

Statutory Framework and Jurisdictional Authority

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FINDINGS

PETITIONS FOR REVIEW OF BOARD OF IMMIGRATION APPEALS DECISIONS TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT: A COMPREHENSIVE ANALYSIS OF JURISDICTION, PROCEDURE, AND STRATEGIC CONSIDERATIONS

Executive Summary

Appeals of Board of Immigration Appeals (BIA) decisions to the United States Court of Appeals for the Ninth Circuit represent the primary federal appellate mechanism available to noncitizens challenging removal orders across Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, Washington, and associated territories. This report provides comprehensive guidance on the jurisdictional framework, procedural requirements, filing deadlines, standards of review, and strategic considerations governing these appeals as of February 2026.

Key Findings and Risk Assessment:

The most critical procedural requirement for Ninth Circuit appellate review is the strict 30-day filing deadline following a final BIA decision.[2][3][29] This deadline is non-jurisdictional as a claim-processing rule; however, petitioners cannot obtain extensions as a matter of right.[55] Failure to timely file results in complete loss of appellate review, making immediate filing essential upon receipt of an adverse BIA decision, particularly for detainees in custody near international borders who face rapid removal.[2][56]

The Ninth Circuit possesses appellate jurisdiction over final orders of removal issued by the BIA, with limited exceptions for criminal convictions, discretionary denials, and certain expedited removal proceedings.[3][24][29] The scope of appealable issues is governed by strict exhaustion requirements and varies significantly based on whether claims were raised before the BIA and the nature of the claims (legal issues, constitutional challenges, or factual determinations).[57]

Petitioners who file timely petitions for review receive automatic temporary stays of removal upon filing, provided they simultaneously file a motion to stay of removal with the petition.[8][11] However, obtaining a permanent stay requires demonstrating a strong likelihood of success on the merits, irreparable harm, and favorable balance of equities.[8] Ninth Circuit decisions are time-intensive, typically requiring 12 to 20 months or longer from briefing completion to appellate decision.[38][41]

Client Risk Assessment: Medium to High (depending on whether legal issues or factual challenges predominate)

The Ninth Circuit's appellate posture as of February 2026 reflects a mixed jurisprudential landscape influenced by recent Supreme Court decisions. While the Ninth Circuit maintains some protective precedent regarding due process in removal proceedings and restrictive interpretation of jurisdictional bars to review, recent Supreme Court decisions in [Riley v. Bondi][55] and related cases have narrowed the scope of appellate review and clarified that certain filing deadlines are claims-processing rules rather than jurisdictional barriers. This creates opportunities for litigants who raise jurisdictional questions but carries risks for those relying on procedural arguments.

Statutory Framework and Jurisdictional Authority

Foundational Statutory Authority

Judicial review of final removal orders is exclusively governed by [8 U.S.C. § 1252][3][29], which serves as the controlling statute for all petitions for review to federal courts of appeals. The statute provides that a "[p]etition for review filed with an appropriate court of appeals in accordance with this section shall be the sole and exclusive means for judicial review of an order of removal entered or issued under any provision of this chapter, except as provided in subsection (e)."[29] This language channels all removal order challenges into the petition for review process rather than habeas corpus or other alternative judicial mechanisms.

The jurisdictional scope of [8 U.S.C. § 1252(a)(1)][29] establishes that federal courts of appeals possess authority to review "any final order of removal" with specific exceptions enumerated in subsection (a)(2). These exceptions preclude judicial review of final removal orders against noncitizens removable by reason of criminal conviction, subject to narrow exceptions for constitutional claims and questions of law.[29] Notably, the Supreme Court's recent decision in [Riley v. Bondi][55] clarified that BIA orders in withholding-only proceedings-proceedings that address only the withholding of removal and Convention Against Torture (CAT) claims without determining removability-are not "final orders of removal" under § 1252(b)(1) and therefore do not trigger the 30-day filing deadline that would otherwise bar later petitions filed within 30 days of a remanded removal order.

The regulatory framework implementing this statutory authority is found in [8 CFR § 1003.1][13][16], which establishes the BIA's jurisdiction, appellate procedures, and decision-making authority. Additionally, [8 CFR § 1003.3][27] sets forth the requirements for filing notices of appeal to the BIA from immigration judge decisions, which constitute the prerequisite administrative step before Ninth Circuit review becomes available.

Ninth Circuit's Territorial Jurisdiction

The Ninth Circuit Court of Appeals maintains appellate jurisdiction over removal orders from immigration judges located within its geographic circuit, which encompasses nine western states: Alaska, Arizona, California, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington.[10][25] This circuit also includes the U.S. territories of Guam and the Northern Mariana Islands.[25] For cases arising in Northern California, the relevant immigration courts are located in San Francisco (main venue at 100 Montgomery Street, Suite 800, and an alternate location at 630 Sansome Street, 4th Floor), with a Concord hearing location at 1855 Gateway Boulevard, Suite 850.[2]

The venue requirement for filing a petition for review is determined by "the court of appeals for the judicial circuit in which the immigration judge completed the proceedings." [3][29] This means that if an immigration judge conducted proceedings in the Northern District of California, the petition for review must be filed with the Ninth Circuit Court of Appeals, even if the noncitizen is currently detained outside the Ninth Circuit. This territorial scope is significant because it means practitioners must become familiar with Ninth Circuit-specific procedures, local rules, and recent precedent even when representing clients in other circuits, should those clients be transferred or have their cases consolidated with Ninth Circuit jurisdiction.

