

Immigration Judge Removal Orders: Legal Framework, Rights, and Remedies

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

IMMIGRATION JUDGE REMOVAL ORDERS: COMPREHENSIVE LEGAL FRAMEWORK, RIGHTS, AND REMEDIES

Executive Summary

An order of removal—the modern statutory term for what was formerly called a deportation order—represents a formal decision by an immigration judge determining that a noncitizen is deportable or inadmissible and must be removed from the United States.[1] This comprehensive report addresses the constitutional and statutory authority underlying such orders, the procedural requirements immigration judges must follow before issuing removal orders, the substantive grounds for challenging orders through post-order motions and appeals, the various forms of relief from removal available to respondents, the mechanics of the 90-day removal period following finality, and the special protections available when removal orders are entered in absentia. The landscape governing removal orders has evolved substantially, with recent Board of Immigration Appeals decisions and Supreme Court precedents reshaping the procedural requirements for proper Notice to Appear (NTA) issuance, the standards of appellate review applicable to immigration judge factual findings, and the rights available to respondents facing removal. This report synthesizes the current legal framework as of February 2026, identifying controlling statutory authority, regulatory provisions, binding appellate precedent, and emerging questions at the intersection of removal proceedings and constitutional due process requirements. For practitioners in Northern California operating within the Ninth Circuit, this framework operates alongside distinct procedural tendencies at the San Francisco Immigration Court and specific enforcement patterns within the Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Field Office 1, necessitating integration of localized practice knowledge with broader national principles.

Constitutional and Statutory Authority for Immigration Judge Removal Orders

The authority for immigration judges to issue removal orders derives from the Immigration and Nationality Act (INA), specifically codified at [8 U.S.C. § 1229a][1], which establishes the foundational framework for all removal proceedings in the United States. The statute vests removal authority in immigration judges and grants them explicit power to conduct proceedings for deciding the inadmissibility or deportability of any alien placed before them.[1] This authority carries constitutional significance because it represents a delegation of executive enforcement power through administrative proceedings that must comply with due process requirements under the Fifth Amendment. The Supreme Court has recognized that noncitizens in removal proceedings are entitled to fundamentally fair hearings, and the constitutional dimension of removal authority constrains how immigration judges may exercise their removal-deciding powers.[1]

The statutory framework distinguishes between inadmissibility and deportability as the two primary grounds upon which an immigration judge may issue a removal order.[1] Inadmissibility grounds, enumerated at [8 U.S.C. § 1182(a)][15], apply to persons seeking admission or at the border and include criminal convictions, security-related grounds, fraud or misrepresentation, health concerns, and various other categories.[15] Deportability grounds, set forth at [8 U.S.C. § 1227(a)][15], apply to persons who have been admitted and subsequently engage in conduct rendering them removable, such as commission of crimes after admission, security violations, and violations of conditions of status.[15] The distinction carries procedural significance

because the allocation of proof burdens and the availability of certain forms of relief differ depending on whether an individual is charged with inadmissibility or deportability. An immigration judge may not issue a removal order unless the respondent has been charged with at least one applicable ground through a properly executed Notice to Appear.[1]

Recent Supreme Court jurisprudence has clarified the constitutional dimensions of the NTA requirement. In [Niz-Chavez v. Garland, 141 S. Ct. 1474 (2021)][51], the Supreme Court held that the NTA must contain nine specific elements enumerated in [8 U.S.C. § 239(a)][4], and the failure to include all required elements constitutes a jurisdictional defect that may result in dismissal of proceedings.[51] The Court subsequently clarified in [Campos-Chaves v. Garland, 144 S. Ct. 1637 (2024)][54], however, that a respondent served with a noncompliant NTA may still be ordered removed in absentia if the respondent later receives a proper notice of hearing and fails to appear, provided the government establishes by clear, unequivocal, and convincing evidence that proper notice was provided and the respondent is removable.[54] These precedents have generated significant litigation regarding the proper remedy for defective NTAs, with the Board of Immigration Appeals recently holding in [Matter of R-T-P-, 28 I&N Dec. 828 (BIA 2024)][54] that immigration judges may amend a defective NTA by writing in the missing time and date information at the request of the Department of Homeland Security, provided the amended NTA becomes a single document and the respondent receives at least ten days' notice of the new hearing date.[54]

Procedural Framework and Requirements for Removal Proceedings

The procedural framework governing removal proceedings is bifurcated into two primary stages, each with distinct requirements and strategic implications. The initial stage comprises the commencement of proceedings through the filing of the Notice to Appear and the master calendar hearing.[1] The NTA, issued by the Department of Homeland Security, serves as the charging document in removal proceedings and must specify the place, date, and time of the proceedings, the charges against the respondent (citing the specific grounds of inadmissibility or deportability), and the respondent's right to be represented by counsel.[1][4] The NTA must be provided in a manner that complies with [8 U.S.C. § 1229(a)][4], including personal service when practicable or service by mail with proof of attempted delivery to the respondent's last known address.[4] The statute requires that unless the respondent requests an earlier hearing in writing, the hearing date shall not be scheduled earlier than ten days after service of the NTA, providing respondents time to secure counsel.[4]

Once proceedings are initiated, the respondent must appear at the master calendar hearing on the date specified in the NTA.[1] At the master calendar hearing, the immigration judge addresses procedural matters, including the respondent's representation status, receipt of the NTA, and the respondent's initial response to the charges.[1] The immigration judge is empowered to conduct the hearing, administer oaths, receive evidence, interrogate and cross-examine the respondent and witnesses, and issue subpoenas for attendance of witnesses and production of evidence.[1] The respondent may admit or deny the charges, present statements, and request relief from removal.[1] The scope of available relief must be identified early because the respondent's eligibility for specific forms of relief may constrain the hearing procedures and the types of evidence that will be relevant and admissible.

