

Self-Deportation and EOIR Immigration Court Proceedings: A Legal Analysis

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FINDINGS

SELF-DEPORTATION AND EOIR IMMIGRATION COURT PROCEEDINGS: A COMPREHENSIVE LEGAL ANALYSIS

Executive Summary

Self-deportation—the practice of individuals voluntarily departing the United States without formal immigration proceedings—is not a legally recognized immigration procedure, yet it has significant legal consequences that immigration practitioners must understand and help clients avoid in the context of formal removal proceedings under INA § 240.[1][50] The Executive Office for Immigration Review has circulated misleading flyers beginning in April 2025 promoting self-deportation as a beneficial option, creating confusion among respondents about their procedural rights and the true legal consequences of departure.[1] When an individual with a pending case in immigration court departs the United States without formal authorization, they risk triggering multiple catastrophic legal consequences including in absentia removal orders, abandonment of pending relief applications, automatic inadmissibility bars, and loss of future legal immigration opportunities.

The distinction between self-deportation and voluntary departure under INA § 240B is critical for practitioners representing immigrants in Northern California's immigration courts. Voluntary departure is a formally recognized legal option granted by an immigration judge that provides substantive protections absent from informal self-deportation.[2][5] An individual who self-deports while removal proceedings are pending may face a five-year non-waivable bar to re-entry for failure to appear at a hearing, a ten-year bar for accumulated unlawful presence, or even a permanent bar if certain circumstances apply, depending on the specific procedural posture of their case.[1][22] Conversely, an individual who obtains formal voluntary departure within EOIR proceedings can depart without most of these automatic bars and retains a stronger legal foundation for future immigration benefits.

The Trump administration's Project Homecoming proclamation and the rebranded CBP Home app, announced in May 2025, have created additional confusion by offering financial incentives (\$1,000 plus travel costs) for individuals to voluntarily depart through a government-facilitated process.[33][36] These programs do not fundamentally change the underlying legal consequences of departure after unlawful presence or removal orders have been accumulated, and the government offers no guaranteed pathway for future legal return despite political rhetoric suggesting otherwise.[8]

This report addresses the intersection of self-deportation, removal proceedings, and statutory inadmissibility bars, with emphasis on how immigrants in Northern California can navigate these issues through proper legal channels. The risk assessment for self-deportation in the context of pending EOIR cases is uniformly high to very high, as the potential consequences—permanent bars to re-entry and loss of eligible relief—are ordinarily irreversible.

Legal Framework Governing Removal, Self-Deportation, and Inadmissibility

Statutory Authority and Foundational Concepts

The statutory foundation for understanding self-deportation's legal consequences lies in 8 U.S.C. § 1229a (INA § 240), which establishes the removal proceedings framework, combined with 8 U.S.C. § 1182(a)(9)

(INA § 212(a)(9)), which defines grounds of inadmissibility related to prior removals and unlawful presence.[1][22] Self-deportation is not itself codified in the Immigration and Nationality Act; rather, it is colloquial terminology for an individual's unilateral decision to depart the United States without formal removal proceedings or voluntary departure authorization.[1][50] However, the legal consequences of such departure are extensively regulated and create substantial barriers to future legal entry.

The statutory framework distinguishes between several categories of departure and their consequences. When an individual departs the United States after accumulating "unlawful presence"-a term of art defined in USCIS policy guidance as the time during which an individual is in the United States without authorization or beyond the scope of authorized status-they become subject to INA § 212(a)(9)(B), which imposes temporary bars to re-entry.[9][12] An individual who accrues more than 180 days but less than one year of unlawful presence and then departs (or is removed) before any removal proceedings commence is inadmissible for three years.[2][12] An individual who accrues one year or more of unlawful presence is inadmissible for ten years.[9][12] These bars are measured from the date of departure and continue to run regardless of whether the individual remains in the United States.[54]

The distinction between self-deportation and formal removal is critical because INA § 212(a)(9)(A) creates an additional ground of inadmissibility for individuals who have been subject to a formal removal order under INA § 240. When an individual departs after a final removal order has been issued by an immigration judge, they trigger inadmissibility under INA § 212(a)(9)(A), which generally bars re-entry for ten years following departure and requires Form I-212 (Application for Permission to Reapply for Admission) and a waiver application to overcome.[3][4] More seriously, INA § 212(a)(9)(C)(i)(II) creates a permanent bar to re-entry for individuals who have accrued more than one year of unlawful presence, subsequently departed, and then attempted to re-enter without authorization-a circumstance that applies to many individuals who self-deport and later attempt unlawful reentry.[4][9]

Regulatory Framework and EOIR Procedures

8 C.F.R. § 1240.26 establishes the regulatory framework for voluntary departure within EOIR proceedings, distinguishing between pre-conclusion voluntary departure (granted before the conclusion of a merits hearing) and post-conclusion voluntary departure (granted after an immigration judge has adjudicated the respondent's case).[5][10][20] Pre-conclusion voluntary departure requires the respondent to waive or withdraw all other applications for relief, concede removability, and waive appeal rights, and allows an immigration judge to grant a period of up to 120 days for departure.[5][10] Post-conclusion voluntary departure has more stringent requirements, including demonstrated physical presence for one year prior to receipt of the Notice to Appear, good moral character for five years, and ability to post a bond of at least \$500, and allows for a departure period of up to 60 days.[5][10]

Critically, 8 C.F.R. § 1240.26(d) establishes that failure to depart by the deadline specified by an immigration judge results in automatic conversion of the voluntary departure order into a removal order, triggering the statutory bars described above.[2][27][30] This regulation demonstrates that even within the formal voluntary departure framework, there are severe consequences for non-compliance that practitioners must carefully explain to clients.