Filing Deadline Requirements and Jurisdictional Analysis

The 30-Day Filing Deadline: Jurisdictional Status and Application

The most critical procedural requirement for appealing a BIA decision is compliance with the 30-day filing

deadline prescribed by [8 U.S.C. § 1252(b)(1)][29], which mandates that "[t]he petition for review must be filed not later than 30 days after the date of the final order of removal." [29] Recent Supreme Court precedent has established that this deadline is a "claim-processing rule" rather than a jurisdictional requirement.[55] This distinction carries profound practical implications because claim-processing rules, unlike jurisdictional rules, may be forfeited or waived if the government fails to raise them and may be subject to equitable tolling in exceptional circumstances.[55][57]

However, notwithstanding its classification as a claim-processing rule, the Ninth Circuit has historically treated the 30-day deadline as effectively mandatory in practice, and petitioners cannot obtain routine extensions of the filing deadline by motion.[2][56] The operative principle is that the petition for review "must be received by the clerk's office on or before the thirtieth day and not merely mailed by that date." [56] The date a petition is postmarked is irrelevant; only the date of receipt by the court controls.[56]

Calculation of the Deadline: The 30-day period runs from the date of the BIA's final order of removal, not from the date the petitioner receives written notice of that decision in the mail. When the final day falls on a Saturday, Sunday, or legal holiday, the deadline is automatically extended to the next business day.[56] For noncitizens in immigration detention, particularly those detained near the U.S.-Mexico border, the deadline creates significant urgency because ICE can execute removal orders immediately upon BIA dismissal or affirmance, and detention in jurisdictions with expedited removal practices may result in deportation before a petition for review can be filed and a stay of removal obtained.[2]

Determining "Finality" of the BIA Order

A critical threshold question in any petition for review is whether the BIA order constitutes a "final order of removal" within the meaning of § 1252. The Ninth Circuit has developed extensive precedent addressing what constitutes a final order, and this question remains actively litigated as of 2026.

In [Abdisalan v. Holder][24], the Ninth Circuit (sitting en banc) held that a BIA decision denying some claims but remanding other claims for further relief proceedings to the immigration judge is not a final order of removal with regard to any claims, even where the BIA decision denies asylum, withholding of removal, and CAT protection but remands solely for voluntary departure proceedings.[24][44] This holding overruled prior circuit authority and established that multiple remands preclude finality as to all claims in a single petition.

Conversely, where the BIA denies relief on all claims raised by the petitioner, the resulting order is final, and the 30-day deadline commences immediately.[24] The Ninth Circuit has stated that "a removal order that has been executed against a U.S. citizen is 'a final order of removal' within the meaning of § 1252(a)" and therefore within the court's jurisdiction.[24]

The Supreme Court's recent decision in [Riley v. Bondi][55] added crucial clarity regarding withholding-only proceedings. Where a petitioner receives a removal order but then pursues only withholding of removal and CAT claims (not asylum), and the BIA denies those claims, the resulting BIA order is not itself a "final order of removal" under § 1252(b)(1). Instead, the underlying Final Administrative Removal Order (FARO) or initial removal order remains the operative final order, and the 30-day deadline is triggered by that initial order, not by the BIA's subsequent withholding-only decision.[55]

Exceptions to Appellability and Jurisdictional Bars

Certain categories of removal orders are categorically excluded from Ninth Circuit review. [8 U.S.C. § 1252(a)(2)(C)][29] provides that "no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense." This preclusion applies to any

noncitizen convicted of any of the criminal offenses specified in [INA § 101(a)(43)][3][29], which includes aggravated felonies, crimes of violence, controlled substance offenses, trafficking offenses, and many other categories of criminal conviction.

However, this categorical bar contains an important exception: "Nothing in subparagraph (B) or (C) ... shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." [29] This means that even noncitizens convicted of crimes specified in § 1252(a)(2)(C) retain the right to appeal questions of law and constitutional claims, though they cannot appeal factual determinations or discretionary decisions. [29]

Additionally, [8 U.S.C. § 1252(g)][3][29] provides that "[n]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien." However, the Supreme Court has instructed that § 1252(g) is a "discretion-protecting provision" with a narrow scope, applying "only to three discrete actions the Attorney General may take: her 'decision or action' to commence proceedings, adjudicate cases, or execute removal orders." [6] The Ninth Circuit recently clarified in [Ibarra-Perez v. USA][6][26] that § 1252(g) does not bar federal court jurisdiction over post-removal claims alleging tortious conduct or unlawful removal practices that occur after removal proceedings have concluded, as such claims do not arise from the "execution" of the removal order itself but rather from post-removal governmental misconduct.

Standards of Review and Evidentiary Considerations

Clearly Erroneous Standard for Factual Findings

The Ninth Circuit applies a highly deferential "clearly erroneous" standard of review to factual findings made by immigration judges and adopted or affirmed by the BIA. [32][35] Under this standard, a factual finding is clearly erroneous "only [if the appellate court is] 'left with the definite and firm conviction that a mistake has been committed.'" [12] Factual findings by immigration judges include credibility determinations, witness testimony assessments, and findings regarding whether an applicant's testimony regarding past persecution, family relationships, economic conditions, or other factual matters is truthful and probative. [32][35]

The Supreme Court and Ninth Circuit have repeatedly emphasized that immigration judges, having heard live testimony and observed witness demeanor, are in a superior position to assess credibility, and appellate courts lack this advantage when reviewing paper records. [35] Consequently, the Ninth Circuit will reverse an immigration judge's factual finding only upon the rare occasion when the finding is not supported by substantial evidence in the record, is illogical or implausible, or contradicts undisputed evidence. [35]

De Novo Review of Legal Determinations and Discretionary Decisions

In contrast to the highly deferential clearly erroneous standard applied to factual findings, the Ninth Circuit reviews legal determinations, discretionary decisions, and constitutional questions de novo—meaning the appellate court applies its own independent judgment rather than deferring to the agency's interpretation. [12][32][35] This includes review of whether the immigration judge applied the correct legal standard for eligibility for asylum, withholding of removal, cancellation of removal, or other forms of relief; whether the immigration judge properly construed the statute or applicable regulations; and whether the immigration judge violated due process or other constitutional protections. [32][44][47]

Notably, recent Ninth Circuit decisions have scrutinized whether the BIA applied the correct standard of

review when considering the immigration judge's legal conclusions. In [*Umana-Escobar v. Gonzales*][32], the Ninth Circuit remanded an asylum and withholding case because the BIA had erroneously reviewed the immigration judge's nexus determination for clear error rather than de novo. The court held that "the BIA must review de novo whether a persecutor's motives meet the nexus legal standards, i.e., whether a protected ground was 'one central reason' (for asylum) or 'a reason' (for withholding of removal) for the past or feared harm." [32] This decision highlights the importance of appellate review ensuring proper application of legal standards, as even the BIA can commit reversible error by applying an incorrect standard of review.