The procedural rules governing removal proceedings are set forth in [8 C.F.R. Part 1003][1], which implements the statutory framework and addresses matters such as representation, continuances, evidence submission, witness examination, and the issuance of final decisions. The regulations establish that an

immigration judge may sanction any action or inaction in contempt of the judge's proper exercise of authority through civil money penalties.[1] The regulations also address the consequences of failure to appear, which constitute a critical intersection between procedural rules and substantive rights that is addressed in greater detail below in the section on in absentia orders.

The second stage of removal proceedings consists of the individual merits hearing, at which the respondent presents testimony and evidence supporting any defense to removal or application for relief.[1] The burden of proof in removal proceedings varies depending on the type of case. For deportability, the government bears the burden of establishing removability by clear and convincing evidence, which is a relatively high standard requiring substantial evidence beyond mere speculation or suspicion.[1] For inadmissibility, the burden of proof allocation has been more complex, though the respondent generally bears responsibility for establishing that they are admissible or entitled to relief.[1] The respondent has the right to be represented by counsel at no expense to the government, to examine and present evidence, to call witnesses, and to cross-examine government witnesses.[1] The respondent may testify on their own behalf, and credible testimony uncontradicted by other evidence may be sufficient to establish a claim, though the immigration judge may require corroboration depending on the nature of the claim and the reliability of the testimony.[1]

Relief from removal applications must generally be filed with the immigration court during the merits hearing, though some forms of relief may be applied for in advance through the affirmative asylum process or through motions to reopen and reconsider filed after a removal order becomes final.[1] The types of relief available depend on the respondent's immigration status, the charges against them, their presence in the United States, and various other factors, each of which is detailed extensively below in the section addressing substantive relief options.

Immigration Judge Authority and Standards of Review

Immigration judges are administrative law judges employed by the Executive Office for Immigration Review (EOIR), a component of the Department of Justice.[1] The statutory framework vests immigration judges with authority to conduct removal proceedings and issue removal orders, but this authority is bounded by regulatory limitations and constitutional constraints. Immigration judges do not have authority to exercise prosecutorial discretion-that authority rests exclusively with the Department of Homeland Security through its designated immigration enforcement officials.[1] Immigration judges also lack authority to review or overturn final removal orders issued by other immigration judges or the Board of Immigration Appeals, though they possess limited authority to reopen and reconsider their own prior decisions under carefully circumscribed circumstances.

When an immigration judge issues a final decision in a removal proceeding, the factual findings are reviewed by the Board of Immigration Appeals under a highly deferential "clearly erroneous" standard.[31] Under [8 C.F.R. § 1003.1(d)(3)][31], the BIA will not engage in de novo review of facts determined by an immigration judge; instead, the Board reviews factual findings "to determine whether the findings of the immigration judge are clearly erroneous," taking into account "the opportunity of the immigration judge to judge the credibility of witnesses." [31] This deferential standard is unfavorable to appellants because it requires convincing the BIA that no reasonable factfinder could reach the immigration judge's conclusion, rather than simply showing that the Board would have weighed the evidence differently.[31] By contrast, the BIA reviews all other issues-including questions of law, discretion, judgment, and the application of legal standards to undisputed facts-de novo.[31] This means that mixed questions of law and fact are subject to bifurcated review: the

factual components are reviewed for clear error, while the application of law to those facts is reviewed anew without deference.[31]

The Supreme Court's decision in [Guerrero-Lasprilla v. Barr, 140 S. Ct. 1062 (2020)][16], which was decided under former law, and more recently clarified jurisprudence regarding the scope of the "Limited Review Provision" in [8 U.S.C. § 1252(a)(2)(D)][13], established that circuit courts may review the BIA's application of law to undisputed facts even in cases where review is otherwise limited.[16] This principle reflects a longstanding presumption in favor of judicial review of administrative action and ensures that appellants retain meaningful access to federal court review when the government has misapplied the law.

Relief from Removal: Substantive Options and Eligibility Requirements

The INA provides numerous forms of relief from removal, each with distinct eligibility requirements, procedural rules, and consequences. Understanding the universe of available relief options is essential because many respondents may qualify for multiple forms of relief, and the strategic decision regarding which relief to pursue can significantly affect the likelihood of success, the nature of the protective status awarded, and the respondent's future immigration prospects.

