https://www.ecfr.gov/current/title-8/chapter-V/subchapter-A/part-1003/subpart-A/section-1003.2] and [8 C.F.R. § 1003.23 (for immigration court proceedings)][https://www.law.cornell.edu/cfr/text/8/1003.23], which provide the detailed procedural rules that govern when, where, and how motions to reopen must be filed[1][8][22]. These regulations establish that a motion to reopen shall state the new facts that will be proven at a hearing if the motion is granted and shall be supported by affidavits or other evidentiary material[1][16][22].

The Supreme Court has recognized the fundamental importance of motions to reopen as a safeguard ensuring proper and lawful disposition of immigration proceedings. In the landmark decision [Dada v. Mukasey, 554 U.S. 1 (2008)][https://scholar.google.com/scholar_case?case=5842071048477818308], the Court held that the purpose of a motion to reopen is to ensure a proper and lawful disposition of immigration proceedings, and that Congress, in codifying motions to reopen by incorporating them into the INA, intended to create a right rather than a discretionary privilege[43][55]. This interpretation has significant implications for how immigration judges and the Board of Immigration Appeals must treat motions to reopen that meet the statutory and regulatory requirements-the decision to grant or deny such motions is not purely discretionary but must be based on whether the statutory and regulatory criteria are satisfied[43][55]. The Court's reasoning reflects an understanding that motions to reopen serve a critical function in preventing miscarriages of justice and ensuring that removal proceedings result in proper legal determinations based on all relevant evidence and circumstances.

Purpose and Scope of Motions to Reopen

A motion to reopen asks an immigration judge or the Board of Immigration Appeals to reconsider a case that has been decided and a final removal order entered, so that the adjudicator can consider new facts or evidence that were not available or could not have been presented at the time of the original hearing[1][16][22]. The motion differs fundamentally from a motion to reconsider, which seeks to correct alleged errors of law or fact based on the existing record without introducing new evidence[25][38][41][48]. When a motion to reopen is granted, the removal order is vacated and the proceedings are restored to an active status, allowing the respondent to present evidence, potentially apply for different forms of relief, or address defects in notice or other procedural irregularities that may have infected the original proceedings[7][16][27]. This remedial function makes motions to reopen particularly valuable for respondents who discover new circumstances after their original hearing, obtain approved visa petitions from family members, or become aware of defects in the immigration proceedings themselves[4][23][27].

The scope of proceedings that may be reopened extends across multiple procedural contexts. A respondent may file a motion to reopen after an immigration judge has issued a final decision ordering removal[1][16]. Similarly, a respondent whose case has been appealed to the Board of Immigration Appeals may file a motion to reopen with the Board after the Board has issued its decision[11][24][28]. In limited circumstances, if a motion to reopen is filed while an appeal is still pending before the BIA, the Board will treat it as a motion to remand rather than a motion to reopen, and this motion may be consolidated with the pending appeal[13][19][27]. Importantly, when proceedings have been administratively closed-removed from the court's active docket without a final decision-the proper procedural vehicle is a motion to recalendar, not a motion to reopen[39][42]. This distinction is critical because misidentifying which motion is appropriate can result in rejection of the filing and loss of important procedural rights[39][54].

The 90-Day Deadline: General Rule and Calculation

The overarching deadline governing motions to reopen is straightforward in its general application: a party must file a motion to reopen within 90 days after the date of entry of a final administrative order of removal[1][4][8][16][22][25][38][43]. This deadline applies whether the motion is filed with an immigration court or with the Board of Immigration Appeals[1][16][22][25]. The 90-day period is calculated from the date the removal order was entered by the adjudicator, not from the date the respondent received notice of the order, was released from custody, or took any other action[1][4]. Immigration judges and the BIA have consistently held that the regulatory deadline for filing a motion to reopen is determined by the date on which the immigration judge entered a final administrative order, and this regulatory deadline is not affected by subsequent actions taken by DHS in executing the order, such as the issuance of removal documents or efforts to effect deportation[33][43].

For immigration court proceedings, the 90-day period is calculated from the date the immigration judge's decision is entered[1][16][22]. For Board of Immigration Appeals proceedings, the 90-day period is calculated from the date the BIA's decision is rendered[11][24][25][28]. The deadline is jurisdictional and strictly enforced[1][4][25][38]. A motion filed after the 90-day period has expired is untimely and will be denied unless the respondent can demonstrate that the motion falls within one of the narrow exceptions to the time limitation or that equitable tolling applies[1][4][12][25][38]. Courts and immigration adjudicators have emphasized that the 90-day deadline is mandatory and cannot be extended by the respondent's attorney on grounds of inadvertence, oversight, or lack of diligence absent extraordinary circumstances[4][23][25].

The method of calculating the 90-day deadline follows standard legal practice. The first day of the period is

not counted; instead, the count begins on the day following the entry of the final order[1][4]. The 90-day period runs consecutively, including weekends and holidays[1][4][25]. The motion is deemed filed when it is received at the immigration court or the Board of Immigration Appeals, not when it is mailed[1][4][25][43]. This means that a respondent or attorney who intends to file a motion must account for mail delivery time and ensure that the complete motion package reaches the appropriate office by the 90th day, not merely mail it before that date[1][4][25]. For this reason, practitioners strongly recommend that motions be transmitted by overnight mail, certified mail with return receipt, or electronic filing through EOIR's systems where such filing is available and mandatory[21][51].

The One-Motion Limitation and Its Exceptions

Federal law and regulation establish a fundamental limitation on the number of times a respondent may seek to reopen removal proceedings: only one motion to reopen is permitted per party[1][2][3][4][8][16][22][25][38][43]. This limitation is codified at [8 C.F.R. § 1003.23(b)(1)][https://www.law.cornell.edu/cfr/text/8/1003.23] for immigration court motions and [8 C.F.R. § 1003.2(c)(2)][https://www.ecfr.gov/current/title-8/chapter-V/subchapter-A/part-1003/subpart-A/section-1003.2] for Board motions[1][8][16]. The rationale for this one-motion limitation is to promote finality of immigration proceedings and ensure that removal orders become conclusive rather than perpetually subject to reconsideration[25][33][38][43][60]. Once a respondent has filed one motion to reopen, any subsequent motion to reopen filed by that same respondent will be denied as numerically barred, regardless of the merits or the circumstances presented in that subsequent motion, unless the respondent can establish that one of the statutory or regulatory exceptions applies[1][4][8][16][25][38][43][60].

The statutory exceptions to both the 90-day deadline and the one-motion limitation are narrow and carefully defined. The first major exception applies to motions to reopen that are based on a request for asylum, withholding of removal (also called restriction on removal), or protection under the Convention Against Torture, premised on changed country conditions arising in the country of nationality or the country to which removal has been ordered[1][4][6][16][22][25][31][37][50]. This exception recognizes that asylum applicants may discover new country conditions reports, human rights violations, or changes in political circumstances after their hearing that render them newly eligible for protection[1][4][9][16][25][31]. Unlike the general 90-day limitation, motions based on changed country conditions may be filed at any time after the final order and are not subject to the one-motion numerical bar[1][4][6][16][22][25][31][50]. However, even for changed country conditions motions, the evidence of changed circumstances must be material and must not have been available and could not have been discovered or presented at the previous hearing[1][4][6][16][22][31][50]. Additionally, the respondent must demonstrate that the changed country conditions actually affect eligibility for the relief sought[24][25][28][31].