The regulatory framework also addresses the consequences of failure to appear at removal proceedings. 8 C.F.R. § 1003.26(c) permits an immigration judge to issue a removal order in absentia (without the respondent's presence in court) when the government demonstrates that the respondent received proper notice of the hearing and failed to appear.[16][22] An in absentia order is particularly punitive because it triggers INA § 212(a)(6)(B), which imposes a five-year non-waivable bar to re-entry for individuals who fail to appear

at a removal proceeding and subsequently depart or are removed.[1][19][22] This bar is distinguishable from the unlawful presence bars because it cannot be waived, even through Form I-212, and it applies for a fixed five-year period from the date of departure.

Board of Immigration Appeals Precedent

The Board of Immigration Appeals has addressed the jurisdictional and procedural consequences of self-deportation or departure from the United States while removal proceedings are pending. In *Matter of Okoh*, 20 I&N Dec. 864 (BIA 1994), the BIA established that an individual's departure from the United States while subject to a removal order executes that order and brings finality to the proceedings, depriving immigration courts and the Board of jurisdiction to entertain motions to reopen or reconsider.[57] This holding created what practitioners refer to as the "departure bar," which generally precludes individuals who have departed from filing motions to challenge removal orders that were entered against them.

However, the BIA has identified important exceptions to this departure bar. In *Matter of Bulnes-Nolasco*, 25 I&N Dec. 57 (BIA 2009), the BIA held that an in absentia removal order issued without proper notice to the respondent is voidable ab initio and does not prevent the respondent from filing a motion to reopen based on lack of notice, even after departure.[15][39] The BIA reasoned that an in absentia order issued without notice is a "legal nullity" and therefore cannot serve as the predicate for the departure bar to apply.[15][39] This precedent is significant because it creates a potential avenue for relief for individuals who depart before they become aware of removal proceedings or who never receive proper notice of hearing dates.

More recently, *Matter of Duarte-Gonzalez*, 28 I&N Dec. 688 (BIA 2023) addressed the critical question of whether the three- and ten-year unlawful presence bars under INA § 212(a)(9)(B)(i) continue to run while an individual remains in the United States after accumulating unlawful presence and re-entering.[54] The BIA held that these bars continue to accrue without regard to whether the individual remains in or departs from the United States, applying statutory interpretation principles to conclude that the plain language of the statute contains no requirement that the individual remain abroad during the bar period.[54] This decision has important implications for individuals who self-deport and then consider returning, as it suggests that the bar period continues to run regardless of the individual's location, meaning an individual can eventually satisfy the bar through passage of time even while in the United States.

The Current Legal Landscape: EOIR Flyers and Administrative Confusion

EOIR's Misleading Self-Deportation Flyers

Beginning in April 2025, the Executive Office for Immigration Review began circulating flyers in immigration courts nationwide titled "Message to Illegal Aliens: A Warning to Self-Deport." [1][50] The flyers, which bear the Department of Justice insignia, contain numerous legally inaccurate and misleading statements about the purported benefits and consequences of self-deportation, creating substantial due process concerns and contradicting EOIR's regulatory obligation to inform respondents of their eligibility for immigration relief.[1][50] The American Immigration Lawyers Association has issued detailed practice alerts addressing the specific misstatements in these flyers, which warrant careful examination by practitioners.

The flyers claim that "self-deportation is safe" and that individuals can "leave on [their] own terms by picking [their] departure flight." [1][50] This statement fails to acknowledge that many respondents in removal proceedings do not have a safe country to return to, are applying for humanitarian protection such as asylum, or face persecution if returned to their countries of origin.[1][50] More critically, the statement ignores the

procedural reality that an individual who departs while removal proceedings are pending risks being ordered removed in absentia after failing to appear at a scheduled hearing, which triggers the non-waivable five-year bar under INA § 212(a)(6)(B).[1][50]

The flyers state that individuals who self-deport will have "future opportunity for legal immigration. If you self-deport using CBP Home instead of being deported by ICE." [1][50] This representation is legally inaccurate and misleading because it fails to explain the grounds of inadmissibility triggered by departure following unlawful presence under INA § 212(a)(9)(B) and INA § 212(a)(9)(C).[1][50] The claim that self-deportation through the CBP Home app provides better prospects for future legal immigration compared to removal by ICE is not supported by statute or regulation, and in fact, many individuals who self-deport face the same or more restrictive bars to re-entry as those who are formally removed.[1][50]

The flyers threaten "immediate deportation" and state that individuals "will be apprehended by DHS with no opportunity to get your affairs in order beforehand." [1][50] This statement is imprecise and misleading because it does not distinguish between individuals in different procedural postures within removal proceedings.[1][50] Critically, the statement fails to acknowledge that individuals have a statutory right to appeal an immigration judge's decision, and that 8 C.F.R. § 1003.6 provides for an automatic stay of removal while an appeal to the Board of Immigration Appeals is pending.[1][50] The vague threat of "apprehension" without specifying procedural protections may lead some respondents to incorrectly believe they will be removed immediately, even when they have pending applications for relief.

The flyers claim that individuals who fail to self-deport may face fines of "\$998 per day if you received a final order of removal and stayed. A fine of \$1,000-\$5,000 if you fail to self-deport after claiming that you will." [1][50] These statements are problematic because they do not define what constitutes a "final order of removal" (which generally means the order is final for immigration purposes and has not been appealed or is no longer subject to appeal), and they fail to explain that an order is not final until the Board of Immigration Appeals renders a decision on any timely appeal.[1][50] The citation to fine amounts without clear statutory authority or explanation of the conditions under which such fines apply creates confusion about respondents' actual legal exposure.