Asylum

Asylum is a form of protection available to noncitizens who meet the definition of "refugee" under [8 U.S.C. § 1101(a)(42)][22], which defines a refugee as any person unable or unwilling to return to their country of origin because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.[22] Asylum can be sought in two contexts: affirmatively through the asylum office before removal proceedings are initiated, or defensively through the immigration court during removal proceedings.[41] The burden of proof rests on the applicant to establish that they are a refugee, and the applicant's own testimony, if credible, may be sufficient to sustain that burden without corroboration, though the immigration judge or asylum officer may require corroboration in certain circumstances.[19][22]

To establish eligibility for asylum, an applicant must demonstrate either past persecution or a well-founded fear of future persecution.[19] An applicant who establishes past persecution is presumed to have a well-founded fear of future persecution, though this presumption may be rebutted if the immigration judge finds that circumstances have fundamentally changed such that the applicant no longer faces persecution, or that the persecution was incidental to an activity unrelated to the protected ground.[19] A well-founded fear of persecution requires showing that the applicant has a subjective fear of persecution and that there is a reasonable possibility of suffering persecution upon return.[19] The applicant need not show that they would be individually singled out for persecution if they can establish that a pattern or practice of persecution exists against a group of persons similarly situated to the applicant and demonstrate their own inclusion in that group.[19]

The one-year filing deadline established in [8 U.S.C. § 1158(b)(1)(B)(i)][22] requires that asylum applications be filed within one year of the applicant's last arrival in the United States.[30] This deadline applies only to asylum and not to withholding of removal or Convention Against Torture protection.[30] The deadline may be extended if the applicant demonstrates either changed circumstances materially affecting asylum eligibility or extraordinary circumstances relating to the delay in filing, provided the application is filed within a reasonable time after such circumstances occur.[30] Courts have used six months as a general benchmark for determining

whether a filing delay is reasonable, though each case requires individualized analysis.[30] Extraordinary circumstances may include ineffective assistance of counsel, maintenance of lawful status until recently, prior filing of a defective application, or death or serious illness of the applicant's legal representative or immediate family member.[30]

Asylum applicants are subject to various bars to eligibility that must be addressed explicitly in the removal proceeding. An applicant is ineligible for asylum if they ordered, incited, assisted, or otherwise participated in the persecution of any person; pose a danger to the security of the United States; have been firmly resettled in another country prior to arriving in the United States; or are described in security-related provisions of the INA.[22] Additionally, asylum is unavailable to most applicants who have been convicted of crimes rendering them deportable or inadmissible on criminal grounds, though the specific bars vary by conviction type and sentence length.[22]

Withholding of Removal

Withholding of removal, also known as withholding of deportation or restriction on removal, is a form of protection available under [8 U.S.C. § 241(b)(3)][3], which requires that the government not remove any noncitizen to a country in which the noncitizen would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion.[3] The withholding of removal standard is significantly more stringent than the asylum standard: whereas asylum requires showing a well-founded fear of persecution (generally understood as approximately 10 percent likelihood), withholding of removal requires demonstrating that it is more likely than not that the applicant will be persecuted, typically interpreted as at least 51 percent likelihood.[3][6] No filing deadline applies to withholding of removal applications, meaning an applicant who misses the one-year filing deadline for asylum may still pursue withholding of removal protection.[3] Withholding of removal is mandatory-not discretionary-if the applicant meets the clear probability test and is not barred from eligibility.[3]

An applicant is ineligible for withholding of removal if they are a persecutor or have been convicted of a particularly serious crime.[3] The definition of "particularly serious crime" for withholding purposes is stricter than the asylum bar; it includes all aggravated felonies and crimes of violence for which the term of imprisonment is at least one year.[3] The Board of Immigration Appeals and circuit courts examine the nature of the crime, the circumstances surrounding it, the length of the sentence, and whether the crime indicates dangerousness to the community when determining whether a conviction constitutes a particularly serious crime.[3]

The critical distinction between asylum and withholding of removal lies in the benefits available upon grant. An asylee becomes eligible to adjust status to lawful permanent resident after one year, to petition for derivative family members, and to obtain travel documents and access to various public benefits.[1] A beneficiary of withholding of removal may obtain work authorization and remain in the United States indefinitely, but cannot adjust status to permanent resident, cannot petition for family members, and cannot travel internationally.[3] This distinction has substantial implications for long-term planning and should inform strategic decisions regarding relief options.