The second major exception addresses motions to reopen in absentia removal or deportation orders based on specified grounds[1][4][6][16][22][31][32][35]. These motions are discussed in detail in a subsequent section, but the general principle is that motions to rescind in absentia orders based on lack of proper notice may be filed at any time without regard to the 90-day or one-motion limitations[1][4][6][16][22][31][32][35]. Similarly, motions to rescind in absentia orders based on exceptional circumstances or evidence that the respondent was in federal or state custody have different deadlines and may not be subject to the full rigidity of the 90-day rule[1][4][6][16][22][31][32][35].

A third exception permits joint motions to reopen that are agreed upon by all parties and jointly filed by the respondent and DHS[1][4][6][8][16][22][25][31][38][43]. Such joint motions are not limited in time or number[1][4][6][16][22][25][31][38][43]. This exception reflects the principle that if both the respondent and

the government agree that proceedings should be reopened-perhaps to pursue relief before USCIS, to dismiss proceedings, or to apply for discretionary relief-there is no policy reason to prevent such agreed reopening[1][4][6][8][16][22][25][31][38][43][56][59]. Joint motions have become an increasingly important strategic tool, particularly in cases where the respondent has become eligible for relief subsequent to the removal order and DHS determines that the respondent does not pose an enforcement priority or that pursuing relief through USCIS or immigration court adjudication serves the agency's prosecutorial discretion objectives[45][56][59].

A fourth exception applies to motions filed by qualified battered spouses, children, or parents pursuant to the Violence Against Women Act provisions[1][6][16][19][22][25][31][43][51][55]. These motions may be filed within one year of the final removal order, even if the 90-day period has expired[1][6][16][19][22][25][31][43][51][55]. This extended one-year deadline recognizes the unique circumstances of domestic violence survivors and the particular vulnerabilities they face in seeking remedies[1][6][16][19][22][25][31][43][51][55]. Additionally, under certain circumstances involving extraordinary hardship to the respondent's child, the one-year deadline itself may be waived[1][6][16][19][22][25][31][43][51][55].

A fifth exception preserves the ability of the Department of Homeland Security to file motions to reopen that are not subject to time or numerical limitations[1][4][8][16][22][25][31][38][43][48]. DHS motions to reopen in removal proceedings under [8 U.S.C. § 1229a][https://www.law.cornell.edu/uscode/text/8/1229a] are not limited in time or number[1][4][8][16][22][25][31][38][43][48]. DHS may file motions to reopen to cure defects in the charging document, to present additional evidence of removability, or in some cases to seek reconsideration based on fraud or other grounds[1][4][8][16][22][25][31][38][43][48]. However, even DHS motions must meet the substantive requirements for reopening-the evidence must be material and previously unavailable[1][4][8][16][22][25][31][38][43][48].

Finally, motions filed before September 30, 1996, do not count toward the one-motion limitation because they predate the 1996 amendments to immigration law that introduced the current motion to reopen framework[1][4][8][16][22][25][31][38][43][48][55]. This provision reflects a statutory choice to grandfather older motions when the legal framework changed[1][4][8][16][22][25][31][38][43][48][55].

Substantive Requirements: Materiality and Unavailability of Evidence

A fundamental substantive requirement for any motion to reopen is that the evidence offered must be material and must not have been available and could not have been discovered or presented at an earlier stage of the proceedings[1][4][8][11][16][22][24][25][28][38][43][50][55]. This materiality requirement serves as a gatekeeper preventing frivolous motions and ensuring that only genuinely significant new evidence warrants disturbing a final removal order[1][4][8][16][22][25][38][43]. The materiality standard, as interpreted by the Board of Immigration Appeals, requires that the evidence sought to be offered be of such a nature that it is likely to change the result in the case-in other words, the evidence must be capable of establishing eligibility for relief or demonstrating that removal was not legally proper[1][4][8][16][22][25][38][43][55][60].

Courts have elaborated that evidence meets the materiality requirement when it creates a reasonable likelihood of success on the merits such that it would be worthwhile to reopen proceedings and develop the issues at a hearing[1][4][8][16][22][25][38][43][60]. The evidence need not establish conclusively that the respondent will prevail on the merits; rather, it must show a reasonable probability that, if the motion is granted and the evidence is presented at a reopened hearing, the result would be different[1][4][8][16][22][25][38][43][60]. Immigration judges and the BIA have recognized that this is a less stringent standard than requiring

conclusive proof of eligibility, particularly where the evidence involves questions of discretion or complicated factual or legal questions that require full development at a hearing[1][4][8][16][22][25][38][43][60].

The unavailability requirement has two distinct components. First, the evidence must not have been available at the time of the previous hearing[1][4][8][16][22][25][38][43]. This means that the evidence either did not exist at the time of the previous proceeding, or it was not accessible to the respondent despite the exercise of reasonable diligence[1][4][8][16][22][25][38][43]. Second, the evidence could not have been discovered or presented at the former hearing[1][4][8][16][22][25][38][43]. This second prong requires consideration of whether, through the exercise of due diligence, the respondent's counsel or the respondent themselves could have discovered and presented the evidence at the time of the original hearing[1][4][8][16][22][25][38][43]. If the respondent or their prior counsel simply failed to discover available evidence despite reasonable opportunity to do so, the evidence will not satisfy the unavailability requirement[1][4][8][16][22][25][38][43].

Typical examples of evidence that satisfies the materiality and unavailability requirements include newly approved family visa petitions showing that a respondent is now eligible for adjustment of status through a qualifying relative[4][23][27][43][57][60]; newly obtained country conditions reports documenting persecution targeting a specific group of which the respondent is a member, emerging after the respondent's initial asylum hearing[1][4][9][16][25][31][43][50]; medical evidence of a serious health condition that rendered the respondent unable to appear at a hearing, discovered after an in absentia order was issued[3][6][21][35]; or newly vacated criminal convictions that eliminate the basis for removability, where the conviction was overturned by a post-conviction court after the removal order was entered[16][22][45][46][52]. In contrast, evidence that was available at the time of the hearing but counsel simply failed to present does not satisfy the unavailability requirement, nor does evidence consisting of new legal arguments or legal strategies that counsel should have raised in the original proceeding[1][4][8][16][25][30][38][43][50].

In Absentia Orders and Special Procedures

When a respondent fails to appear for a scheduled removal hearing, immigration judges have authority under limited circumstances to issue a removal order in absentia-that is, to order the respondent removed without the respondent being physically present in the courtroom[6][32][35]. However, before such an order can be issued, strict statutory and regulatory requirements must be satisfied. The government must provide the respondent with proper notice of the hearing, and the respondent must be informed of the consequences of failing to appear[3][6][32][35]. If these notice requirements are not satisfied, the in absentia order is subject to rescission and should be vacated[3][6][32][35].

The procedural rules governing motions to rescind in absentia orders differ substantially from the general motions to reopen framework. There are three independent statutory bases upon which a respondent may seek rescission of an in absentia order[3][6][32][35]. The first basis is lack of proper notice[3][6][32][35]. If the respondent did not receive proper written notice of the hearing, either because notice was not served at all or because the notice did not comply with statutory requirements regarding time, place, and consequences of failing to appear, the order may be rescinded[3][6][32][35]. A critical aspect of the notice requirement is that the respondent must receive notice at the most recent address provided to immigration authorities; if the respondent failed to report a change of address and did not receive the notice as a result, rescission may not be available[3][6][32][35]. Importantly, motions to rescind based on lack of notice may be filed at any time-there is no 90-day or other deadline[3][6][16][32][35][43]. This unlimited deadline reflects the severity of the notice defect and the fact that due process principles require actual notification of legal proceedings[3][6][16][32][35][43].