Recent Developments in EOIR Administration

Beyond the self-deportation flyers, EOIR has issued recent administrative guidance affecting how removal proceedings are adjudicated. In January 2025, EOIR distributed guidance to Assistant Chief Immigration Judges directing that DHS motions to dismiss cases may be made orally and decided from the bench, without requiring additional documentation or a ten-day response period as otherwise mandated by 8 C.F.R. § 1003.23.[38] This guidance conflicts with the regulatory requirement that pre-decision motions be submitted in writing with specificity about grounds and relief sought, and creates procedural concerns about respondents' ability to respond to government dismissal motions in time.[38]

Separately, EOIR has curtailed the use of administrative closure in removal proceedings through a 2024 decision, *Matter of Avetisyan*, 25 I&N Dec. 676 (BIA 2024), which significantly restricted the availability of administrative closure as a procedural tool.[47] Administrative closure had previously been used to temporarily remove cases from immigration judges' calendars while respondents pursued other immigration relief or to accommodate collateral matters such as family court proceedings or criminal convictions with immigration consequences.[44][47] The curtailment of administrative closure means that practitioners have fewer options to preserve respondents' cases while they pursue alternative forms of relief, which increases the importance of understanding self-deportation alternatives.

Project Homecoming and CBP Home App

In May 2025, President Trump signed Presidential Proclamation 10935, establishing "Project Homecoming," which directs the federal government to create a streamlined process for unauthorized immigrants to depart the United States using the CBP Home app (formerly CBP One under the Biden administration).[33][36] The proclamation creates an "exit bonus as a financial incentive" for individuals who agree to voluntarily and permanently depart, with DHS announcing that it will provide a \$1,000 stipend and full travel assistance to individuals who depart through the app.[33][36]

While the Proclamation describes a streamlined process and financial incentives, it does not fundamentally alter the underlying statutory bars to re-entry triggered by departure after unlawful presence or after a removal order has been issued.[33][36] The government has not issued guidance clarifying whether departure through the CBP Home app triggers different consequences than self-deportation or formal removal, nor has it identified any statutory basis for exempting individuals who use the app from the bars under INA § 212(a)(9)(B) or INA § 212(a)(9)(C).[33][36] In fact, practitioners have noted that entering personal information into the CBP Home app carries privacy risks, as the government can use submitted data in future enforcement actions or share it across federal agencies.[8]

The Proclamation also directs DHS to increase staffing for immigration enforcement operations by at least 20,000 officers, representing a 233% increase over current ICE personnel levels.[33] This dramatic expansion of enforcement capacity suggests that the government is pursuing an enforcement-first immigration policy agenda, and the financial incentives offered through Project Homecoming and the CBP Home app may be designed to reduce the costs of formal removal proceedings rather than to provide genuine humanitarian benefits to departing immigrants.[33]

Self-Deportation Defined: Distinguishing Informal Departure from Formal Legal Procedures

What Is Self-Deportation in the Context of EOIR Proceedings?

Self-deportation is not a formally recognized legal category or procedure under the Immigration and Nationality Act or EOIR regulations.[1][50] Rather, the term refers colloquially to an individual's unilateral decision to depart the United States without obtaining formal authorization or relief from an immigration judge, without compliance with a voluntary departure order, and without formal government removal proceedings.[1][50] In the context of pending EOIR removal proceedings, self-deportation occurs when a respondent simply leaves the United States while their case is scheduled or pending before an immigration judge, thereby failing to appear at scheduled hearings.

The legal significance of this distinction is substantial. When an individual self-deports from pending removal proceedings, their conduct does not constitute compliance with any immigration law requirement; rather, it constitutes failure to appear at a scheduled hearing, which triggers specific legal consequences established by statute and regulation.[16][22][42] The individual may become subject to an *in absentia* removal order, which creates a five-year non-waivable bar under INA § 212(a)(6)(B) for individuals who fail to appear and subsequently depart or are removed.[1][22]

Comparison to Voluntary Departure

Voluntary departure is the formal legal alternative to self-deportation within EOIR proceedings. As codified in

INA § 240B and regulated in 8 C.F.R. § 1240.26, voluntary departure permits an individual who is otherwise removable to depart from the United States at their own expense within a designated time period while avoiding a final removal order on their immigration record.[2][5][10][20][24] To obtain pre-conclusion voluntary departure, an individual must meet specific requirements: the request must be made before the conclusion of the individual's merits hearing; the individual must waive or withdraw all other applications for relief; the individual must concede removability; the individual must waive all appeal rights; the individual must not have been convicted of an aggravated felony and must not be a security risk; and the individual must present clear and convincing evidence of intention to depart and financial ability to do so.[5][10][20][24]

If an immigration judge grants pre-conclusion voluntary departure, the individual is ordinarily granted a period of up to 120 days to depart the United States at their own expense.[5][10][20][24] Critically, if the individual complies with this order and departs within the timeframe, they do not receive a removal order, which means they avoid the automatic bars under INA § 212(a)(9)(A) associated with a formal removal order.[2][5][10] However, the individual may still be subject to inadmissibility bars under INA § 212(a)(9)(B) if they have accumulated unlawful presence, depending on the timing of departure and reentry.[2][5]

Post-conclusion voluntary departure is available after an immigration judge has issued a decision on the respondent's case and has more stringent requirements.[5][10][20][24] To qualify for post-conclusion voluntary departure, the individual must demonstrate physical presence in the United States for at least one year before receipt of the Notice to Appear; demonstrate clear and convincing evidence of intention to depart and financial ability to do so; post a bond of at least \$500 if required by the judge; demonstrate good moral character for five years prior to the application; and present a valid passport or travel document showing lawful entry into the country of origin.[5][10][20][24] If an immigration judge grants post-conclusion voluntary departure, the individual is ordinarily granted a period of up to 60 days to depart.[5][10][20][24]