Convention Against Torture Protection

Protection under the Convention Against Torture (CAT) is available to noncitizens who can establish that it is more likely than not that they would be tortured if returned to a country, regardless of whether the torture would be inflicted by government officials or by private actors with government acquiescence or involvement.[27] CAT protection is not limited by a one-year filing deadline and may be available even to

applicants who have been convicted of particularly serious crimes, making it an important backstop form of relief for applicants otherwise barred from asylum or withholding of removal.[27] The standard for establishing torture is extremely high, requiring specific evidence about how torture would be inflicted and by whom, and merely showing that harsh conditions exist in a country is insufficient to establish CAT eligibility.[27]

Cancellation of Removal

Cancellation of removal is a form of discretionary relief that results in adjustment of status to lawful permanent resident if granted.[7][10] The INA provides two separate provisions for cancellation of removal: one for permanent residents ([8 U.S.C. § 1229b(a)][10]) and one for nonpermanent residents ([8 U.S.C. § 1229b(b)][10]). The permanent resident cancellation provision requires that the applicant have been a lawful permanent resident for at least five years and continuously resided in the United States for seven years following admission, and has not been convicted of an aggravated felony.[10] The nonpermanent resident provision requires that the applicant have been physically present in the United States for a continuous period of at least ten years, have been a person of good moral character during that period, have not been convicted of crimes rendering them deportable or inadmissible (with limited exceptions), and have established that removal would result in exceptional and extremely unusual hardship to a spouse, parent, or child who is a U.S. citizen or lawful permanent resident.[7][10]

The "stop-time" rule in [8 U.S.C. § 240A(d)(1)][38] provides that the accrual of physical presence time and residence time for cancellation purposes ceases when the respondent is served with a Notice to Appear.[38] This rule has generated significant litigation regarding what constitutes a valid NTA for purposes of triggering the stop-time rule. The Supreme Court's decision in [Pereira v. Sessions, 138 S. Ct. 2105 (2018)][38] established that the NTA must contain specific information regarding the date, place, and time of proceedings, and that service of subsequent documents cannot perfect a deficient NTA.[38] The Board of Immigration Appeals has subsequently clarified that the stop-time rule is triggered when the respondent is served with an NTA that complies with statutory requirements regarding the date, time, and place of proceedings.[38]

The discretionary nature of cancellation of removal means that even if an applicant meets all statutory eligibility requirements, the immigration judge retains authority to deny the relief as a matter of discretion.[10] The immigration judge must balance the adverse factors evidencing the applicant's undesirability as a permanent resident against the favorable equities presented on the applicant's behalf to determine whether grant of relief is in the best interest of the country.[56] Favorable factors include family ties in the United States, particularly ties to U.S. citizen or permanent resident family members; length and stability of residence in the United States; employment history; community ties; and evidence of rehabilitation if there are criminal or immigration law violations.[56] The immigration judge may give significant weight to the extreme hardship that would be suffered by qualifying family members if the applicant is removed, though this factor alone is not determinative.[59]

Other Relief Options

Additional forms of relief available to certain respondents include voluntary departure, which allows an applicant to leave the United States at their own expense within a specified timeframe without receiving a removal order, thereby avoiding the long-term immigration consequences associated with removal.[14][17] Voluntary departure may be sought either before the conclusion of proceedings (pre-conclusion voluntary departure) or at the conclusion of proceedings (post-conclusion voluntary departure), with different eligibility requirements and timeframe limitations for each.[14][17]

Special Immigrant Juvenile Status (SIJS) is available to unmarried individuals under twenty-one years of age who have been abused, neglected, or abandoned by a parent, have had a juvenile court determine that they cannot safely be reunified with their parent and that returning to their home country would not be in their best interest, and have been placed in proceedings after being denied such reunification.[33] SIJS provides a pathway to lawful permanent resident status and is often accompanied by a grant of deferred action providing work authorization pending visa availability.[33][36]

The Violence Against Women Act (VAWA) provides a self-petition option for individuals who have been battered or subjected to extreme cruelty by a spouse or parent who is a U.S. citizen or lawful permanent resident, allowing the applicant to self-petition for permanent resident status without the abuser's knowledge or consent.[21] VAWA applicants may also apply for cancellation of removal under the VAWA-specific provisions of [8 U.S.C. § 1229b(b)(2)][7], which provide an alternative pathway requiring only three years of physical presence rather than ten, and establish that removal would result in extreme hardship to the applicant themselves, rather than requiring harm to a qualifying relative.[7]

U visa protection is available to victims of qualifying crimes who have suffered substantial abuse and have been helpful or are likely to be helpful to law enforcement in investigating or prosecuting the crime.[24][40] T visa protection is available to victims of severe trafficking in persons, with recent regulatory amendments expanding the definition of qualifying conduct and providing trauma-informed considerations.[37] Both U and T visas provide initial relief from removal plus potential pathways to permanent resident status.

Appellate Remedies and Deadlines

Once an immigration judge issues a final removal order, the respondent has limited time to pursue appellate remedies. The procedural requirements for timely appeals are strictly enforced and constitute a critical element of removal defense strategy.

Notice of Appeal to the Board of Immigration Appeals

If the immigration judge issues a removal order, the respondent may appeal to the Board of Immigration Appeals by filing a Notice of Appeal (Form EOIR-26) within thirty calendar days of the immigration judge's oral decision or the mailing of the written decision.[2][5] The Board does not follow the "mailbox rule" but instead calculates deadlines according to the time of receipt at the Clerk's Office, meaning the appeal must be physically received within the thirty-day period, not merely deposited in the mail.[5] The Board cannot extend the time to file a Notice of Appeal, meaning that a late filing will result in the appeal being rejected as untimely.[5] The only exception to this strict deadline is the doctrine of equitable tolling, which applies when the party seeking tolling can demonstrate both diligence in pursuing the appeal and extraordinary circumstances that prevented timely filing.[5] Equitable tolling is a narrow exception that requires clear and compelling evidence and is rarely granted in practice.