Discretionary decisions-determinations regarding whether a noncitizen deserves discretionary relief such as cancellation of removal, adjustment of status, or positive exercise of prosecutorial discretion-are also reviewed de novo by the Ninth Circuit. [12] The court will examine whether the immigration judge or BIA properly weighed positive and negative equitable factors, provided a reasoned explanation for the decision, and did not abuse discretion by failing to consider relevant factors or by basing the decision on clearly erroneous factual findings. [12][32]

Administrative Exhaustion Requirements

The Ninth Circuit, like other circuits, enforces strict administrative exhaustion requirements that condition appellate review on whether the petitioner raised the issue before the BIA and provided the agency with an adequate opportunity to address it. [4][24][57] The Supreme Court's decision in [*Santos-Zacaria v. Garland*][57] clarified that § 1252(d)(1)'s exhaustion requirement is a non-judicial claim-processing rule subject to waiver and forfeiture. This means that if the government fails to argue that a petitioner failed to exhaust an administrative remedy, the government has forfeited that objection, and the court of appeals may review the claim on the merits. [57]

To satisfy the exhaustion requirement, a noncitizen must place the BIA on notice of the challenge and provide the agency with "an opportunity to pass on the issue." [4] However, a petitioner is not required to file a motion to reopen or reconsider to exhaust administrative remedies; filing a timely notice of appeal to the BIA with a properly stated statement of reasons for the appeal suffices to present the issue for BIA consideration. [57] Where a petitioner raises an issue in a notice of appeal that the BIA chooses to dismiss without addressing the merits, the Ninth Circuit may still have jurisdiction if the BIA considered the issue on the merits and chose to ignore a procedural defect that might have justified declining to decide the issue. [4]

Motion to Stay of Removal: Procedures and Strategic Considerations

Automatic Temporary Stay Upon Filing

One of the most critical protective mechanisms available to noncitizens facing removal is the automatic temporary stay of removal that attaches upon timely filing of a petition for review combined with a motion to stay of removal. [9th Circuit General Order 6.4(c)][8] and [*DeLeon v. INS*][8] establish that "[r]emoval is automatically, temporarily stayed upon the filing of either a PFR that also requests stay of removal or an initial stay motion." [8] This automatic stay continues during the pendency of the petition for review unless the court vacates it or denies the motion for permanent stay. [8]

The automatic stay is triggered by the act of filing-it does not require court approval or a judicial order. [8] However, the stay is temporary and limited in duration, typically continuing only until the court decides the motion for permanent stay or otherwise orders a termination of the stay. [8] Consequently, while the automatic stay provides critical breathing room to prevent removal while briefing is underway, it is not a substitute for

obtaining a permanent stay, which requires filing a substantive motion before the court.

Standards for Obtaining Permanent Stay of Removal

To obtain a permanent stay of removal from the Ninth Circuit, a petitioner must satisfy the traditional stay standard applicable in federal litigation, which requires demonstrating: (1) a strong likelihood of success on the merits of the petition for review; (2) that irreparable harm will result if the stay is denied (typically, removal to a country where persecution or torture is feared); and (3) that the balance of equities weighs in favor of granting the stay.[8][59] The Ninth Circuit applies this standard in immigration cases and reviews stay decisions for abuse of discretion.[8]

The "strong likelihood of success on the merits" prong requires the petitioner to present arguments that, if accepted, would likely result in reversal of the BIA decision or remand for further proceedings.[8] This is a significant threshold; mere colorable arguments or close questions are insufficient.[8] Petitioners who are challenging factual findings (subject to the clearly erroneous standard) generally face higher burdens in demonstrating a strong likelihood of success than those challenging legal determinations (subject to de novo review).[8] Similarly, petitioners claiming that the BIA failed to exercise discretion correctly face greater difficulty satisfying this prong than those asserting that the immigration judge applied an incorrect legal standard.[8]

The irreparable harm prong is typically satisfied in immigration cases by demonstrating that if removed, the petitioner faces persecution, torture, or denial of due process, and that such harm cannot be remedied by monetary damages or other conventional relief available in the absence of a stay.[8][59] Courts recognize that deportation to a country of feared persecution constitutes irreparable harm as a matter of law in asylum and withholding cases; however, petitioners must identify which country they fear removal to and provide documentation of conditions in that country to support the claim of irreparable harm.[8][59]

The balance of equities prong requires weighing the petitioner's interest in remaining in the United States pending appellate review against the government's interest in executing removal orders and the public's interest in faithful execution of removal judgments.[8] Notably, the government often argues that generalized public interest in immigration enforcement favors vacating the stay; however, courts have held that this interest is typically outweighed when substantial questions of law or constitutional rights are raised.[8]

Briefing Schedule for Stay Motions

The Ninth Circuit has established specific briefing schedules for motions to stay of removal. Pursuant to [9th Circuit General Order 6.4(c)][8], the government's response to a stay motion is due "within 21 days from the due date of the administrative record" (meaning the Certified Administrative Record filed by the government), and the petitioner's reply is due within 7 days of service of the government's response.[8] If the government fails to file a response to the stay motion, "the temporary stay continues during the pendency of the PFR, absent further order from the court."[8]

This briefing schedule is significantly shorter than the schedule for briefing the merits of the petition for review (40 days for opening brief, 30 days for answering brief, 14 days for reply), allowing courts to expedite decisions on stay motions when imminent removal is threatened.[8][11]

Current Legal Landscape: Recent Developments and Precedential Authority

Recent Supreme Court Decisions Affecting Ninth Circuit Appellate Review

The legal landscape governing Ninth Circuit appeals of BIA decisions has shifted meaningfully following recent Supreme Court decisions. Most significantly, [Riley v. Bondi][55] (decided in 2024) clarified that the 30-day filing deadline in § 1252(b)(1) is a claims-processing rule rather than a jurisdictional bar to review. This holding has substantial implications because it means that if the government fails to raise the timeliness defense in its answering brief on a petition for review, the government forfeits that defense, and the court may review the petition on the merits despite missing the 30-day deadline.[55]

Additionally, [Riley][55] established that BIA orders denying deferral of removal in withholding-only proceedings are not "final orders of removal" under § 1252(b)(1), which means that the 30-day deadline is triggered by the underlying FARO or initial removal order, not by the BIA's subsequent withholding-only decision.[55] This distinction has created important strategic opportunities for petitioners who can file within 30 days of the underlying removal order even if they file more than 30 days after the BIA's withholding-only decision.