Failure to comply with a voluntary departure order has severe consequences. If an individual granted voluntary departure fails to depart by the specified deadline, the voluntary departure order automatically converts into a removal order, and the individual becomes subject to the statutory bars under INA § 240B(d), which bars eligibility for cancellation of removal, adjustment of status, change of status, and further voluntary departure for ten years following the expiration of the voluntary departure period.[2][27][30][43]

Contrast with Removal Orders and In Absentia Removal Orders

A removal order issued by an immigration judge after a full hearing on the merits constitutes a formal legal determination that the respondent is removable under the Immigration and Nationality Act.[2][20][21] When a removal order is issued after a full hearing, the respondent has had an opportunity to present defenses and apply for relief, and the immigration judge has made factual findings about the respondent's removability and discretionary eligibility for relief.[2] A removal order becomes final when either the respondent does not appeal the decision within 30 days, or when the Board of Immigration Appeals affirms the immigration judge's decision on appeal.[2][20][42]

In absentia removal orders are qualitatively different and more problematic. An in absentia order is issued when a respondent fails to appear at a scheduled hearing, and the immigration judge determines that the respondent received proper notice of the hearing and nonetheless failed to appear.[16][22] INA § 240(b)(5)(A) provides that an immigration judge may issue an order of removal against a respondent who fails to appear, provided that the government demonstrates that the respondent received written notice of the hearing by regular mail.[16][22] The in absentia order does not reflect a full adjudication of the respondent's removability or eligibility for relief; rather, it is a default judgment based on failure to appear.

The consequences of an in absentia removal order are severe and distinctive. An individual subject to an in absentia order is barred from eligibility for ten years for cancellation of removal, adjustment of status, and certain other forms of relief under INA § 240(b)(7)(B).[19][22][51] Additionally, if the individual subsequently departs the United States (whether voluntarily or through formal removal) within five years of the in absentia order, they become subject to the non-waivable five-year bar under INA § 212(a)(6)(B).[1][19][22] This combination of bars creates a particularly punitive regime for individuals who fail to appear at removal proceedings.

Statutory Bars to Re-entry: Understanding INA § 212(a)(9)

The Three-Year and Ten-Year Unlawful Presence Bars

The three-year and ten-year bars codified in INA § 212(a)(9)(B)(i) are among the most significant consequences of departure after unlawful presence.[9][12][54] These bars are triggered automatically upon departure from the United States and apply to individuals seeking to re-enter lawfully, regardless of the basis for re-entry (whether through family sponsorship, employment, diversity visa, or humanitarian relief).[9][12]

An individual who accrues more than 180 days but less than one year of unlawful presence before departing the United States is subject to the three-year bar.[2][9][12] Unlawful presence is measured from April 1, 1997 (the effective date of IIRIRA), and includes time spent in the United States without authorization or beyond the scope of lawfully authorized status.[9][12] The three-year bar runs from the date of departure and prevents re-entry for a period of three years unless the individual obtains a waiver under INA § 212(a)(9)(B)(v) or completes consular processing with an approved waiver application.[9][12]

An individual who accrues one year or more of unlawful presence before departing the United States is subject to the ten-year bar.[2][9][12] This bar is significantly more restrictive than the three-year bar and prevents legal re-entry for ten years unless a waiver is obtained.[2][9][12] The practical consequence is that an individual who self-deports after spending significant time in the United States as an unauthorized immigrant may be unable to reunite with family members through family-based immigration for a decade or longer, during which time their family relationships may deteriorate, their children may grow up, and their employment or economic circumstances may change substantially.

Importantly, *Matter of Duarte-Gonzalez* established that the three- and ten-year bars continue to run while an individual is in the United States, meaning that the bar period need not be spent entirely outside the country.[54] This holding has significant implications for individuals considering self-deportation, as it suggests that an individual who departs and subsequently returns (whether lawfully or unlawfully) may eventually satisfy the bar period through the passage of time, even if some portion of the bar period is spent within the United States.

The Removal Order Bars under INA § 212(a)(9)(A) and (C)

Individuals who depart after receiving a formal removal order face additional and more severe bars than those who self-deport before proceedings commence. INA § 212(a)(9)(A) creates a ground of inadmissibility for individuals who have been formally removed and seek to re-enter the United States.[3][4][51] This bar ordinarily lasts for ten years from the date of removal and can be waived only through Form I-212 (Application for Permission to Reapply for Admission) and a separate waiver application demonstrating qualifying humanitarian factors.[3][4]

INA § 212(a)(9)(C)(i)(II) creates what is colloquially known as the "permanent bar," which applies to individuals who have accrued more than one year of unlawful presence, subsequently departed (whether through formal removal or voluntary departure), and then attempted to re-enter without authorization.[4][9][51] This bar makes the individual ineligible for most forms of relief from removal and requires that the individual remain outside the United States for at least ten years after their last departure before they can apply for a waiver on Form I-212.[4][51]

The permanent bar is particularly significant because it represents a categorical restriction on relief eligibility that applies regardless of humanitarian factors or the strength of the individual's immigration case. An individual subject to the permanent bar cannot adjust status, cannot apply for cancellation of removal, cannot obtain asylum, and cannot benefit from many other forms of relief even if they would otherwise qualify.[4][51] In essence, the permanent bar effectively precludes legal immigration for individuals who attempt re-entry after it has been triggered.

The In Absentia Failure-to-Appear Bar

INA § 212(a)(6)(B) creates a non-waivable five-year bar to re-entry for individuals who fail to appear at removal proceedings without reasonable cause and subsequently depart or are removed.[1][19][22][51] This bar is particularly relevant to self-deportation because it is triggered specifically by failure to appear at an immigration hearing, which is what occurs when an individual simply leaves the United States while removal proceedings are pending.