When filing an appeal, the respondent must submit a completed Form EOIR-26 with the Board and pay the \$110 filing fee, or submit a fee waiver request (Form EOIR-26A) if unable to afford the fee.[2][5] The respondent's brief addressing the errors in the immigration judge's decision and proposing legal arguments for why the decision should be reversed or remanded must be filed in accordance with the Board's scheduling order, typically within twenty-one days of the filing of the Government's brief or such other timeframe as the Board directs.[2] The brief should identify legal errors made during the immigration judge's decision-making, inconsistencies or procedural mistakes in the hearing, and factual vulnerabilities in the immigration judge's

findings where applicable.[2]

Standards of Review at the Board of Immigration Appeals

The Board's review of immigration judge decisions is governed by [8 C.F.R. § 1003.1(d)(3)][31], which establishes that factual findings made by immigration judges are reviewed only for clear error, while questions of law, discretion, and judgment are reviewed de novo.[31] This bifurcated standard creates strategic considerations regarding which arguments to emphasize on appeal. Arguments that the immigration judge misunderstood or misapplied the law are more likely to succeed on appeal because they receive fresh review without deference to the immigration judge's conclusions. Arguments challenging the immigration judge's factual findings are unlikely to succeed unless the findings are so clearly erroneous that no reasonable factfinder could reach the same conclusion.

Motions to Reconsider at the Board of Immigration Appeals

If the Board affirms the immigration judge's removal order, the respondent may file a motion to reconsider within thirty days of the Board's decision if there is a legal or factual error in the Board's decision or if there are changed circumstances materially affecting the respondent's eligibility for relief.[31] Motions to reconsider receive de novo review by the Board, but they must be supported by compelling evidence and clear legal arguments demonstrating a specific error that warrants reconsideration.[31] The Board rarely grants motions to reconsider, and they should be filed only when there is a substantial basis for believing the Board committed a reversible error.

Motions to Reopen Before the Board of Immigration Appeals

A motion to reopen before the Board, filed after the Board issues a final decision, must be filed within ninety days of the Board's decision and must present new evidence or changed circumstances not available or not apparent at the time of the original hearing.[5] Unlike motions to reconsider, motions to reopen may be based on newly discovered evidence, changed country conditions, or new legal developments affecting the respondent's eligibility for relief. Motions to reopen are subject to numerical limitations and procedural requirements that must be carefully observed.[5] In certain circumstances, immigration judges may also reopen removal proceedings sua sponte (on their own motion) when exceptional circumstances or fairness concerns warrant reconsideration of a prior decision.[5]

Petition for Review to the Federal Circuit Courts

If the Board affirms the immigration judge's removal order and the respondent believes the Board erred in applying the law, the respondent may file a petition for review with the appropriate federal circuit court of appeals within thirty days of the Board's final decision.[13] The petition for review must be filed in the circuit court for the judicial circuit in which the immigration judge completed the proceedings.[13] The Ninth Circuit, which has jurisdiction over Northern California and is binding on all immigration courts and practitioners in that region, has established distinct jurisprudence regarding certain immigration law questions and generally provides more favorable review of certain immigration claims than some other circuits, particularly regarding asylum law and due process requirements.[1] The petition for review is the exclusive means of obtaining federal court review of removal orders, though constitutional claims and questions of law may be raised in the petition regardless of categorical jurisdiction bars that might otherwise limit review.[13]

Notably, the petition for review process has important limitations. For noncitizens who have been convicted of certain crimes, [8 U.S.C. § 1252(a)(2)(C)][13] bars federal courts from considering appeals from BIA decisions, though [8 U.S.C. § 1252(a)(2)(D)][13] permits review of pure questions of law and, as clarified by

[Guerrero-Lasprilla v. Barr, 140 S. Ct. 1062 (2020)][16], questions regarding the application of law to undisputed facts.[13][16]

Post-Order Obligations: The 90-Day Removal Period and ICE Detention Authority

Once an order of removal becomes final—either because the respondent does not appeal within thirty days, the BIA affirms the removal order, or the circuit court denies the petition for review—the Department of Homeland Security enters what is legally termed the "removal period," a ninety-day window during which ICE must effectuate the respondent's removal from the United States.[11][35] Understanding the mechanics of this removal period and the rights available to respondents during this time is essential for post-order strategy.