The Supreme Court's decision in [Nasrallah v. Barr][24][44] established that "CAT orders are not the same as final orders of removal[,] but clarified that "CAT orders may be reviewed together with final orders of removal in a court of appeals." [24][44] This holding permits petitioners to raise CAT claims on appeal of a removal order even if those claims are not themselves independently appealable.

Recent Ninth Circuit Precedent (2025-2026)

Recent Ninth Circuit decisions reflect continuing development in asylum and withholding jurisprudence, particularly regarding nexus determinations and persecution standards. In [Guevara-Serrano v. Bondi][18] (decided January 2026), the Ninth Circuit panel granted in part and denied in part a petition for review, holding that the record compelled the conclusion that the Honduran government was unwilling or unable to protect petitioners from gang-related harm. The court remanded the case for further proceedings regarding asylum and withholding of removal claims, finding that the immigration judge's determination on government protection was not supported by sufficient evidence.[18]

[Montejo-Gonzalez v. Garland][1] (decided October 2024) represents important recent authority regarding motions to reopen and exceptional circumstances. The Ninth Circuit held that the BIA abused its discretion by denying a motion to reopen where the record established exceptional circumstances, including that petitioners did everything they reasonably could to have their day in court, their delayed arrival at a hearing was beyond their control, and the in absentia removal order would cause unconscionable results (particularly because minor children were eligible to seek derivative citizenship through their newly naturalized father).[1]

Notably, as of February 2026, prosecutorial discretion and humanitarian stays of removal, which were previously available tools in the immigration enforcement system, have been substantially limited by executive policy and enforcement directives issued in early 2025, according to the personalization instructions provided. As of December 2025, the Doyle memo no longer applies or is adhered to, and there is no current replacement policy at this time. This represents a significant change in the legal landscape governing removal proceedings and may increase the litigation burden on appeals of BIA decisions.

Standards of Review for Agency Decisions

The Ninth Circuit applies the Administrative Procedure Act (APA) standard of review to pure questions of law raised in petitions for review, meaning that agency interpretation of statutes and regulations is reviewed under the standards articulated in [Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.][4] and its progeny.[4] Under this framework, if Congress has directly spoken to the precise question at issue in the statute, the agency must conform its interpretation to Congress's intent; if the statute is ambiguous, the court

defers to the agency's interpretation if it is reasonable.[4]

However, the Ninth Circuit has declined to apply Chevron deference to certain agency interpretations, particularly where constitutional questions are implicated or where the agency has offered shifting interpretations on a matter of substantial importance.[4][6][26]

Ninth Circuit Procedural Requirements and Local Rules

Petition for Review Filing Requirements

Petitions for review filed with the Ninth Circuit must comply with [Ninth Circuit Rule 15-4][14], which requires that a petition for review of a BIA decision "state whether petitioner (1) is detained in the custody of the Department of Homeland Security or at liberty and/or (2) has moved the Board of Immigration Appeals to reopen or applied to the district director for an adjustment of status." [14] The petition must also be accompanied by a copy of the BIA order being challenged and must include the petitioner's alien registration number in the caption.[14]

The petition must be filed as an original in paper format unless required to be submitted via the Appellate Electronic Filing System (CM/ECF).[14] The filing fee is \$600.00, or a motion to proceed in forma pauperis (in the form of a pauper) must be filed if the petitioner cannot afford to pay.[36]

Additionally, [Federal Rules of Appellate Procedure 15(a)][42] requires that the petition name each party seeking review, name the agency as a respondent, and specify the order or part thereof being reviewed.[42]

Briefing Schedule and Requirements

Following the filing of a petition for review, the Ninth Circuit establishes a briefing schedule through a time scheduling order.[36][51] The government must file the Certified Administrative Record (CAR) within 40 days of service of the petition for review.[2][56] Once the CAR is filed, the briefing schedule commences: the petitioner must file an opening brief within 40 days after the date on which the administrative record is available; the government must file an answering brief within 30 days of service of the opening brief (or 40 days if the government seeks additional time); and the petitioner may file a reply brief within 14 days of service of the government's brief.[3][29]

These deadlines are subject to a single 30-day extension upon motion, but additional extensions require a formal motion demonstrating good cause.[36] The Ninth Circuit has recently tightened its initial briefing schedules and has indicated that litigants should no longer deprioritize the court's deadlines to accommodate competing work demands at their law firms.[11]

The opening brief must include an addendum containing all orders of the immigration court and BIA that are being challenged.[36] The opening brief need not be accompanied by excerpts of record (which is required in some circuits) but instead must rely on the administrative record compiled by the government.[36]

Motion Practice and Emergency Relief

All motions filed in the Ninth Circuit must comply with [Federal Rule of Appellate Procedure 27][11][51] and [Ninth Circuit Rule 27][11]. A response to a motion is due 10 days after the motion is filed, and an optional reply is due 7 days after the response is filed.[11] Petitioners may file emergency or urgent motions where immediate relief is needed within 21 days to avoid irreparable harm; such motions must include a [Circuit Rule 27-3 Certificate][11] explaining the facts showing the emergency and why relief could not have been

sought sooner.[11] The Ninth Circuit monitors emergency motion emails (Emergency@ca9.uscourts.gov) and telephone messages during business hours and provides responses the next business day unless more immediate relief is necessary.[11]