The second basis for rescission is that the failure to appear was due to exceptional circumstances beyond the respondent's control[6][32][35]. Exceptional circumstances are defined by statute to include situations such as serious illness of the respondent or serious illness or death of an immediate family member, battery or extreme cruelty, or other compelling circumstances of similar gravity[6][32][35]. They do not include less compelling circumstances[6][32][35]. The statute provides that for motions based on exceptional circumstances, the respondent must file within 180 days of the in absentia order, or such motion is time-barred[6][32][35]. However, courts of appeals have recognized that this 180-day deadline is subject to equitable tolling in appropriate circumstances[6][32][35][43]. Motions based on exceptional circumstances are subject to the one-motion limitation unless the respondent demonstrates that one of the statutory exceptions applies[6][32][35].

The third basis for rescission is that the respondent was in federal or state custody at the time of the hearing, and the failure to appear was not through any fault of the respondent[3][6][32][35]. For example, if a respondent was incarcerated in county jail when their removal hearing was scheduled, and the respondent did not have an opportunity to obtain release or arrange their appearance, rescission may be warranted[3][6][32][35]. Like motions based on lack of notice, motions based on custody status are not subject to any temporal deadline-they may be filed at any time[3][6][16][32][35][43].

When evaluating whether exceptional circumstances exist, immigration judges apply a totality of the circumstances analysis[32][35]. The respondent must provide detailed, plausible explanations for why they failed to appear, supported by corroborating documentation such as medical records, affidavits from family members, weather reports, or other evidence[32][35]. Courts have recognized that factors such as prior attendance at immigration hearings, availability of relief, and efforts to inform the court of circumstances should be considered in determining whether extraordinary circumstances were present[32][35]. Additionally, courts have recognized that if a respondent arrives late to court but the immigration judge nonetheless issues an in absentia order in error, the respondent may move to reopen based on these facts without necessarily establishing that exceptional circumstances prevented them from appearing[32][35].

A critical procedural protection applies to motions to rescind in absentia orders: filing such a motion triggers an automatic stay of removal while the motion is pending before the immigration judge[6][32][35]. This means that the respondent cannot be removed while the immigration judge is considering the motion to rescind[6][32][35]. This automatic stay reflects the seriousness of the procedural defect and ensures that respondents do not lose their opportunity to be heard while seeking to reopen proceedings that may have been entered without proper notice[6][32][35].

Grounds for Reopening: Categorizing Reopening Requests

Motions to reopen fall into several analytical categories based on the legal grounds upon which reopening is sought. Understanding these categories is essential for developing effective strategies and explaining to clients why certain evidence does or does not support reopening.

The first category consists of motions to reopen based on new evidence of changed circumstances-evidence that demonstrates facts that were not known or could not have been presented at the time of the original hearing. This category is the broadest and encompasses a wide range of scenarios. One common example is marriage to a United States citizen or admission of a visa petition by a qualifying relative, which establishes eligibility for adjustment of status[4][23][27][43][57][60]. Another example is the birth of a United States citizen child after the removal order was entered, which can establish extreme hardship for purposes of cancellation of removal[4][23][27][43][60]. Additional examples include discovery of family members in the

United States who can attest to hardship, acquisition of employment or housing documentation establishing ties to the community, or evidence that the respondent's criminal case was overturned on appeal, eliminating the basis for removability[4][16][22][23][27][45][46][52]. For these factual grounds to support reopening, the respondent must demonstrate that the facts were not available and could not have been discovered at the time of the original proceeding[1][4][8][16][22][25][38][43].

The second category consists of motions to reopen based on changed country conditions-evidence that the situation in the respondent's country of origin has changed since the time of the original hearing in ways that make the respondent newly eligible for asylum, withholding of removal, or Convention Against Torture protection[1][4][6][9][16][25][31][43][50]. A respondent fleeing gang violence might discover new State Department reports documenting that gang violence has dramatically increased in their neighborhood or region[1][4][9][16][25][31][43][50]. An applicant claiming persecution based on political opinion might discover new country conditions reports documenting political repression targeting their particular viewpoint[1][4][9][16][25][31][43][50]. A woman fleeing gender-based violence might discover new documentation that her country has failed to criminalize domestic violence or has failed to enforce existing laws[1][4][9][16][25][31][43][50]. For these country conditions grounds, the motion may be filed at any time and is not subject to the one-motion numerical bar[1][4][6][9][16][25][31][43][50]. However, courts have divided on whether changed country conditions that became relevant only because the respondent's personal circumstances changed can support reopening[9][31].

The Ninth Circuit, which controls law in Northern California, has taken a more liberal approach and held that even changes in personal circumstance-under certain conditions-can support a motion to reopen based on changed country conditions if the respondent can establish that country conditions have materially changed[9][31]. In contrast, the Second and Third Circuits have adopted a stricter approach requiring that the changed country conditions themselves be independent of any change in the respondent's personal situation[9][31]. This circuit split has significant implications for applicants who have, for instance, become politically active after their initial removal order, or who have formed relationships or family connections that would make them targets for persecution under changed country conditions. Northern California practitioners can take advantage of Ninth Circuit precedent that is more favorable to reopening in these circumstances than the law that would apply in other jurisdictions[9][31].

The third category consists of motions to reopen based on ineffective assistance of counsel. These motions allege that the respondent's prior attorney provided representation that fell below an objective standard of reasonableness and that this deficient performance caused the respondent prejudice[4][14][17][23][45][52]. Ineffective assistance of counsel claims must satisfy specific procedural requirements established in [Matter of Lozada, 19 I&N Dec. 637 (BIA 1988)][https://scholar.google.com/scholar_case?case=ineffective+counsel+lozada], a foundational BIA precedent that remains controlling law[4][14][17][23][45][52]. These requirements, discussed in detail in a subsequent section, establish that the respondent must file an affidavit describing their agreement with prior counsel, must inform prior counsel of the ineffective assistance allegations and provide an opportunity to respond, and must demonstrate that prior counsel's deficiency caused cognizable prejudice to the respondent[4][14][17][23][45][52]. Ineffective assistance claims are often pursued in conjunction with equitable tolling arguments to overcome the 90-day filing deadline[4][14][17][23][45][52].

The fourth category consists of motions to reopen based on legal error or changed law. While these grounds might seem to sound in a motion to reconsider rather than a motion to reopen, courts have recognized limited circumstances in which changed law or discovery of legal error can support reopening. For example, if a BIA precedent decision is overruled or modified by the Board sitting en banc, or if a circuit court decision affects

the interpretation of law applicable to the respondent's case, reopening may be warranted[16][22][33][37][43]. Similarly, if the Board holds that a prior decision was incorrect and issues new binding precedent, respondents in similar cases may be able to reopen to take advantage of the changed legal landscape[16][22][33][37][43]. These legal grounds for reopening are narrow and must be distinguished from situations where the respondent simply had different legal arguments available that counsel should have raised[1][4][8][16][25][30][38][43][50].

Evidence Requirements and Affidavits

Every motion to reopen, without exception, must be supported by evidence[1][4][8][16][22][25][38][43][50][55]. The motion itself, consisting of counsel's arguments and assertions, does not constitute supporting evidence[1][4][8][16][22][25][38][43][50][55][56]. Rather, the motion must be accompanied by affidavits from the respondent and potentially from third parties, documentary evidence such as birth certificates, marriage certificates, medical records, country conditions reports, or other tangible proof[1][4][8][16][22][25][38][43][50][55][56]. The evidence must be detailed and specific, clearly establishing the facts upon which reopening is sought[1][4][8][16][22][25][38][43][50][55][56].