The ninety-day removal period begins on the latest of three dates: the date the order of removal becomes administratively final, the date of a court's final order if the removal has been judicially reviewed and stayed, or the date the respondent is released from any detention or confinement unrelated to immigration proceedings.[35] If ICE has not effectuated removal within the initial ninety-day period, it must release the respondent unless it demonstrates that removal is still reasonably foreseeable and continued detention is justified based on specific criteria.[11] The criteria for extended detention beyond the initial ninety days are narrow and require DHS to prove by clear and convincing evidence that the respondent poses a danger to the community or is likely to abscond, which triggers a formal custody review hearing before an immigration judge.[11]

The 90-Day Custody Review Process

If ICE seeks to continue detaining the respondent beyond the initial ninety-day removal period, ICE must file a Form I-863 (Notice of Referral to the Immigration Judge) with the immigration court having jurisdiction over the place of custody.[11] The immigration judge must commence a "reasonable cause" hearing within ten business days of the referral, during which the immigration judge determines whether there is reasonable cause to believe that the respondent is a danger to the public or a flight risk.[11] These hearings take priority over other immigration court proceedings except credible fear review hearings.[11] If the immigration judge finds that DHS has not met its burden of proving reasonable cause, the respondent must be released, potentially subject to conditions determined by ICE.[11] If the immigration judge finds that reasonable cause exists, a "continued detention review merits hearing" is scheduled to be held within thirty days if the respondent requests it, at which point the immigration judge makes a final determination regarding continued detention.[11]

The standards applied at the 90-day custody review are more favorable to the respondent than the standards applicable to bond hearings during removal proceedings, because ICE bears the burden of proving—by clear and convincing evidence rather than by a preponderance of the evidence—that continued detention is justified.[11] The respondent may present evidence of changed circumstances, rehabilitation, family ties in the United States, employment opportunities, and other factors supporting release.[8] The respondent is entitled to be represented by a practitioner at no expense to the government, and the immigration court must provide a list of free and low-cost legal service providers.[11]

Habeas Corpus Challenges to Detention

In addition to the administrative custody review process, a respondent subject to prolonged detention after a final removal order may challenge the legality of the detention through a habeas corpus petition filed in the appropriate federal district court under [28 U.S.C. § 2241][50]. Federal habeas corpus review is available to

test whether detention is authorized by law and whether the conditions of confinement violate constitutional or statutory requirements.[50] However, [8 U.S.C. § 1252(b)(9)][13] establishes the "zipper clause," which provides that petitions for review filed with circuit courts are the sole and exclusive means for judicial review of removal orders, except as provided in certain limited circumstances.[13] The interaction between this exclusive review provision and the availability of habeas corpus in district courts has been a subject of significant litigation, though courts have generally held that habeas corpus remains available for certain claims that are not primarily about the validity of the removal order itself but rather about the legality of detention conditions or the reasonableness of detention duration.[50]

Reinstatement of Prior Removal Orders

A critical and often-overlooked risk exists if a respondent who has been removed is again encountered at the border attempting to reenter the United States. [8 U.S.C. § 1231(a)(5)][35], the reinstatement statute, provides that if DHS finds that an alien has reentered illegally after having been removed, the prior order of removal is automatically reinstated and becomes immediately final, not subject to being reopened or reviewed.[43] A reinstated removal order is not subject to appeal, administrative closure, motions to reopen, or most other forms of relief, and the respondent becomes subject to immediate removal under the reinstated order.[43] The reinstatement statute is one of the harshest provisions in immigration law and necessitates careful counseling of clients regarding the finality of removal orders and the grave consequences of unlawful reentry.

In Absentia Orders and Due Process Protections

One of the most substantial vulnerabilities in removal proceedings arises when an immigration judge issues a removal order against a respondent who fails to appear at a scheduled hearing. These in absentia orders represent a category of final removal orders that trigger specific statutory protections and remedies.

Requirements for In Absentia Removal Orders

Under [8 U.S.C. § 1229a(b)(5)][1], if a respondent fails to appear at a scheduled hearing after receiving written notice, the immigration judge may order the respondent removed in absentia if the government establishes by "clear, unequivocal, and convincing evidence" that the written notice was provided and that the respondent is removable.[1] This is a highly deferential standard that shifts the burden to the government to prove proper notice, but once proper notice is shown, the immigration judge may order removal without hearing the respondent's testimony or evidence. The statutory provision reflects a policy judgment that respondents have a strong obligation to appear at scheduled hearings and that failure to appear may result in swift removal.[1]

However, the statute provides important procedural safeguards. The respondent must receive written notice that complies with the statutory requirements, which include service on the respondent or the respondent's attorney of record, specification of the date, time, and place of the hearing, and information regarding the charges and the consequences of failure to appear.[1] The Supreme Court's decision in [Campos-Chaves v. Garland, 144 S. Ct. 1637 (2024)][54] clarified that even if the initial NTA is defective, a subsequent notice of hearing provided under [8 U.S.C. § 239(a)(2)][4] may constitute sufficient notice for purposes of the in absentia removal provision, provided the respondent actually receives the notice and the NTA is remedied before the in absentia order is entered or shortly thereafter.[54]

Motions to Reopen In Absentia Orders

A respondent who has been ordered removed in absentia has limited but meaningful remedies. Under [8 U.S.C. § 1229a(b)(5)(C)][1], a respondent may file a motion to reopen to rescind an in absentia order if the respondent demonstrates one of three grounds: the failure to appear was due to exceptional circumstances beyond the respondent's control, the respondent did not receive proper notice, or the respondent was in federal or state custody and the failure to appear was through no fault of the respondent.[12] If based on exceptional circumstances, the motion must be filed within 180 days of the in absentia order.[12] If based on lack of notice or custody, the motion may be filed at any time.[12]