Pro Se Petitioner Requirements

Self-represented (pro se) petitioners filing petitions for review in immigration cases must follow specific requirements set forth in the Ninth Circuit's Pro Se Immigration Case Opening guide.[51] All documents must be in English and clear and easy to read; documents that cannot be read may be returned for correction.[51] Pro se petitioners must pay the \$600 filing fee or file a motion to proceed in forma pauperis with supporting financial affidavit.[51] The petition for review must follow the general requirements in [Federal Rules of Appellate Procedure 15][42] and include specific information regarding the petitioner's detention status and any pending motions to reopen before the BIA.[51]

San Francisco Immigration Court and Northern California Implementation

San Francisco Immigration Court Locations and Procedures

The San Francisco Immigration Court, which has primary jurisdiction over removal proceedings in Northern California, maintains three hearing locations: the main San Francisco location at 100 Montgomery Street, Suite 800, San Francisco, CA 94104; an alternate San Francisco location at 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111; and the Concord hearing location at 1855 Gateway Boulevard, Suite 850, Concord, CA 94520.[2] Cases may be scheduled at any of these locations, and practitioners must remain prepared to appear in multiple forums.

Immigration judges in the San Francisco Immigration Court apply local rules and procedures that may vary from other courts within the Ninth Circuit jurisdiction. While no published source provides judge-specific decision-making preferences in the search results provided, practitioners should be aware that individual judges may have particular tendencies regarding continuances, evidence submission deadlines, and discretionary relief decisions. Consultation with local counsel or recent case outcomes before immigration judges in San Francisco is advisable for strategic planning.

San Francisco Asylum Office Interview Procedures

The San Francisco Asylum Office conducts initial affirmative asylum interviews and credible fear interviews. Current interview appointment wait times should be verified directly with USCIS, as processing times fluctuate based on staffing and caseload. The asylum office maintains specific interview patterns and procedures that may affect evidence preparation and case strategy, particularly regarding documentation of country conditions, family relationships, and persecution experiences.

Interaction with California State Criminal Procedure and Immigration Consequences

A unique feature of Northern California immigration practice involves the interaction between immigration proceedings and California state criminal procedure, particularly where criminal convictions or pending charges affect immigration status. California Penal Code § 1473.7 permits vacation of convictions where the conviction was obtained in violation of the noncitizen's right to be informed of immigration consequences or where the conviction is legally invalid due to ineffective assistance of counsel regarding immigration consequences. Practitioners handling immigration appeals should coordinate with criminal defense counsel regarding potential § 1473.7 relief, which could retroactively affect a noncitizen's removability or eligibility

for relief.

Similarly, California Penal Code § 1203.43 permits post-conviction relief for noncitizens whose convictions carry immigration consequences. AB 1352 expands discovery obligations in criminal proceedings to include information regarding immigration consequences. These state law tools can significantly affect the immigration appellate landscape by potentially vacating the predicate criminal conviction that supports a removal finding.

The California Values Act (SB 54) limits state and local cooperation with federal immigration enforcement, which may affect the factual record before immigration judges and BIA decisions regarding law enforcement cooperation and agency reliability in removal cases.

Standards of Review and Legal Standards Applied to Specific Relief Categories

Asylum Claims: Persecution, Protected Ground, and Nexus

Asylum eligibility under [INA § 208(b)(1)][3] requires the applicant to establish that she suffered persecution or has a well-founded fear of persecution on account of a protected ground (race, religion, nationality, political opinion, or particular social group).[12][32] The Ninth Circuit reviews the immigration judge's determination of whether persecution occurred or is feared under a clearly erroneous standard but reviews the legal standards applied to asylum and the nexus determination (whether the persecution is "on account of" a protected ground) de novo.[32]

Recent Ninth Circuit decisions have clarified that the nexus standard for asylum requires showing that a protected ground was "one central reason" for the persecution, whereas the nexus standard for withholding of removal is less stringent, requiring only that a protected ground be "a reason" for the persecution (among potentially other reasons).[18][32] Immigration judges and the BIA have sometimes conflated these standards or applied the wrong standard to a particular form of relief, leading to reversible error on appeal.[32]

Withholding of Removal Under INA § 241(b)(3)

Withholding of removal under [INA § 241(b)(3)][3] requires a noncitizen to establish that her life or freedom would be threatened in a particular country on account of a protected ground.[3][29] The standard of proof is higher than for asylum (it is a preponderance-of-evidence standard), and the nexus requirement is less stringent than for asylum ("a reason" rather than "one central reason").[18] The Ninth Circuit reviews the legal standards applied and de novo but applies the clearly erroneous standard to factual findings regarding country conditions, persecution history, and relocation alternatives.[18][32]

Convention Against Torture Protection Under 8 CFR § 1208.16

Convention Against Torture (CAT) protection under [8 CFR § 1208.16][29] requires a noncitizen to establish that it is more likely than not that she would be tortured by or with the acquiescence of a government official if returned to the proposed country.[29] This standard differs from persecution (the standard for asylum and withholding), as it requires torture rather than persecution and requires government involvement (direct infliction or acquiescence), whereas persecution can be inflicted by non-governmental actors.[29] The Ninth Circuit reviews legal standards de novo and factual findings under the clearly erroneous standard.[18][24]

Importantly, the Ninth Circuit has emphasized that CAT orders are not the same as final orders of removal under § 1252(b)(1), but may be reviewed alongside final removal orders in a single petition for

review.[24][44] This means a petitioner can raise CAT claims on appeal even if those claims were presented in a separate proceeding or were not raised before the immigration judge.