Affidavits are a critical component of most motions to reopen. An affidavit is a written statement made by an individual under oath or penalty of perjury, in which the individual describes facts within their personal knowledge[1][4][8][16][22][25][38][43][50][55]. For a respondent's own affidavit in support of a motion to reopen, the respondent should detail the new facts that have arisen since the original hearing, explain why these facts were not available at the time of the original proceeding, and describe the specific ways in which these facts support eligibility for relief or demonstrate that the original decision was improper[1][4][8][16][22][25][38][43][50][55]. The affidavit should be detailed and credible, avoiding vague generalities and instead providing specific dates, names, locations, and other identifying information[1][4][8][16][22][25][38][43][50][55].

The BIA has held that facts presented in affidavits supporting a motion to reopen must generally be accepted as true for purposes of evaluating the motion, unless the facts are "inherently unbelievable" or contradicted by documentary evidence of record[27][55]. This places an important burden on the moving party to craft affidavits that are plausible, internally consistent, and supported by corroborating evidence[27][55]. Practitioners should specifically argue in the motion to reopen that the respondent's claims are not inherently unbelievable and must be accepted as true for purposes of deciding the motion[27][55].

For post-conviction relief motions to reopen-where the respondent's criminal conviction has been overturned or vacated-the motion must include clear evidence that the conviction has actually been disturbed, not merely that the respondent is eligible for post-conviction relief or intends to seek such relief[16][22][49]. The respondent must attach a certified copy of the order vacating or modifying the conviction or other clear evidence that the conviction has been overturned[16][22][49]. A motion based merely on eligibility for post-conviction relief, without more, is insufficient to support reopening[16][22][49].

Filing Procedures, Venue, and Jurisdictional Requirements

The location where a motion to reopen is filed depends on the current procedural posture of the case. If the case is pending before an immigration judge-that is, if the judge has not yet issued a final decision or if a final decision has been issued but no appeal has been filed with the Board-the motion to reopen is filed with that immigration judge or, if the judge is unavailable, with the Chief Immigration Judge or a designated

deputy[1][8][16][22][37]. The motion must be filed with the immigration court having administrative control over the record of proceeding[8][22][37]. For immigration courts in Northern California, this typically means filing with the San Francisco Immigration Court at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][https://www.justice.gov/eoir/eoir-immigration-court-listing] or one of the satellite locations such as the Concord Hearing Location at [1855 Gateway Blvd., Suite 850, Concord, CA 94520][https://www.justice.gov/eoir/eoir-immigration-court-listing][1][8][16][22][37].

If a final decision has been issued by an immigration judge and an appeal has been filed with the Board of Immigration Appeals, or if the Board of Immigration Appeals has already issued a final decision in the case, the motion to reopen must be filed with the Board[1][4][8][11][16][22][24][25][28][37]. The BIA is located at [5107 Leesburg Pike, Falls Church, VA 22041][https://www.justice.gov/eoir/][1][4][8][11][16][22][24][25][28][37][53]. Electronic filing options are increasingly available through EOIR's electronic case access system (ECAS), and certain offices now require electronic filing for certain types of filings[1][4][8][11][16][22][24][25][28][37].

If a motion to reopen is filed while an appeal is still pending before the BIA, the BIA may treat that motion as a motion to remand for further proceedings before the immigration judge[13][19][25][27][30][43]. This is an important strategic distinction because a motion to remand is not subject to the 90-day deadline or the one-motion numerical bar when new evidence or changed circumstances arise during the pendency of the appeal[13][19][25][27][30][43]. This means that if a respondent's case is on appeal before the BIA and new evidence becomes available-such as approval of a visa petition-filing a motion for remand to allow the immigration judge to consider the new evidence may be preferable to attempting to file a motion to reopen with the immigration court[13][19][25][27][30][43][55].

Critically, if the respondent's case is subject to a petition for review pending in federal court, the motion to reopen must still be filed with the Board of Immigration Appeals, not with the federal court[13][19][25][27]. However, if the BIA grants the motion to reopen, the respondent's case will be removed from the federal court's jurisdiction because there will no longer be a final order for the court to review, as the removal order will have been vacated[13][19][25][27].

Service requirements are also critical to proper filing. The respondent must serve the motion to reopen on the opposing party, which is typically the Immigration and Customs Enforcement Office of the Principal Legal Advisor (OPLA) in the relevant field office jurisdiction[8][16][22][25][37][51]. If the respondent is represented by an attorney, the motion must include an entry of appearance (Form [EOIR-28][https://www.justice.gov/eoir/] or Form EOIR-61) establishing the attorney as counsel of record[1][8][16][22][37][51]. A certificate of service, signed by the moving party or counsel, must be included with the motion certifying that a copy was served on DHS and, if applicable, providing the method of service[8][16][22][25][37][51]. Failure to properly serve the motion may result in the motion being rejected as procedurally defective[8][16][22][25][37][51].

To ensure that the court has the respondent's current contact information, a Form [EOIR-33/IC (Change of Address/Contact Information Form)][https://www.justice.gov/eoir/] should be filed with the motion[1][16][22][37][51]. This form must be filed within five working days of any change in the respondent's contact information or address[1][16][22][37][51]. If the respondent is incarcerated, service on DHS can be made through DHS's electronic eService portal or by mail to the field office address[1][16][22][37][51][56].

Filing Fees and Fee Waivers

Most motions to reopen require the payment of a filing fee[18][26][29][43][51]. As of the current date, the filing fee for a motion to reopen filed with an immigration court is [referenced in EOIR's fee schedule][https://www.justice.gov/eoir/types-appeals-motions-and-required-fees], and the fee must be paid to DHS before or with the filing of the motion[18][26][29][43][51]. The fee payment receipt must be attached to the motion when it is filed with the immigration court[18][26][29][43][51]. A separate fee, paid directly to DHS, is required for any underlying application for relief that will be pursued if the motion to reopen is granted, though if the motion to reopen is denied, that fee will not be required[18][26][29][43][51].

However, there are important exceptions to the filing fee requirement. No filing fee is required for a motion to reopen that is based exclusively on an application for asylum, withholding of removal, or Convention Against Torture protection, or for any motion to reopen for which the only relief sought is termination of proceedings[18][26][29][43][51]. No filing fee is required for a joint motion to reopen agreed upon by all parties and jointly filed[18][26][29][43][51]. No filing fee is required for a motion to reopen a removal order entered in absentia if the motion is based on lack of proper notice pursuant to [8 U.S.C. § 240(b)(5)(C)(ii)][https://www.law.cornell.edu/uscode/text/8/1229a][18][26][29][43][51]. No filing fee is required for a motion that requests only a stay of removal[18][26][29][43][51]. No filing fee is required for any motion filed by the Department of Homeland Security[18][26][29][43][51].

If a respondent cannot afford to pay the filing fee, a fee waiver may be requested on [Form EOIR-26A][https://www.justice.gov/eoir/][18][26][29][43][51]. The fee waiver request must be submitted with the motion and must include information about the respondent's monthly income, expenses, and supporting documentation demonstrating inability to pay[18][26][29][43][51]. The fee waiver request must be signed under penalty of perjury[18][26][29][43][51]. The immigration judge or, for BIA motions, the Board will decide the fee waiver request and issue a written decision explaining whether the fee waiver is granted or denied[18][26][29][43][51]. Importantly, a fee waiver is not automatic; the respondent must affirmatively demonstrate economic hardship and inability to pay[18][26][29][43][51]. If a fee waiver request is denied, the respondent generally has 15 days in which to resubmit the motion with the required filing fee or a revised fee waiver request[18][26][29][43][51].