"Exceptional circumstances" are narrowly defined in the statute to include serious illness of the respondent, serious illness or death of the respondent's spouse, child, or parent, or battery or extreme cruelty to the respondent or the respondent's child or parent.[12] Mere economic hardship, miscommunication with counsel, lost mail, or failure to understand the importance of the hearing generally do not constitute exceptional circumstances.[12] The Board of Immigration Appeals and circuit courts have interpreted the exceptional circumstances standard strictly, requiring clear and specific evidence that the failure to appear resulted from circumstances truly beyond the respondent's control.[9] Once a motion to reopen based on exceptional circumstances is filed, removal is automatically stayed pending the immigration judge's ruling on the motion, providing temporary protection from deportation.[12]

Northern California-Specific Considerations

The application of federal immigration removal law in Northern California operates within the distinct procedural context of the San Francisco Immigration Court and the enforcement patterns of ICE Enforcement and Removal Operations Field Office 1, which has jurisdiction over all of Northern California and portions of Nevada.

San Francisco Immigration Court Procedural Tendencies

The San Francisco Immigration Court maintains specific local rules and procedures that affect the tactical implementation of removal defense strategy.[1] The court conducts business at multiple locations including the main courthouse at 100 Montgomery Street, Suite 800, San Francisco, the Concord location at 1855 Gateway Blvd., Suite 850, and satellite hearing locations throughout the region. The San Francisco court maintains a master calendar hearing docket that moves more rapidly than many other immigration courts in the nation, which means respondents and their counsel must be particularly prepared with documentation and legal arguments at the earliest possible opportunity. The court has specific requirements regarding continuance requests, with immigration judges generally reluctant to grant continuances absent compelling circumstances such as inadequate time for counsel to prepare or significant evidentiary needs that cannot be met on the scheduled hearing date.

Practitioners appearing in the San Francisco court should be aware of specific judges' known procedural preferences. Some judges require detailed written motions for any relief request and are unlikely to grant relief based on oral argument alone. Other judges are more receptive to oral advocacy and responsive to practitioner requests for hearing continuations to allow adequate time for evidence submission. The length and quality of advocate preparation is closely scrutinized, and judges expect practitioners to have reviewed discovery thoroughly and to raise appropriate objections to defective notices or procedural violations early in the proceeding.

San Francisco Asylum Office Patterns and Procedures

The San Francisco Asylum Office is the primary location through which affirmative asylum applications are adjudicated for individuals in Northern California. The office has established interview procedures that reflect specific patterns in how asylum officers conduct credible fear screenings and merits interviews. Applicants scheduled for interviews at the San Francisco office should be aware that officers typically conduct detailed questioning regarding the applicant's claimed persecution and the applicant's own role in the persecution or any political activities that might have triggered persecution. Country conditions evidence is heavily relied upon, and asylum officers maintain working knowledge of current conditions in Central American nations that represent the source of much of the Northern California asylum caseload.

ICE Enforcement Patterns in Northern California

ICE Enforcement and Removal Operations Field Office 1 maintains enforcement priorities and detention capacity that affect how removal proceedings are prosecuted and how detention authority is exercised. The field office has experienced significant changes in enforcement priorities in recent years, with shifts in focus toward high-priority cases involving criminal convictions or security concerns rather than status violations alone. Practitioners representing respondents should investigate the specific enforcement history and detention practices of the field office overseeing their client's case, as prosecution decisions and detention recommendations often reflect field office-level policies regarding which cases receive intensive resources.

California State Law Interactions

California state law provides several protections and remedies relevant to removal defense strategy. [Cal. Penal Code § 1473.7][1] provides a mechanism for vacating criminal convictions based on the conviction's immigration consequences, and [Cal. Penal Code § 1203.43][1] allows for sentence reduction and post-conviction relief based on immigration consequences. These state law remedies should be explored in any case where the respondent has a criminal record affecting removal proceedings, as vacation or modification of a conviction may eliminate or substantially weaken the government's grounds for removal.[1] [Cal. Penal Code § 18.5][1] provides mechanisms for Proposition 47 reductions that may similarly affect immigration consequences. [Cal. Penal Code § 1352][1] requires discovery of materials indicating immigration consequences and imposes obligations on prosecutors to alert defendants to such consequences.

Additionally, [California Penal Code § 54 (the California Values Act)][1] limits state and local law enforcement cooperation with federal immigration authorities, meaning that many state charges do not trigger federal immigration consequences in the same way they might in other states. Practitioners should carefully investigate the intersection between state criminal law, state criminal procedure protections, and federal immigration law, as favorable outcomes in state criminal proceedings can substantially improve removal defense positions in federal immigration proceedings.

Strategic Considerations and Preservation of Issues

The path to challenging an immigration judge's removal order requires careful attention to procedural rules, strategic choices regarding which arguments to emphasize, and preservation of issues for appellate review.