The non-waivable character of this bar distinguishes it from other grounds of inadmissibility that can be overcome through Form I-212 or other waiver mechanisms.[1][19][22] An individual subject to this bar simply cannot re-enter legally for five years, and the government has no discretion to waive the bar or allow earlier re-entry, even in humanitarian circumstances such as death of a family member or urgent medical need.[1][19][22] This rigid, non-waivable character makes it one of the most punitive consequences of failure to appear at removal proceedings.

EOIR Court-Specific Implications of Self-Deportation

Procedural Consequences of Departure While Case Is Pending

When a respondent with a pending case in immigration court departs the United States, multiple procedural consequences follow. First, if the respondent had a scheduled hearing before the immigration judge, their failure to appear at that hearing triggers the authority for the immigration judge to issue an in absentia removal order under INA § 240(b)(5)(A) and 8 C.F.R. § 1003.26(c).[16][22] The government must establish that the respondent received proper notice of the hearing (ordinarily accomplished through certified or regular mail to the respondent's last known address), and if the respondent fails to appear without demonstrating exceptional circumstances, the immigration judge must issue a removal order in absentia.[16][22]

Second, any pending applications for relief filed by the respondent are ordinarily treated as withdrawn upon the respondent's departure from the United States. This is particularly significant for respondents with pending asylum applications, as departure effectively abandons the asylum claim and prevents future adjudication of the application.[14] Similarly, if the respondent had filed applications for cancellation of removal, adjustment of status, or other relief, departure ordinarily results in withdrawal of those applications, though in some circumstances the respondent may be able to re-file after departure.[14][44][47]

Third, the respondent's removal proceedings may be administratively closed or terminated through government motion. 8 C.F.R. § 1239.2(a)(6) provides that the government may seek dismissal of removal proceedings if the Notice to Appear was "improvidently issued," and 8 C.F.R. § 1239.2(a)(7) provides for dismissal if "circumstances have changed to such an extent that continuation is no longer in the best interest of the government." [25][38] If the respondent has departed, the government may seek dismissal on the ground that the individual is no longer in the United States or is not in government custody.

Fourth, if the respondent filed an appeal of an adverse immigration judge decision to the Board of Immigration Appeals and subsequently departs, the departure ordinarily constitutes withdrawal of the pending appeal under 8 C.F.R. § 1003.23(b)(1), which provides that a motion to reopen or reconsider shall not be made by a person subject to removal proceedings subsequent to departure, and that any departure constitutes withdrawal of such motions. [15][39] This rule, established in *Matter of Okoh*, creates a significant procedural trap for respondents who depart while appeals are pending. [57]

However, there is an important exception to the departure bar in circumstances involving in absentia orders issued without proper notice. In *Matter of Bulnes-Nolasco*, the BIA established that an in absentia order issued in proceedings of which the respondent had no notice is voidable from its inception and becomes a legal nullity upon rescission. [15][39] Therefore, an individual who departed without being aware of removal proceedings or who never received proper notice of a hearing date may be able to file a motion to reopen to rescind the in absentia order even after departure, provided the motion is premised on lack of notice and filed at any time (unlike the 180-day deadline for exceptional circumstances motions). [15][22]

Abandonment of Relief Applications and Collateral Consequences

The abandonment of pending relief applications that occurs upon departure has serious collateral consequences for respondents' family members and dependents. If a respondent had derivative family members included on their asylum application (such as a spouse or unmarried children under 21), the withdrawal of the respondent's case results in withdrawal of the derivative applications as well. [14] This means that family members lose independent protection from removal even if they have qualifying relationships and would otherwise be eligible for asylum or other relief. [14]

Similarly, if a respondent was pursuing cancellation of removal with the intent to establish a foundation for later family sponsorship of relatives, departure and the resulting removal order bars them from filing cancellation applications in the future for ten years (if the removal order is final) or potentially indefinitely (if a permanent bar has been triggered). [2][30][43] This means that the respondent's family separation becomes potentially indefinite rather than temporary, as the respondent cannot use cancellation of removal to establish lawful permanent residence that would enable them to sponsor family members for immigration.

Departure also affects the respondent's ability to pursue alternative forms of relief that may have been developed during removal proceedings. If, during the course of removal proceedings, the respondent developed facts supporting eligibility for U visa relief (based on victimization by qualifying crimes), T visa relief (based on human trafficking victimization), or VAWA self-petitioner relief (based on domestic violence), departure ordinarily results in loss of the opportunity to pursue these forms of relief within the removal proceedings context. [14][26][45] While the respondent might theoretically re-file for these forms of relief after departure through consular processing or other mechanisms, the administrative and factual circumstances may have changed, witnesses may have become unavailable, and the respondent may face re-entry bars that complicate future processing.

The Interaction of Self-Deportation with Prosecutorial Discretion

Although prosecutorial discretion has been significantly curtailed in recent years, it remains theoretically available for immigration judges and DHS attorneys to consider in appropriate circumstances.[26][29][45] Prosecutorial discretion permits DHS attorneys to decide not to pursue removal proceedings or to seek dismissal of pending cases based on factors such as the respondent's ties to the community, family relationships, employment history, humanitarian considerations, and lack of criminal history.[26][29]

However, once a respondent has departed from the United States, the opportunity to seek prosecutorial discretion relief is ordinarily foreclosed. If the respondent is no longer in the country, DHS has no incentive to exercise prosecutorial discretion and seek dismissal of the case, as the government's enforcement objective (removing the individual from the United States) has already been accomplished through voluntary departure.[26][29] Moreover, a respondent who self-deports may be viewed as having abdicated their right to challenge removal, thereby reducing the likelihood that sympathetic DHS attorneys would intervene on behalf of the respondent.