Equitable Tolling and Extended Deadlines for Extraordinary Circumstances

While the 90-day deadline for filing a motion to reopen is strictly enforced, the Supreme Court and courts of appeals have recognized that this deadline is subject to equitable tolling in extraordinary circumstances[4][6][12][14][19][23][25][43][51]. Equitable tolling is a legal doctrine that permits a court or administrative agency to extend a filing deadline when circumstances beyond the party's control prevented timely filing[4][6][12][14][19][23][25][43][51]. The Supreme Court's decision in [Guerrero-Lasprilla v. Barr, 140 S. Ct. 1062 (2020)][https://scholar.google.com/scholar_case?case=guerrero] established that courts of appeals have jurisdiction to consider whether equitable tolling applies to the 90-day motion to reopen deadline when the underlying facts are not in dispute[4][6][12][14][19][23][25][43][51][56][60].

To establish that equitable tolling applies, a respondent must demonstrate two essential elements[4][6][12][14][19][23][25][43][51][56][60]. First, the respondent must show that they exercised diligence in pursuing reopening[4][6][12][14][19][23][25][43][51][56][60]. This means that the respondent, upon becoming aware of the basis for reopening or with reasonable inquiry, acted promptly to consult with counsel and pursue the motion[4][6][12][14][19][23][25][43][51][56][60]. Simply waiting years after becoming aware that reopening was possible will generally not satisfy the diligence requirement[4][6][12][14][19][23][25][43][51][56][60]. Second, the respondent must show that the delay was caused by extraordinary circumstances beyond their control[4][6][12][14][19][23][25][43][51][56][60].

Circumstances that courts have found to meet this threshold include ineffective assistance of counsel that prevented the respondent from filing a timely motion, fraud or misconduct by prior counsel, or serious obstacles to accessing legal representation[4][6][12][14][19][23][25][43][51][56][60].

The most common basis for equitable tolling in the immigration context is ineffective assistance of prior counsel[4][6][12][14][19][23][45][52]. If the respondent's prior attorney failed to file a timely motion to reopen despite the respondent's request or awareness that reopening was necessary, and if this failure resulted from the attorney's incompetence or misconduct rather than the respondent's own actions, equitable tolling may be appropriate[4][6][12][14][19][23][45][52]. However, the respondent must still follow the [Lozada][https://scholar.google.com/scholar_case?case=ineffective+counsel+lozada] procedures, discussed below, to properly raise ineffective assistance claims[4][6][12][14][19][23][45][52].

For motions based on exceptional circumstances that result in in absentia orders, courts have held that the 180-day deadline is also subject to equitable tolling[6][32][35][43]. All appellate courts that have addressed this issue have recognized equitable tolling as available for the 180-day exceptional circumstances deadline[6][32][35][43]. This means that even if more than 180 days have passed since an in absentia order was entered, a respondent may still file a motion to rescind if the respondent exercised diligence and the delay was caused by extraordinary circumstances, such as lack of access to counsel or failure of prior counsel to file the motion[6][32][35][43].

Courts have cautioned, however, that equitable tolling is an extraordinary remedy and should not be invoked for ordinary attorney negligence or as a means to excuse the client's own passivity[4][6][12][14][19][23][25][43][51][56][60]. If the respondent had knowledge of the facts supporting reopening and simply delayed months or years in seeking counsel or pursuing the motion, equitable tolling will likely be denied[4][6][12][14][19][23][25][43][51][56][60]. The respondent must demonstrate that, upon discovering the relevant facts, they acted with diligence to pursue relief and that extraordinary circumstances, not ordinary negligence, caused the delay[4][6][12][14][19][23][25][43][51][56][60].

Equitable Tolling Based on Ineffective Assistance of Counsel: The Lozada Framework

When a respondent seeks to reopen based on ineffective assistance of counsel and to invoke equitable tolling to overcome a missed deadline, the respondent must comply with specific procedural requirements established in the seminal BIA decision [Matter of Lozada, 19 I&N Dec. 637 (BIA 1988)][https://scholar.google.com/scholar_case?case=ineffective+counsel+lozada][4][14][17][23][45][52]. These Lozada requirements serve as gatekeepers ensuring that ineffective assistance claims are genuine and that prior counsel receives adequate opportunity to respond[4][14][17][23][45][52]. Understanding and complying with these requirements is essential to successfully mounting an ineffective assistance argument[4][14][17][23][45][52].

The first Lozada requirement is that the respondent must file a detailed affidavit describing the facts that form the basis of the ineffective assistance claim[4][14][17][23][45][52]. This affidavit should describe the respondent's understanding of their agreement with the prior attorney, what the attorney represented to the respondent, what services the attorney provided or failed to provide, and the specific ways in which the attorney's conduct fell below professional standards[4][14][17][23][45][52]. The affidavit should be detailed and specific, providing dates, names, and descriptions of conversations or events that demonstrate the deficiency in counsel's representation[4][14][17][23][45][52]. Vague assertions that counsel was ineffective, without specific factual support, will not satisfy the Lozada requirement[4][14][17][23][45][52].

The second Lozada requirement is that the respondent must provide notice to prior counsel of the allegations

of ineffective assistance and must provide an opportunity for prior counsel to respond[4][14][17][23][45][52]. This requirement acknowledges that prior counsel should have an opportunity to explain their conduct or dispute the respondent's characterization of events[4][14][17][23][45][52]. In practice, this is typically accomplished by serving the motion to reopen and supporting affidavits on prior counsel's office, with a cover letter requesting a response[4][14][17][23][45][52].

The third Lozada requirement is that the respondent must demonstrate whether a complaint has been filed with the appropriate state bar or attorney disciplinary authority regarding the alleged ineffective assistance[4][14][17][23][45][52]. If a complaint has been filed, the respondent should attach proof of filing to the motion[4][14][17][23][45][52]. If no complaint has been filed, the respondent should explain why not-for example, because the respondent did not have sufficient information to file a complaint, or because the respondent was unaware of the option to do so, or other legitimate reasons[4][14][17][23][45][52]. Failure to file a bar complaint, without explanation, does not necessarily preclude an ineffective assistance claim, but the immigration judge or Board will consider this factor in evaluating the credibility and seriousness of the claim[4][14][17][23][45][52].

Beyond these procedural requirements, the respondent must also demonstrate the substantive elements of an ineffective assistance claim[4][14][17][23][45][52]. The respondent must show, first, that counsel's performance was deficient-that is, that counsel's conduct fell below an objective standard of reasonableness[4][14][17][23][45][52]. Examples of potentially deficient performance include failure to discover and investigate available evidence, failure to pursue viable legal claims, failure to advise the client regarding eligibility for relief, failure to properly prepare for the hearing, or failure to maintain communication with the client[4][14][17][23][45][52].

Second, the respondent must demonstrate that counsel's deficient performance caused prejudice[4][14][17][23][45][52]. Prejudice means that there is a reasonable probability that, absent counsel's deficiency, the outcome of the proceedings would have been different[4][14][17][23][45][52]. In other words, the respondent must show that had counsel not been ineffective, there is a meaningful chance that the respondent would have prevailed in seeking relief or avoiding removal[4][14][17][23][45][52]. This is sometimes referred to as the "but-for" test: but for counsel's ineffective performance, the result would have been different[4][14][17][23][45][52].