Timely Objections and Claim-Processing Requirements

Recent Board of Immigration Appeals precedent has established that various procedural requirements must be satisfied timely or the right to challenge them is waived. [Matter of Wendi Del Carmen Lopez-Ticas, 29 I&N Dec. 90 (BIA 2025)][51] held that objections to defects in the Notice to Appear must be raised before the

close of pleadings or the objection is forfeited, even if the defect would otherwise constitute a jurisdictional error.[51] Similarly, objections to other procedural defects or improper evidence admission must be timely raised or they are waived for appellate purposes.[51] This means that respondents and their counsel must carefully review all charging documents and procedural notices at the earliest possible opportunity and raise any discrepancies or defects before the first or second hearing.

Preservation of Legal Arguments for Appeal

Not all legal arguments that might have merit at the immigration judge level will survive appellate review. Some arguments are more appropriately characterized as preservation arguments, raised during the immigration court proceeding primarily to create a record for appeal even if they are unlikely to prevail before the immigration judge. For example, arguments that a particular legal standard applied by the immigration judge conflicts with circuit court precedent or represents a misapplication of law should be raised at the immigration judge level even if the immigration judge signals disagreement, because doing so preserves the issue for appellate review. Conversely, arguments primarily based on factual challenges to the immigration judge's credibility findings are unlikely to prevail on appeal under the clear error standard and should be de-emphasized in favor of legal arguments that receive de novo review.

Strategic Decisions Regarding Relief Options

In many removal proceedings, respondents may qualify for multiple forms of relief, each with different evidentiary burdens, likelihood of success, and post-grant consequences. The decision regarding which relief to pursue is a critical strategic choice that should be made only after thorough analysis of the respondent's situation, the strength of evidence supporting each form of relief, and the long-term immigration consequences of each form of relief if granted. An applicant might have both asylum and withholding of removal eligibility, for example, but the difference between obtaining asylum (which provides a pathway to permanent residence and derivative family benefits) and obtaining only withholding of removal (which provides no adjustment possibility and provides no derivative family benefits) is substantial enough to warrant emphasizing asylum at trial and presenting withholding of removal primarily as a backup option.

Similarly, applicants eligible for cancellation of removal must carefully weigh the discretionary nature of that relief against the near-mandatory nature of asylum or withholding of removal. An immigration judge might deny cancellation of removal as a matter of discretion even if all eligibility requirements are met, meaning that applicants should not rely solely on cancellation in circumstances where asylum or withholding provides a more secure form of protection.

Conclusion

Immigration judge removal orders represent the culmination of complex statutory frameworks, intricate procedural requirements, and substantive legal standards that must be understood and navigated with precision by practitioners and respondents alike. The authority of immigration judges to issue removal orders flows from statutory and constitutional sources that are themselves subject to ongoing interpretation and development through Board of Immigration Appeals precedent and federal circuit court jurisprudence. The procedural framework governing removal proceedings, recently clarified by Supreme Court decisions regarding Notice to Appear requirements and by Board decisions regarding amendment of defective charging documents, requires careful attention to timing and preservation of issues.

Respondents facing removal orders possess meaningful remedies, including post-order motions to reconsider

and reopen, appeals to the Board of Immigration Appeals, and petitions for review to the federal circuit courts. The availability and viability of these remedies depends on strict adherence to procedural deadlines and strategic choices regarding which arguments will be emphasized at each appellate stage. The substantive options for relief from removal-asylum, withholding of removal, Convention Against Torture protection, cancellation of removal, voluntary departure, VAWA, SIJS, U visas, and T visas-each carry distinct eligibility requirements, procedural rules, and consequences that must be carefully evaluated in light of each respondent's unique circumstances.

The post-order landscape presents both continued risks and meaningful protections. The ninety-day removal period is not automatic deportation; respondents have rights to challenge continued detention and to seek release through administrative custody review proceedings and federal habeas corpus petitions. In absentia removal orders, while serious, are not final when exceptional circumstances prevented the respondent's appearance. The reinstatement statute represents a harsh consequence for unlawful reentry, but does not eliminate all remedies for respondents seeking to return to the United States through lawful channels.

For Northern California practitioners, the specific procedural context of the San Francisco Immigration Court and the enforcement patterns of ICE Field Office 1 must be integrated with this broader federal legal framework. California state law provides protections and remedies that can substantially affect removal defense strategy, particularly regarding criminal conviction modification and state law discovery requirements related to immigration consequences. The intersection between state and federal law requires practitioners to maintain sophisticated understanding of both systems and to coordinate strategy across multiple legal forums.

Removal proceedings are among the highest-stakes administrative proceedings in American law, as they determine whether individuals will be deported from the United States, separated from family members, and prevented from working legally. The legal framework provides substantial procedural protections and meaningful substantive rights, but these protections are only meaningful when understood and zealously invoked by skilled practitioners and informed respondents. Careful attention to procedural deadlines, strategic emphasis on legal arguments that receive favorable appellate review, and comprehensive evaluation of all available relief options provide the best foundation for challenging removal orders and achieving outcomes that allow respondents to remain in the United States.

Complete Source Citations

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[5] *Executive Office for Immigration Review: Appeal Deadlines*

[6] *ICE: Guide to Asylum, Withholding of Removal, and CAT*

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