Northern California Immigration Court Context and Venue-Specific Considerations

San Francisco Immigration Court and Judicial Tendencies

The San Francisco Immigration Court, located at 100 Montgomery Street, Suite 800 (with additional hearing locations at 630 Sansome Street, 4th Floor, and in Concord at 1855 Gateway Blvd., Suite 850), serves the Northern California region and handles a substantial docket of removal proceedings involving Central American asylum seekers, Mexican nationals, and tech workers on H-1B visa issues.[1] Immigration judges in the San Francisco court have developed procedural tendencies and case management practices that affect how self-deportation issues arise in practice.

San Francisco immigration judges generally require detailed written motions for pre-conclusion voluntary departure, and many judges in this venue are receptive to requests for continuances to allow respondents to gather evidence of good moral character, community ties, and financial ability to depart.[5][10] However, the court also strictly enforces filing deadlines and procedural requirements, and judges have limited tolerance for respondents who miss scheduled hearings or fail to comply with court orders.

A significant percentage of cases in San Francisco involve asylum claims from Central American nationals, particularly from Guatemala, El Salvador, and Honduras.[1] For respondents with pending asylum applications, the risk of self-deportation is particularly acute, as departure ordinarily results in abandonment of the asylum claim and loss of eligibility for asylum-based work authorization, which many respondents rely upon to support themselves and their families while cases are pending.[2][14]

Interaction with California State Criminal Law and Immigration Consequences

Northern California practitioners must be attentive to the interaction between state criminal law and immigration consequences, particularly given California's progressive criminal justice reforms that have created opportunities to mitigate immigration consequences of convictions. California Penal Code § 1473.7 permits defendants to challenge convictions based on ineffective assistance of counsel or newly discovered evidence showing that the conviction carries unforeseen immigration consequences, and California Penal Code § 1203.43 permits courts to modify sentences to avoid specified immigration consequences.

For respondents considering self-deportation, the interaction with California's criminal law framework is important because modification of convictions under state law may remove grounds of removability that

would otherwise support removal proceedings. If a respondent can reduce a conviction from an aggravated felony to a non-deportable offense, they may eliminate DHS's ability to pursue removal, thereby eliminating the pressure that might have motivated consideration of self-deportation.[1]

Additionally, California Penal Code § 18.5 and Proposition 47 have created opportunities to reduce certain drug and property offenses from felonies to misdemeanors, which may have significant immigration consequences. A respondent whose underlying removability ground was a drug felony might become removable on an enhanced felony basis under different INA provisions, or might become ineligible for some forms of relief but eligible for others, depending on the details of the conviction and the modification sought.[1]

SB 54 and State Law Protections

California Penal Code § 7056 (popularly known as "SB 54," the California Values Act) limits state and local law enforcement cooperation with federal immigration enforcement. The statute prohibits state and local peace officers from using state funds or facilities to enforce immigration law, from providing certain information about individuals to federal immigration authorities, and from detaining individuals based solely on civil immigration detainers absent certain specified circumstances.[1]

For respondents in Northern California, SB 54 provides important practical protections that may reduce the likelihood of immigration enforcement and apprehension while removal proceedings are pending. A respondent who is not currently detained and is in removal proceedings may have a reduced risk of apprehension by ICE if they are not stopped by local law enforcement for criminal activity, as state and local police have limited authority to cooperate with ICE under SB 54.[1] This reduced enforcement pressure may reduce the motivation to self-deport, as respondents may have more time and opportunity to pursue formal relief options.

However, SB 54 provides no protection against federal enforcement, and CBP (Customs and Border Protection) and ICE remain authorized to apprehend and detain individuals regardless of state law restrictions.[1] Additionally, if a respondent is already in immigration detention or in federal custody, SB 54 provides no relief, and the respondent's risk of enforcement action remains high.

Risk Assessment: The Legal and Practical Consequences of Self-Deportation in Pending EOIR Proceedings

High-Risk Scenario: Self-Deportation Before Removal Proceedings Commence

If an individual departs the United States before any removal proceedings have been initiated (that is, before a Notice to Appear has been filed), the legal consequences are limited to the statutory bars under INA § 212(a)(9)(B) for accumulated unlawful presence.[2][9][12] This is the least severe scenario from a removal proceedings perspective, as the individual is not subject to in absentia orders, removal order bars, or failure-to-appear bars.[2]

However, the practical consequences remain severe. An individual who self-departs after accumulating unlawful presence and then seeks to return through family sponsorship, employment, humanitarian relief, or other mechanisms will face either a three-year or ten-year bar depending on the duration of unlawful presence, absent a waiver application.[2][9][12] For many immigrants in Northern California, particularly those with family members in the United States who could sponsor them, the prospect of a ten-year separation is

devastating and may outweigh the immediate enforcement pressure that motivated consideration of self-deportation.

Risk Level for this scenario: Medium to Medium-High. While the direct removal proceedings consequences are avoided, the statutory bars to re-entry are substantial and may be effectively permanent for individuals without access to waiver processing or without qualifying family relationships to sponsor their re-entry.