Importantly, recent court decisions have held that different circuits apply slightly different standards for demonstrating prejudice in the ineffective assistance context[4][14][17][23][45][52]. The Ninth Circuit, which controls in Northern California, applies a standard requiring that the respondent show a "reasonable likelihood of success on the merits" of the underlying claim for relief[4][14][17][23][45][52]. Under this standard, if the respondent can establish that, but for counsel's failure to raise a particular claim or present particular evidence, there would be a reasonable likelihood that the respondent would have prevailed on that claim, prejudice is established[4][14][17][23][45][52]. This is a somewhat lower bar than requiring clear and convincing proof of eligibility, making it more feasible to establish prejudice in cases where the evidence or legal arguments should have been presented but were not[4][14][17][23][45][52].

Changed Country Conditions for Asylum and Related Protection

Motions to reopen based on changed country conditions are distinct from other reopening motions in that they are not subject to the 90-day deadline or the one-motion numerical limitation[1][4][6][9][16][25][31][43][50]. This exception recognizes that asylum applicants face an ongoing threat in their countries of origin and that material changes to country conditions can emerge at any time, making an applicant newly eligible for

protection even years after a removal order[1][4][6][9][16][25][31][43][50].

To support a motion to reopen based on changed country conditions, the respondent must present evidence that the situation in the country of origin or nationality has materially changed since the time of the original hearing[1][4][6][9][16][25][31][43][50]. The evidence must establish that the changed conditions are material and were not available and could not have been discovered at the time of the original hearing[1][4][6][9][16][25][31][43][50]. The respondent must also demonstrate, or at minimum present evidence supporting the inference, that the changed conditions make the respondent newly eligible for asylum, withholding of removal, or Convention Against Torture protection[1][4][6][9][16][25][31][43][50].

Typical sources of country conditions evidence include State Department Country Reports on Human Rights Practices, Human Rights Watch reports, Amnesty International reports, UNHCR reports, United Nations Office on Drugs and Crime reports, and academic research[1][4][6][9][16][25][31][43][50]. For Northern California cases, practitioners frequently utilize country conditions reports specific to Central America-particularly Guatemala, El Salvador, and Honduras-reflecting the demographic composition of the San Francisco Asylum Office caseload and Northern California immigration court docket[1][4][6][9][16][25][31][43][50]. Recent reports document dramatically escalating gang violence and cartel activity, increasing rates of femicide and gender-based violence, political repression and persecution of journalists and opposition political figures, and serious failures of judicial systems and police protection[1][4][6][9][16][25][31][43][50].

An important and contested issue in changed country conditions cases is whether the respondent's personal circumstances can be considered in evaluating whether changed country conditions support reopening[9][31]. The Ninth Circuit has held that changed country conditions do not lose their relevance merely because they have become material to the respondent's case only because of changed personal circumstances on the respondent's part[9][31]. For example, if a respondent becomes politically active after the removal order and thereafter discovers that political opponents are being persecuted in the country of origin, the Ninth Circuit holds that the respondent can move to reopen based on the changed country conditions, even though the country's treatment of political opponents may have been unchanging but is now relevant due to the respondent's personal activism[9][31]. This approach is more favorable to respondents than the position taken by the Second and Third Circuits, and Northern California practitioners should emphasize this Ninth Circuit advantage[9][31].

The motion must be accompanied by copies of the country conditions reports and other evidentiary materials establishing the changed country conditions[1][4][6][9][16][25][31][43][50]. The respondent's affidavit should connect the country conditions evidence to the respondent's personal circumstances and explain how the changed conditions affect the respondent's eligibility for protection[1][4][6][9][16][25][31][43][50]. If the respondent's asylum or withholding claim depends on membership in a particular group (for instance, LGBTQ+ individuals, a targeted ethnic group, or members of a particular political party), the country conditions evidence should detail the level and nature of persecution targeting that group[1][4][6][9][16][25][31][43][50]. If the respondent's claim depends on government inability or unwillingness to protect the respondent, the evidence should address both the prevalence of the harm and the government's response[1][4][6][9][16][25][31][43][50].

Domestic Violence-Based Reopening: VAWA and Extended Deadlines

A special statutory provision extends reopening deadlines for certain battered spouses, children, and parents seeking to reopen removal proceedings to pursue relief under the Violence Against Women

Act[1][6][16][19][22][25][31][43][51][55]. Under [8 U.S.C. § 1229a(c)(7)(C)(iv)][https://www.law.cornell.edu/uscode/text/8/1229a], a motion to reopen filed by a qualified battered spouse, child, or parent may be filed within one year of the final removal order, even if the 90-day deadline has expired[1][6][16][19][22][25][31][43][51][55]. This extended deadline reflects recognition of the particular vulnerability and powerlessness of domestic violence survivors and the barriers they often face in accessing the legal system[1][6][16][19][22][25][31][43][51][55].

To qualify for this extended deadline, the respondent must meet several criteria[1][6][16][19][22][25][31][43][51][55]. First, the respondent must be the spouse, child, or parent of an abusive U.S. citizen or lawful permanent resident[1][6][16][19][22][25][31][43][51][55]. Second, the respondent must be seeking to reopen to pursue relief under the VAWA provisions, which allow battered individuals to self-petition for relief without requiring their abuser's cooperation[1][6][16][19][22][25][31][43][51][55]. Third, the respondent must file the motion within one year of the final removal order[1][6][16][19][22][25][31][43][51][55]. Fourth, the respondent must be physically present in the United States at the time of filing[1][6][16][19][22][25][31][43][51][55]. Fifth, the respondent must be physically present in the United States at the time the removal order was entered[1][6][16][19][22][25][31][43][51][55].

Additionally, if the respondent can establish extraordinary circumstances or extreme hardship to the respondent's child, the one-year deadline itself can be waived, extending the deadline further[1][6][16][19][22][25][31][43][51][55]. This provides a safety valve for domestic violence survivors who did not become aware of their eligibility for VAWA relief within the one-year window[1][6][16][19][22][25][31][43][51][55].

Importantly, filing a motion to reopen under VAWA provisions triggers an automatic stay of removal while the motion is pending[1][6][16][19][22][25][31][43][51][55]. This means that the respondent will not be removed while the motion to reopen is being adjudicated[1][6][16][19][22][25][31][43][51][55]. This automatic stay protection reflects the severity of the procedural defect (entering a removal order against a battered individual before they had opportunity to apply for VAWA relief) and ensures that the respondent remains available for the reopened proceedings[1][6][16][19][22][25][31][43][51][55].

Motion Content, Structure, and Strategic Considerations

A motion to reopen should be organized and structured to clearly present the legal basis for reopening and the factual support for the motion. The motion should include an introductory section identifying the parties, the immigration judge or Board, the respondent's alien file number, and the basis for the motion[1][4][8][16][22][25][43][51][55]. The motion should include a concise statement of facts describing the respondent's background, the original removal proceeding, the removal order, and the new facts or circumstances that have arisen[1][4][8][16][22][25][43][51][55].

The motion should include a section setting forth the legal standard for reopening, citing the applicable statutes and regulations[1][4][8][16][22][25][43][51][55]. The motion should then present the legal arguments supporting reopening, addressing each potential basis for reopening that applies to the respondent's case and demonstrating how the evidence or circumstances satisfy that basis[1][4][8][16][22][25][43][51][55]. If the motion is based on new evidence, the argument should establish that the evidence is material and was not available at the time of the original hearing[1][4][8][16][22][25][43][51][55]. If equitable tolling is being invoked to overcome a missed deadline, the motion should include detailed factual support for the equitable tolling argument, demonstrating the respondent's diligence and the extraordinary circumstances causing the

delay[1][4][8][16][22][25][43][51][55].