Administrative Exhaustion and Procedural Bars to Review

Issue Exhaustion and the Requirement to Raise Issues Before the BIA

Federal courts of appeals will not review issues that a noncitizen failed to raise before the BIA, absent extraordinary circumstances.[4][15][24][57] To properly raise an issue before the BIA, a noncitizen must include specific reasons for the appeal on Form EOIR-26 (Notice of Appeal from Decision of an Immigration Judge).[27][49] General or conclusory statements are insufficient; the notice of appeal must "specifically identify the findings of fact, the conclusions of law, or both, that are being challenged." [27]

Recent developments in exhaustion doctrine clarify that a noncitizen is not required to file a motion to reopen or reconsider before the BIA to exhaust administrative remedies; a timely notice of appeal with adequate reasons suffices.[57] This represents important clarification because it means that petitioners can proceed directly to Ninth Circuit review within 30 days of the BIA decision without filing additional motions before the BIA, provided the issue was raised in the original notice of appeal.[57]

However, if an issue is not raised before the BIA, the Ninth Circuit will not review it absent a showing that exhaustion would be futile (for example, where the legal issue is controlled by newly announced precedent that could not have been raised before the BIA).[4][24]

Forfeiture and Waiver of Administrative Exhaustion

Following the Supreme Court's decision in [Santos-Zacaria v. Garland][57], administrative exhaustion objections are subject to waiver and forfeiture. If the government fails to argue in its answering brief on a petition for review that the petitioner failed to exhaust an administrative remedy, the government has forfeited that objection, and the court of appeals may review the issue on the merits.[57] This represents a significant development because it means the government must affirmatively raise exhaustion defenses; courts will not sua sponte dismiss petitions for lack of exhaustion.

Post-Adverse Decision Options: En Banc Rehearing and Supreme Court Certiorari

En Banc Rehearing Procedures

If a three-judge panel of the Ninth Circuit issues a decision adverse to the petitioner, the petitioner may file a petition for rehearing en banc (meaning rehearing before the entire active judiciary of the Ninth Circuit) within 21 days of the panel decision.[14][23] The petition must comply with [Ninth Circuit Rule 35][14] and Federal Rules of Appellate Procedure 35.

The en banc rehearing process begins when the panel circulates the en banc petition to all active judges of the Ninth Circuit, who then vote on whether to grant rehearing.[14][23] If no judge votes to grant rehearing within 21 days of circulation, the panel may enter an order denying rehearing and denying en banc consideration.[14][23] If a majority of non-recused active judges votes to grant rehearing, the three-judge panel opinion is vacated and the case is briefed and argued anew before the full en banc court.[14][23]

Historical data demonstrates that en banc rehearing is granted relatively infrequently. According to the Ninth

Circuit's own statistics, in 2023, the court received 645 petitions for rehearing en banc but granted only 11 following a vote (out of 25 cases sent to ballot).[23] Dissents from denials of en banc rehearing were filed in 10 of the 14 denials that followed a vote (71% of denials).[23] This high dissent rate suggests that controversial cases often attract substantial en banc interest but still fall short of garnering majority support for rehearing.

For immigration cases, en banc rehearing may be appropriate where a three-judge panel's decision conflicts with established Ninth Circuit precedent, creates a new legal standard of national importance, or involves a fundamental due process or constitutional question. However, the high threshold for en banc rehearing means that most adverse immigration decisions will not be subject to en banc review.

Supreme Court Certiorari

Following affirmance or adverse decision by the Ninth Circuit, a petitioner may seek review by the United States Supreme Court by filing a petition for writ of certiorari. The Supreme Court grants certiorari in only a small percentage of petitions and typically only where the case presents a question of significant national importance, creates a circuit split, or involves a constitutional question.[37][40]

For immigration cases, successful certiorari petitions have addressed issues such as the jurisdictional status of filing deadlines, the finality of withholding-only orders, and CAT procedures. Recent Supreme Court decisions in immigration cases (including [Riley v. Bondi][55], [Nasrallah v. Barr][24], and others) demonstrate the Supreme Court's continued involvement in immigration appellate jurisprudence, particularly regarding jurisdictional and procedural questions.[55][24]

The time limit for filing a petition for writ of certiorari is 90 days after entry of final judgment by the appellate court.[37] This deadline may be extended by a prior application for extension of time to the Supreme Court, but extensions are granted sparingly.[37]

Appellate Timeline and Case Processing

Duration of Ninth Circuit Proceedings

One of the most significant considerations in filing a petition for review to the Ninth Circuit is the substantial amount of time required to resolve the appeal. The Ninth Circuit's own website predicts a waiting time of 12 to 20 months from filing to disposition, though individual cases may take substantially longer.[38] Some cases remain pending for more than three years, and the court notes that no numerical guarantee can be provided.[38][41]

The timeline breaks down as follows: after filing the petition for review, the government has 40 days to file the Certified Administrative Record (CAR), followed by a briefing schedule during which the petitioner typically has 40 days to file an opening brief, the government has 30 days to file an answering brief, and the petitioner has 14 days to file a reply.[3][29] If either party seeks extension of time, the briefing timeline extends accordingly. Following completion of briefing, the case enters a queue for panel assignment, and judges must review the briefs and record before a decision can be issued.[38]

Once oral argument is scheduled (which is not guaranteed in all cases), the court may hold oral argument in San Francisco, Pasadena, Seattle, or Portland, requiring parties to travel.[43][46] After oral argument, the panel deliberates and one judge drafts an opinion, which must be circulated among the three panel members and any judges who requested a vote on en banc rehearing. The opinion drafting and circulation process

typically requires two to four months, though some opinions take more than a year to issue.[38]

Impact of Pending Detention on Timeline Strategy

For clients in immigration detention, the substantial appellate timeline creates significant pressure. While the automatic temporary stay prevents removal during the appellate process, clients detained in immigration custody remain confined during the 12-20 months (or longer) required for Ninth Circuit review.[38] This may influence strategic decisions regarding whether to pursue appellate review (if the client might be better served by pursuing alternative forms of relief not requiring appellate review), pursue settlement negotiations with the government (if the government is willing to reverse the BIA decision or remand for further proceedings), or seek release from detention pending appellate review through bond proceedings.

Strategic Considerations and Recommended Approach

Option 1: Pursue Appellate Review on Questions of Law and Constitutional Claims

Strategic Framework: For clients facing removal orders based on potentially erroneous legal standards, incorrect interpretation of statutes or regulations, or constitutional violations, a petition for review to the Ninth Circuit may be strategically sound. This option is particularly appropriate where: (a) the immigration judge applied an incorrect legal standard (e.g., wrong nexus standard for withholding of removal); (b) the BIA failed to consider relevant evidence or factor into discretionary determinations; (c) the client was denied due process (inadequate notice, lack of counsel access, or inability to present evidence); or (d) the removal order is based on a criminal conviction that may be subject to vacation under California Penal Code § 1473.7.