Medium-Risk Scenario: Self-Deportation While Case Is Scheduled but Not Yet Adjudicated

If an individual departs the United States while a removal proceeding has been filed but before the immigration judge has rendered a decision on the merits, the consequences are more severe than self-departure before proceedings commence. The individual is at substantial risk of an in absentia removal order, which triggers the five-year non-waivable bar under INA § 212(a)(6)(B) for failure to appear.[1][19][22]

Additionally, if the individual had pending applications for relief (asylum, cancellation of removal, adjustment of status), departure ordinarily results in withdrawal of those applications.[14] The removal order that results from the in absentia hearing creates a ten-year bar to relief eligibility under INA § 240(b)(7)(B) and prevents the individual from filing certain forms of relief for ten years.[19][22]

The individual also becomes subject to accumulated unlawful presence bars under INA § 212(a)(9)(B), which may be a three-year or ten-year bar depending on the duration of presence in the United States.[2][9][12]

Critically, if the individual later attempts to challenge the in absentia order through a motion to reopen, they face the departure bar established in *Matter of Okoh*, which ordinarily precludes motions to reopen after departure, except in limited circumstances involving lack of notice.[15][39] The only potential exception is the holding from *Matter of Bulnes-Nolasco* that an in absentia order issued without proper notice may be reopened even after departure, but this requires the individual to successfully demonstrate that they did not receive proper notice, which requires meeting a demanding evidentiary standard.[15][39]

Risk Level for this scenario: High. The combination of in absentia order consequences, failure-to-appear bars, withdrawal of relief applications, and accumulated unlawful presence bars creates a substantially worse legal position than self-departure before proceedings commence.

Highest-Risk Scenario: Self-Deportation After Removal Order Issued but Before Final Resolution of Appeal

If an individual departs after an immigration judge has issued a removal order denying all applications for relief, but before the Board of Immigration Appeals has resolved any timely appeal, the legal consequences are most severe. Departure constitutes withdrawal of the pending appeal under 8 C.F.R. § 1003.23(b)(1), which means the immigration judge's decision becomes final and the removal order is no longer subject to challenge on appeal.[15][39]

The individual then faces the removal order bars under INA § 212(a)(9)(A), which ordinarily bar re-entry for ten years and require Form I-212 application and waiver processing for re-entry.[3][4] If the individual has accrued more than one year of unlawful presence and has previously been removed or departed under a removal order, they may become subject to the permanent bar under INA § 212(a)(9)(C)(i)(II), which may permanently bar them from most forms of relief regardless of humanitarian circumstances.[4]

Additionally, if the individual had any specialized relief applications pending (U visa, T visa, VAWA self-petition, derivatives on asylum applications), departure ordinarily results in abandonment of those applications, and the ten-year bar on relief eligibility prevents re-filing such applications for a

decade.[2][30][43]

If the individual later attempts to file a motion to reopen the removal order after departure, they encounter the jurisdictional bar established in *Matter of Okoh*, which ordinarily precludes such motions.[15][39] The limited exceptions available under *Matter of Bulnes-Nolasco* for in absentia orders issued without notice do not apply to orders issued after a full hearing on the merits.

Risk Level for this scenario: Very High. The individual has effectively abandoned their case by departing while an appeal is pending, and faces removal order bars, potential permanent bars, and a substantially diminished ability to pursue future immigration relief.

Statutory Waivers and Alternatives to Self-Deportation

Form I-212 and Waiver Processing for Re-entry After Removal

For individuals who have been formally removed or who have departed under a removal order, Form I-212 (Application for Permission to Reapply for Admission) and accompanying waiver applications provide a potential mechanism for seeking return to the United States after the applicable bar period has elapsed or for seeking forgiveness of the bar period.[3][4] An individual subject to INA § 212(a)(9)(A) (the removal order bar) may apply for a waiver under INA § 212(a)(9)(A)(iii) if they can demonstrate humanitarian factors, family unity considerations, or the public interest.[3][4]

However, the waiver standard is demanding, and USCIS has historically granted I-212 waivers at relatively low rates, particularly for cases without exceptional family circumstances or humanitarian factors.[3][4] The Form I-212 application must be filed from outside the United States (though provisional waiver applications under 8 C.F.R. § 212.7 may be filed from within the United States in some circumstances), and processing times are typically lengthy, ranging from months to years depending on the complexity of the case and the volume of applications at the relevant USCIS service center.[3][4]

For individuals subject to the permanent bar under INA § 212(a)(9)(C)(i)(II), the situation is substantially worse. The permanent bar generally cannot be waived until ten years have elapsed since the individual's last departure from the United States, and even after the ten-year period, waiver eligibility depends on the individual's ability to demonstrate humanitarian factors.[4][51] For many individuals, the practical effect is that the permanent bar is effectively permanent, as the individual lacks the resources or connections to maintain family relationships and documentary evidence over a ten-year period abroad.

Provisional Unlawful Presence Waivers

For individuals subject to the three- or ten-year unlawful presence bars under INA § 212(a)(9)(B), 8 C.F.R. § 212.7 establishes a provisional waiver process that permits certain individuals to apply for waiver approval while in the United States, rather than requiring separation from family members during the lengthy waiver processing period abroad.[12] The provisional waiver process is available for spouses, children, and parents of U.S. citizens and lawful permanent residents who can demonstrate "extreme hardship" to the qualifying relative.[12]

However, the provisional waiver process has substantial limitations that restrict its utility for self-deportation scenarios. First, the provisional waiver is available only for individuals who have a pending or approved immediate relative petition (Form I-130) or employment-based petition, or who qualify for visa lottery or other specific immigration categories.[12] Second, the extreme hardship standard for waiver approval is

demanding and requires detailed evidence of unusual and severe hardship that would result from the qualifying relative's deportation or separation.[12] Third, approval of a provisional waiver does not guarantee that an individual will ultimately receive an immigrant visa, as other grounds of inadmissibility or immigration law violations may render the individual ineligible for visa issuance despite the waiver.[12]

For respondents in Northern California considering self-deportation, the provisional waiver process is relevant only if they have an immediate relative (U.S. citizen spouse, parent, or child over 21, or lawful permanent resident spouse or adult child) who can file a Form I-130 petition and if they can demonstrate that departure and separation from that relative would cause extreme hardship.[12] For respondents without qualifying family relationships, the provisional waiver process is unavailable, and they are left to pursue the lengthier overseas waiver process or to accept the bar period as effectively permanent.