If the motion to reopen is filed to permit the respondent to apply for a particular form of relief-such as cancellation of removal, adjustment of status, asylum, withholding of removal, or VAWA relief-the motion should include a section demonstrating prima facie eligibility for that relief[1][4][8][16][22][25][43][51][55][56]. Prima facie eligibility means that, accepting the facts alleged in the motion as true, the respondent would be eligible for the relief sought[1][4][8][16][22][25][43][51][55][56]. This showing is less stringent than proving full eligibility, but it provides some assurance to the adjudicator that reopening would not be futile[1][4][8][16][22][25][43][51][55][56].

The motion should conclude with a clear statement of what relief is requested-typically, that the motion be granted, that the existing removal order be vacated, that the proceedings be reopened, and that the respondent be permitted to pursue specified relief or that a new hearing be conducted[1][4][8][16][22][25][43][51][55][56]. If the respondent seeks a stay of removal pending adjudication of the motion, this should be explicitly requested in the motion[1][4][8][16][22][25][43][51][55][56].

The motion must be accompanied by all relevant exhibits, which should be clearly labeled and organized[1][4][8][16][22][25][43][51][55][56]. Exhibits typically include the respondent's affidavit, the original removal order, any approved applications or petitions, country conditions reports, medical records, marriage certificates or other civil documents, expert reports if applicable, and other supporting documentation[1][4][8][16][22][25][43][51][55][56]. Each exhibit should be referenced in the motion text and should support a specific assertion or argument[1][4][8][16][22][25][43][51][55][56].

Strategic considerations should guide the presentation of the motion. The motion should be tailored to the specific immigration judge or Board panel that will adjudicate it, where information about judicial preferences is available[1][4][8][16][22][25][43][51][55][56]. San Francisco Immigration Court judges have varying procedural tendencies and receptivity to different types of motions; experienced Northern California practitioners should consider these known preferences in structuring the motion[1][4][8][16][22][25][43][51][55][56]. The motion should be detailed and comprehensive, addressing potential counterarguments or weaknesses in the motion and explaining why those counterarguments fail[1][4][8][16][22][25][43][51][55][56].

Government Response and the Role of Prosecutorial Discretion

Once a motion to reopen is filed with an immigration court, DHS has up to ten working days to file a response, unless the immigration judge sets a different deadline[1][8][16][22][37][51]. If the motion is filed with the Board of Immigration Appeals, DHS has thirteen days to file an opposition[4][8][16][22][25][37][43]. If DHS does not file a response within the required time frame, the motion is deemed unopposed, and the immigration judge or Board is more likely to grant the motion[1][4][8][16][22][25][37][43][51].

The role of prosecutorial discretion merits particular attention. In April 2022, ICE's Principal Legal Advisor issued the "Doyle Memorandum," a significant guidance document that instructed OPLA (Office of the Principal Legal Advisor) attorneys how to exercise prosecutorial discretion in immigration removal proceedings[46][56][59]. Although prosecutorial discretion-the inherent authority of law enforcement to decide whether and to what degree to enforce the law-was substantially curtailed during certain recent administrations, the Doyle Memorandum identified circumstances in which OPLA attorneys should consider

joining motions to reopen or exercising discretion to support reopening[46][56][59].

According to the Doyle Memorandum guidance, OPLA attorneys should focus on joining motions to reopen in cases where noncitizens are moving to reopen to dismiss the case and seek relief before USCIS, or where noncitizens are seeking to reopen to pursue newly available relief before immigration court and meet criteria for discretion[46][56][59]. OPLA guidance also encourages attorneys to exercise prosecutorial discretion in cases where noncitizens qualify both under the law and in the attorney's discretion, including cases where the noncitizen appears eligible for mandatory protection via withholding of removal or Convention Against Torture protection[46][56][59]. However, practitioners should note that as of December 2025, the Doyle memorandum is no longer being adhered to, and no replacement guidance has been issued, creating significant uncertainty about current DHS positioning on prosecutorial discretion matters[46][56][59].

Practitioners should proactively engage with OPLA when considering joint motions to reopen or when seeking DHS cooperation[46][56][59]. Local EOIR field offices have been instructed to establish Standard Operating Procedures (SOPs) for receiving prosecutorial discretion requests, and practitioners should determine the specific procedures for their local office[46][56][59]. Strategic engagement with OPLA before filing a motion can sometimes result in DHS agreement to join the motion, which significantly improves the likelihood of the motion being granted and eliminates most potential procedural disputes[46][56][59].

San Francisco Immigration Court Context and Procedural Considerations

The San Francisco Immigration Court, located at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][https://www.justice.gov/eoir/eoir-immigration-court-listing], handles removal proceedings for a geographic area encompassing Northern California[1][16][22][37][51]. The court's docket is heavily weighted toward asylum and protection-based claims, particularly from Central American countries (Guatemala, El Salvador, Honduras) and Mexico[1][16][22][37][51]. The San Francisco court has established local rules and practices that diverge from the national defaults in certain respects[1][16][22][37][51].

Motions to reopen filed with the San Francisco Immigration Court should comply with the court's local practice requirements, which are available through the EOIR website and the Immigration Court Practice Manual chapter addressing San Francisco-specific procedures[1][16][22][37][51]. Practitioners should be aware of specific immigration judges' known preferences regarding motion practice, continuance policies, and evidence presentation-information that can be gathered from experienced local counsel, AILA committee members, or through direct communication with the judge's chambers[1][16][22][37][51].

Service on DHS in Northern California is typically made on the Immigration and Customs Enforcement Office of the Principal Legal Advisor at the ICE field office location handling the respondent's case. For Northern California, this is typically the [San Ysidro Field Office or San Francisco Field Office][https://www.ice.gov/contact/legal][1][16][22][37][51][56]. Contact information and specific service procedures should be obtained from the immigration court or from the EOIR website[1][16][22][37][51][56].

The San Francisco Asylum Office, which makes credible fear determinations and conducts certain asylum interviews, has specific interview patterns and procedures that may be relevant to motion strategy in cases where the respondent will be pursuing asylum claims in reopened proceedings[1][16][22][37][51]. Understanding these local procedures and practices can inform the structure and content of the motion[1][16][22][37][51].

Stays of Removal and Automatic Stay Provisions

Filing a motion to reopen does not automatically stay the respondent's removal[1][4][8][16][22][25][37][43][51][55]. This means that unless the respondent specifically requests and obtains a stay, DHS can proceed with the respondent's removal even while the motion to reopen is pending[1][4][8][16][22][25][37][43][51][55]. The respondent should therefore file a separate motion to stay removal, or include a request for stay in the motion to reopen, explicitly requesting that the immigration judge order that the respondent not be removed while the motion is pending[1][4][8][16][22][25][37][43][51][55].

In making a decision on a motion for stay of removal, the immigration judge typically applies a preliminary injunction standard: (1) whether the respondent has made a substantial showing of likelihood of success on the merits of the motion to reopen; (2) whether the respondent would suffer irreparable injury if removed before the motion is decided; (3) whether a stay would harm DHS or the government; and (4) the public interest[1][4][8][16][22][25][37][43][51][55]. The respondent should address each of these factors in the request for stay[1][4][8][16][22][25][37][43][51][55].

However, there are important exceptions where an automatic stay attaches upon filing of a motion, meaning that the respondent cannot be removed regardless of whether a stay was explicitly requested. An automatic stay applies when a motion to rescind an in absentia removal order is filed under [8 U.S.C. § 1229a(b)(5)(C)][https://www.law.cornell.edu/uscode/text/8/1229a][6][16][32][35][43]. Similarly, an automatic stay applies when a motion to reopen is filed by a qualified battered spouse, child, or parent under the VAWA provisions, provided that the motion establishes a prima facie case for the relief applied for[1][6][16][19][22][25][31][43][51][55]. These automatic stays reflect the seriousness of the procedural or substantive defects that may require reopening and ensure that respondents do not lose their opportunity to pursue relief while waiting for adjudication of their motions[1][6][16][19][22][25][31][43][51][55].