Advantages: Legal questions are reviewed *de novo* by the Ninth Circuit, meaning the court applies independent judgment rather than deferring to the immigration judge or BIA. This standard favors appellants challenging legal determinations. Additionally, if new law has emerged since the BIA decision (changed precedent, new statutory interpretation, or new regulation), the Ninth Circuit may consider this new law and reverse or remand accordingly.

Disadvantages: The appellate timeline (12-20 months or longer) means that clients remain in removal proceedings or detention for an extended period. Additionally, if the appellate court determines that the issue was not exhausted before the BIA, the claim may be dismissed as unexhausted, even if the legal argument would prevail on the merits.

Risk Level: Medium to High (depending on whether exhaustion is clear and whether the legal issue is supported by controlling or persuasive precedent)

Option 2: Pursue Settlement or Administrative Appeal Before the BIA

Strategic Framework: In some cases, rather than immediately filing a petition for review to the Ninth Circuit, it may be strategically preferable to: (a) file a motion to reopen or reconsider before the BIA if new facts or law have emerged; (b) seek settlement with the government's Office of Immigration Litigation (OIL), which may agree to remand the case for further proceedings before the immigration judge; or (c) request that the government concede certain factual or legal points to facilitate reversal or remand.

Advantages: This approach may resolve the case more quickly than Ninth Circuit appellate review, potentially resulting in remand to the immigration judge for a new hearing or decision. Additionally, some BIA motions to reconsider may be filed outside the 90-day deadline if equitable tolling applies (typically where ineffective

assistance of counsel delayed timely filing), providing a second opportunity to challenge the BIA decision.

Disadvantages: Motions to reopen and reconsider before the BIA face strict requirements: a motion to reopen generally must be filed within 90 days of the final removal order and must demonstrate that new facts, together with facts already in the record, indicate a reasonable likelihood of success on the merits.[45][48] Additionally, filing a motion to reopen triggers the filing deadline under § 1229a(c)(7)(C)(i), and if the motion is denied, a new petition for review deadline commences.[45]

Risk Level: Low to Medium (depending on availability of new facts or law and BIA receptiveness to motions to reconsider)

Option 3: Seek Release from Detention Pending Appellate Review

Strategic Framework: For clients in immigration detention, a collateral strategy involves seeking release from detention on bond pending appellate review. Under [8 U.S.C. § 1226(a)][29], most noncitizens have a statutory right to a bond hearing to determine whether they pose a danger or flight risk. Additionally, under certain circumstances, bond hearings may be required by due process under the Fifth Amendment.[20][29][47]

Advantages: Obtaining release from detention allows the client to continue employment, family relationships, and community activities while the appellate process unfolds. For clients with deep family and community ties, demonstrating release options may provide strategic benefits in subsequent bond hearings or discretionary relief proceedings.

Disadvantages: Bond hearings focus on dangerousness and flight risk, not the merits of the removal order. Additionally, if the client is subject to [8 U.S.C. § 1226(c)][29] mandatory detention due to a criminal conviction, statutory bond eligibility may be significantly limited, requiring more substantial showings of humanitarian relief or emergency circumstances.[20][47]

Risk Level: Low to Medium (depending on criminal history and family/community ties)

Conclusion and Recommendations

Petitions for review of BIA decisions to the Ninth Circuit represent a critical appellate mechanism for noncitizens challenging removal orders in nine western states and associated territories. Success in these proceedings requires meticulous attention to jurisdictional requirements, strict compliance with filing deadlines, and strategic assessment of whether appellable legal questions or constitutional issues predominate in the case.

The 30-day filing deadline for petitions for review is non-jurisdictional as a claim-processing rule, but petitioners cannot obtain routine extensions and must file immediately upon receipt of an adverse BIA decision, particularly if detained. Failure to timely file results in complete loss of appellate review. The Ninth Circuit applies deferential clearly erroneous review to factual findings but de novo review to legal determinations and constitutional claims, making the characterization of each claim critical to appellate strategy.

Practitioners should prioritize: (1) immediate filing of petitions for review combined with motions to stay of removal to prevent removal during the appellate process; (2) careful issue preservation during immigration judge and BIA proceedings to avoid exhaustion and forfeiture problems; (3) strategic assessment of whether appellable legal questions or constitutional issues justify the 12-20 month (or longer) appellate timeline; and

(4) coordination with criminal counsel regarding potential vacatur of predicate criminal convictions under California law, which could retroactively affect removability.

Recent Supreme Court decisions have clarified jurisdictional and procedural questions governing appellate review, creating new strategic opportunities for petitioners while also establishing that certain filing deadlines are claims-processing rules subject to waiver by the government. Immigration practitioners must remain current with these evolving standards and adjust appellate strategy accordingly.

For clients facing removal and seeking to challenge BIA decisions, consultation with appellate immigration counsel experienced in Ninth Circuit practice is essential to evaluate whether appellate review is strategically sound, identify viable legal arguments, and maximize the probability of favorable appellate outcomes within the constraints of federal appellate review.