Strategic Recommendations and Alternative Approaches to Self-Deportation

Seeking Voluntary Departure as an Alternative

For respondents actively considering self-deportation, the first strategic priority should be to evaluate whether voluntary departure under INA § 240B is a viable alternative that provides better legal consequences than unilateral departure.[2][5][10][20][30] Voluntary departure offers several advantages over self-deportation: it provides a defined departure deadline that allows the respondent to arrange affairs, obtain travel documents, and plan re-entry logistics; it avoids both the in absentia order consequences and the removal order bars that would otherwise apply; and it provides a formal legal framework that may facilitate future re-entry applications.

For respondents currently detained or facing imminent removal, requesting voluntary departure before an immigration judge may provide leverage in negotiating with DHS attorneys. If the respondent demonstrates financial ability to depart and intent to comply with a voluntary departure order, DHS may be willing to stipulate to voluntary departure rather than proceed with contested hearings or in absentia removal proceedings.[2][5][30]

The respondent must understand that pre-conclusion voluntary departure requires waiving all pending applications for relief, including asylum, cancellation of removal, and adjustment of status, and waiving the right to appeal.[5][10][20][24] This is an important decision point that must be made with careful consideration of whether the respondent has legitimate claims for relief that might succeed at a hearing or on appeal.[2][5]

Administrative Closure as a Temporary Alternative

In appropriate circumstances, respondents may benefit from seeking administrative closure of their removal proceedings under 8 C.F.R. § 1240.12(c), which permits an immigration judge to temporarily remove a case from the calendar to allow respondents to pursue other immigration relief or to accommodate collateral legal proceedings.[44][47] Administrative closure is particularly relevant for respondents who are pursuing criminal conviction modification under California Penal Code § 1473.7 or § 1203.43, as modification of a conviction may eliminate the respondent's removability.

However, administrative closure has been significantly curtailed following *Matter of Avetisyan*, and immigration judges may no longer grant administrative closure if DHS objects, even if both the respondent and immigration judge believe closure is appropriate.[44][47] Additionally, administrative closure does not

eliminate the respondent's removal proceedings; it merely pauses them pending completion of collateral matters or development of other relief options.[44][47]

Seeking Dismissal Through Prosecutorial Discretion

Although prosecutorial discretion has been curtailed and is currently not applied systematically, respondents with strong positive equities and sympathetic circumstances may benefit from requesting that DHS seek dismissal of removal proceedings as a matter of prosecutorial discretion.[26][29][45] Prosecutorial discretion requests should emphasize factors such as family ties to the United States, employment history, military service, community contributions, lack of criminal history (or rehabilitation if criminal history exists), humanitarian factors, and lengthy residence in the United States.[26][29][45]

For respondents in Northern California, particularly those represented by experienced immigration counsel, prosecutorial discretion requests to the San Francisco Office of the Principal Legal Advisor may be effective in cases involving particularly sympathetic factual circumstances. However, practitioners must understand that prosecutorial discretion requests are not legally enforceable, that ICE attorneys have substantial discretion to deny such requests, and that the availability of prosecutorial discretion has decreased substantially since January 2025.[26][29][45]

Conclusion: Avoiding the Self-Deportation Trap in EOIR Proceedings

Self-deportation is not a legal process, and the consequences of unilateral departure while removal proceedings are pending are ordinarily more severe and more restrictive than the consequences of pursuing formal legal alternatives within the EOIR framework. The Executive Office for Immigration Review's misleading flyers promoting "self-deportation" as a beneficial option obscure the serious statutory bars to re-entry, the abandonment of pending relief applications, and the jurisdictional consequences that result from departure while proceedings are pending.[1][50]

For immigrants in Northern California facing removal proceedings, the appropriate response to EOIR flyers and DHS enforcement pressure is consultation with experienced immigration counsel who can evaluate whether formal voluntary departure, administrative closure, motion to terminate, or other statutory alternatives provide better legal outcomes than unilateral departure.[2][5][30][44] Respondents should understand that voluntary departure requires sacrifice of pending relief applications but provides a more dignified exit with fewer long-term immigration consequences than self-deportation or in absentia removal orders.[2][5][30]

Practitioners representing immigrants in removal proceedings must actively advise clients about the risks of self-deportation and the availability of formal alternatives. The decision to self-deport is ordinarily an irreversible decision that forecloses future immigration opportunities for years or decades, eliminates pending relief applications, and subjects the respondent to non-waivable bars under INA § 212(a)(6)(B) and statutory bars under INA § 212(a)(9) that may be effectively permanent for respondents without qualifying family relationships.[1][2][22]

The Project Homecoming initiative and CBP Home app do not fundamentally alter the underlying statutory framework, and respondents considering these options should understand that departure through government-facilitated channels does not provide immunity from the statutory bars to re-entry or from reinstatement of removal proceedings if the individual later attempts unauthorized re-entry.[33][36] The \$1,000 financial incentive must be weighed against the permanent loss of future immigration opportunities for the vast majority of respondents who lack privileged access to immediate relative sponsorship or other

qualifying pathways to legal re-entry.

Immigrants in removal proceedings deserve clear information about the true legal consequences of their choices, and immigration practitioners have an ethical obligation to provide that information and to pursue all available legal alternatives before clients make irreversible decisions to self-deport. The EOIR flyers distributed in immigration courts across the country represent a troubling departure from EOIR's regulatory obligation to inform respondents of their eligibility for immigration relief, and practitioners should preserve these flyers in the record of proceedings to support potential due process challenges to removal orders that may have been influenced by the misleading information.

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