Current Legal Landscape: Recent Developments and Emerging Trends

The legal landscape governing motions to reopen has been relatively stable in terms of core statutory and regulatory framework, but recent developments at the Board of Immigration Appeals and in federal courts have affected application of these principles. The Board of Immigration Appeals has issued recent decisions addressing when equitable tolling applies to the 90-day deadline, the evidentiary standard for establishing materiality of new evidence, and the proper procedures for adjudicating ineffective assistance claims[4][16][22][33][37][43][48]. Courts of appeals have continued to develop precedent on circuit-specific issues such as the treatment of changed personal circumstances in changed country conditions cases[9][31].

Administrative closure has emerged as a significant procedural issue affecting motion practice. The Administrative Closure Final Rule, effective in 2024, established new procedures and factors for determining when cases may be administratively closed[39][54]. When a case is closed, the proper motion to restore active proceedings is a motion to recalendar, not a motion to reopen[39][42][54]. This distinction has led to increased litigation regarding the appropriate characterization of various procedural mechanisms[39][42][54].

The intersection between post-conviction relief and immigration proceedings continues to develop as well. California's [Penal Code § 1473.7][https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?sectionNum=1473.7&lawCode=PEN] permits vacatur of convictions based on immigration consequences, and successful vacatures can support motions to reopen immigration proceedings[16][22][45][46][52]. Recent California judicial decisions have expanded the scope of [PC § 1473.7][https://leginfo.legislature.ca.gov/faces/codesdisplaySection.xhtml?sectionNum=1473.7&lawCode=PEN] relief, creating new opportunities for immigration respondents to challenge underlying convictions and

thereby eliminate grounds for removability[16][22][45][46][52].

Conclusion: Strategic Framework for Motion Practice

Motions to reopen represent a critical procedural mechanism for immigration respondents seeking to challenge or reconsider final removal orders. The statutory framework provides a generally applicable 90-day deadline and one-motion limitation, but these rules contain important exceptions for changed country conditions, in absentia rescission, joint motions, VAWA cases, and other specified circumstances. The substantive requirements-that evidence be material and previously unavailable, and that the respondent demonstrate prima facie eligibility for relief-create a meaningful but not insurmountable threshold for reopening.

Practitioners should approach motion to reopen practice by first establishing the procedural posture of the case and determining the correct venue for filing. Second, practitioners should identify all potential legal bases for reopening that might apply to the respondent's circumstances, including new facts, changed country conditions, in absentia rescission, ineffective assistance, and post-conviction relief. Third, practitioners should gather comprehensive evidence supporting reopening, including affidavits, documentary proof, country conditions reports, expert reports, and other corroborating materials. Fourth, practitioners should evaluate whether equitable tolling applies to overcome missed deadlines, and if so, develop detailed factual support for the tolling argument. Finally, practitioners should consider engaging with DHS to explore whether joint motion cooperation is possible, as joint motions offer significantly higher likelihood of success and eliminate most procedural disputes.

The process of litigating motions to reopen demands precision in procedural compliance, comprehensive factual development, and strategic engagement with all parties. Immigration respondents who face removal despite potential eligibility for relief or who suffered procedural defects in their removal proceedings should not hesitate to pursue motions to reopen, as these motions remain a vital mechanism for ensuring that removal orders are proper, lawful, and based on complete evidence and circumstances.

References and Sources

[1] Executive Office for Immigration Review, 5.7 - Motions to Reopen

[4] Immigrant Legal Resource Center, Reopening Removal Proceedings Based on the Ineffective Assistance of Prior Counsel (June 2025)

[6] National Immigration Litigation Alliance, In Absentia Orders Practice Advisory (June 2024)

[8] 8 C.F.R. § 1003.2

[9] University of Chicago Law Review, Changed Countries, Changed Circumstances: Reopening Removal Proceedings under 8 USC §1229a

[11] Executive Office for Immigration Review, 5.6 - Motions to Reopen (BIA)

[12] Monreal Law, Motions to Reopen or Reconsider: Fixing Old Removal Orders

[13] American Immigration Council, The Basics of Motions to Reopen EOIR-Issued Removal Orders

[14] Clinic Legal, Sample Equitable Tolling Argument for Motion to Reopen

[16] Executive Office for Immigration Review, How to File a Motion to Reopen

[17] Immigrant Legal Resource Center, Reopening Removal Proceedings Based on Ineffective Assistance

[18] Executive Office for Immigration Review, Types of Appeals, Motions, and Required Fees

[19] American Immigration Council, Rescinding an In Absentia Order of Removal

[22] 8 C.F.R. § 1003.23

[23] Immigrant Legal Resource Center, Motions with the BIA

[24] Executive Office for Immigration Review, 5.6 - Motions to Reopen (BIA procedures)

[25] Texas Immigration Law Council, Differences Between Motions to Reopen and Motions to Reconsider

[26] Executive Office for Immigration Review, 3.4 - Filing Fees

[27] Immigrant Legal Resource Center, Reopening Removal Proceedings (June 2025)

[28] Executive Office for Immigration Review, 5.6 - Motions to Reopen (BIA Reference Materials)

[29] Executive Office for Immigration Review, Types of Appeals, Motions and Fees

[30] Ninth Circuit Court of Appeals, Motions to Reopen or Reconsider

[31] University of Chicago Law Review on Changed Country Conditions

[32] Immigration Litigation, In Absentia Orders (June 2024)

[33] Executive Office for Immigration Review, BIA Precedent Chart - Motions to Reconsider

[35] American Immigration Council, Rescinding an In Absentia Order of Removal

[37] Immigrant Defense Project, Sample Motion to Reconsider/Reopen

[38] Executive Office for Immigration Review, 5.8 - Motions to Reconsider

[39] Immigrant Legal Resource Center, Responding to DHS Motions to Recalendar (July 2025)

[40] Executive Office for Immigration Review, Form EOIR-42B Application for Cancellation

[42] Executive Office for Immigration Review, 5.9 - Other Motions

[43] American Immigration Council, The Basics of Motions to Reopen (January 2025)

[45] Immigrant Legal Resource Center and NIPNLG, Post-Conviction Relief Motions to Reopen (June 2024)

[46] Northwest Immigration Rights Project, Template Motions to Reopen under Mendez Rojas Settlement

[48] AILA, EOIR Issues Memo on New Asylum Procedures (PM 21-09)

[50] Executive Office for Immigration Review, 5.6 - Motions to Reopen (Full Reference Materials)

[51] ABA ProBAR, A Legal Guide for ICE Detainees

[52] Immigrant Legal Resource Center, Practice Advisory: Post-Conviction Relief Motions to Reopen

[53] Northwest Immigration Rights Project, Template Motions to Reopen

[54] Immigrant Legal Resource Center, Responding to DHS Motions to Recalendar (July 2025)

[55] American Immigration Council, The Basics of Motions to Reopen

[56] Immigration Justice, Prosecutorial Discretion in Immigration Cases

[57] Avvo, Can I File Motion to Reopen and Adjust Status at the Same Time

[59] Clinic Legal, ICE Issues Clarifying Memo on Prosecutorial Discretion

[60] Executive Office for Immigration Review, BIA Precedent Chart - Motions to Reconsider