Complete Source Citations and Bibliography

A. Statutes and Regulations

- [1] *Montejo-Gonzalez v. Garland*, 21-304, U.S. Court of Appeals for the Ninth Circuit (October 17, 2024)
- [2] How to File a Petition for Review in the Ninth Circuit Court of Appeals - FIRR Guide
- [3] 8 U.S.C. § 1252 - Judicial Review of Orders of Removal
- [4] *Suate-Orellana v. Garland*, 19-72446, U.S. Court of Appeals for the Ninth Circuit (May 7, 2024)
- [5] How to File a Petition for Review - Ninth Circuit Court of Appeals
- [6] *Ibarra-Perez v. USA*, 24-631, U.S. Court of Appeals for the Ninth Circuit (August 27, 2025)
- [7] Ninth Circuit Immigration Outline
- [8] Courts of Appeals Rules Governing Judicial Motions to Stay Removal - National Immigration Litigation Alliance Practice Advisory (November 14, 2023)
- [9] A. Jurisdiction and Standards of Review - Ninth Circuit Immigration Outline
- [10] Circuit Map - Ninth Circuit Court of Appeals
- [11] Motions - Ninth Circuit Court of Appeals
- [12] Identifying Issues for a BIA Appeal - Immigrant Litigation Resource Center (June 2022)
- [13] 8 CFR § 1003.1 - Organization, Jurisdiction, and Powers of the Board of Immigration Appeals
- [14] Amendments to Ninth Circuit Rules (Adopted June 2024, Effective December 2024)
- [15] Petition for Review (Matter No. 17-71103 et al.) - Ninth Circuit Memorandum (January 22, 2026)
- [16] 8 CFR 1003.1 -- Organization, Jurisdiction, and Powers of the Board (eCFR)
- [17] *National TPS Alliance v. Noem*, 25-5724, U.S. Court of Appeals for the Ninth Circuit (January 28, 2026)
- [18] *Guevara-Serrano v. Bondi*, 23-4420, U.S. Court of Appeals for the Ninth Circuit (January 20, 2026)
- [19] *Noem v. Vasquez Perdomo*, 25A169, Supreme Court of the United States (September 8, 2025)

- [20] [Martinez v. Clark - Order Denying Panel and En Banc Rehearing, 21-35023, U.S. Court of Appeals for the Ninth Circuit \(May 30, 2023\)](#)
- [21] [Appellate Jurisdiction Outline - Ninth Circuit Court of Appeals](#)
- [22] [Impact Litigation - National Immigration Litigation Alliance](#)
- [23] [Unpacking the Panel Rehearing and Rehearing En Banc Process - Ninth Circuit Data \(January 30, 2025\)](#)
- [24] [A. Jurisdiction and Standards of Review \(Updated\) - Ninth Circuit Immigration Outline](#)
- [25] [Understanding the Ninth Circuit Court: A Key Player in U.S. Law](#)
- [26] [Ibarra-Perez v. USA, 24-631, U.S. Court of Appeals for the Ninth Circuit \(August 27, 2025\) \(reprinted\)](#)
- [27] [8 CFR § 1003.3 - Notice of Appeal](#)
- [28] [Ninth Circuit Immigration Outline \(reprinted\)](#)
- [29] [8 U.S.C. § 1252 - Judicial Review of Orders of Removal \(reprinted\)](#)
- [30] [8 CFR Part 1003 Subpart A -- Board of Immigration Appeals](#)
- [31] [Ibarra-Perez v. USA, 24-631, U.S. Court of Appeals for the Ninth Circuit \(January 28, 2026\)](#)
- [32] [Umana-Escobar v. Gonzales, 19-70964, U.S. Court of Appeals for the Ninth Circuit \(March 17, 2023\)](#)
- [33] [Matter of M-A-M-Z-, 28 I&N Dec. 173 \(BIA 2020\)](#)
- [34] [CLINIC Court Watch: Federal Immigration Case Updates \(January 2026\)](#)
- [35] [BIA Precedent Chart - Executive Office for Immigration Review](#)
- [36] [Counseled Immigration Cases - After Opening a Case, Ninth Circuit Court of Appeals](#)
- [37] [Application to Extend Time to File Cert Petition - Supreme Court of the United States \(December 12, 2025\)](#)
- [38] [How Long do Immigration Appeals in Circuit Court Take to Process? - Hoppock Law Firm](#)
- [39] [Rule 15. Review or Enforcement of an Agency Order - Fourth Circuit](#)
- [40] [CLINIC Court Watch: Federal Immigration Case Updates \(December 2025\)](#)
- [41] [Frequently Asked Questions - Ninth Circuit Court of Appeals \(Updated December 2023\)](#)
- [42] [Federal Rule of Appellate Procedure 15 - Review or Enforcement of an Agency Order](#)
- [43] [Streaming Oral Arguments - Ninth Circuit Court of Appeals](#)
- [44] [A. Jurisdiction and Standards of Review - Ninth Circuit Immigration Outline \(Complete Version\)](#)
- [45] [The Basics of Motions to Reopen EOIR-Issued Removal Orders - American Immigration Council \(January 2025\)](#)
- [46] [Audio and Video - Ninth Circuit Court of Appeals](#)
- [47] [E. Due Process in Immigration Proceedings - Ninth Circuit Immigration Outline](#)

- [48] Reopening Removal Proceedings Based on Ineffective Assistance of Counsel - ILRC (June 2025)
- [49] Appeal an Immigration Judge's Decision - Department of Justice
- [50] *Mendoza-Linares v. Garland*, 20-71582, U.S. Court of Appeals for the Ninth Circuit (October 24, 2022)
- [51] Pro Se Immigration Cases - After Opening a Case, Ninth Circuit Court of Appeals (September 2025)
- [52] How to Appeal an Immigration Judge Decision - LawHelp Minnesota
- [53] *Alonso-Juarez v. Garland*, 15-72821, U.S. Court of Appeals for the Ninth Circuit (September 8, 2023)
- [54] Opening a Case Pro Se Petitioners in Non-Immigration Agency Cases - Ninth Circuit Court of Appeals
- [55] *Riley v. Bondi*, 23-1270, Supreme Court of the United States (2024)
- [56] How to File a Petition for Review in the Ninth Circuit Court of Appeals - Updated Guide
- [57] Exhaustion of Administrative Remedies in Petitions for Review - National Immigration Litigation Alliance (May 2023)
- [58] BIA Precedent Chart - M-REC - Executive Office for Immigration Review
- [59] How to File a Petition for Review - American Immigration Council (Updated November 2015)
- [60] *Honcharov v. Barr*, 15-71554, U.S. Court of Appeals for the Ninth Circuit (May 29, 2019)

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This comprehensive report provides immigration law practitioners with detailed guidance on appeals of BIA decisions to the Ninth Circuit Court of Appeals, incorporating current statutory frameworks, binding and persuasive precedent, procedural requirements unique to the Ninth Circuit, and strategic considerations specific to Northern California immigration practice. Practitioners are advised to verify all citations to ensure currency and to consult with appellate immigration counsel regarding case-specific strategy and positioning.