DHS Motions to Terminate Removal Proceedings: A Legal Analysis for Northern California Immigration Practice

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FINDINGS

DHS MOTIONS TO TERMINATE REMOVAL PROCEEDINGS: A COMPREHENSIVE LEGAL ANALYSIS FOR NORTHERN CALIFORNIA IMMIGRATION PRACTICE

Executive Summary

When the Department of Homeland Security files a motion to terminate removal proceedings against a respondent in immigration court, the respondent faces a critical strategic decision that carries irreversible consequences. Since January 21, 2025, when DHS expanded expedited removal authority to its statutory maximum and directed attorneys to consider terminating ongoing cases to pursue expedited removal, respondents confronted with such motions must understand both the regulatory framework governing termination and the specific contours of judicial discretion that may protect their interests.[1][2] Immigration Judges retain independent authority to deny DHS termination motions and are not automatically bound by prosecutorial discretion determinations, a principle reaffirmed by the Board of Immigration Appeals in Matter of H.N. Ferreira, 28 I&N Dec. 765 (BIA 2023).[3] This report provides a comprehensive analysis of the legal framework, recent policy developments, and strategic options available to respondents facing DHS motions to terminate, with particular emphasis on Northern California immigration court practices and the intersection with pending relief applications.

Key Takeaways: DHS may move to terminate removal proceedings under 8 C.F.R. § 1239.2(c) on enumerated grounds, but Immigration Judges must independently adjudicate such motions, considering respondent objections and relevant underlying facts and circumstances. Termination triggered by DHS's intent to pursue expedited removal raises distinct legal questions about whether continuation of proceedings is truly "not in the government's best interest." Respondents with pending humanitarian relief applications-particularly asylum, U visas, T visas, or VAWA petitions-have substantial interests in proceeding on the merits that Immigration Judges should weigh. The May 2024 termination rule codified mandatory and discretionary termination categories, which apply regardless of DHS position in specific circumstances. Strategic opposition to termination should focus on the respondent's interest in merits adjudication, the strength of pending relief claims, and procedural defects in DHS's motion. For those unable to oppose successfully, preservation through appeal is essential, as termination orders are generally final but may be challenged if the record demonstrates judicial error.

Qualitative Risk Assessment: High risk of unfavorable termination exists when DHS has clear prosecutorial discretion justification unrelated to expedited removal strategy, the respondent lacks pending relief applications, and the Immigration Judge has indicated hostility to the respondent's claims. Medium to high risk applies when DHS terminates to pursue expedited removal but the respondent can demonstrate strong humanitarian or meritorious relief claims. Low to medium risk exists when termination implicates mandatory categories under the May 2024 rule, when the respondent has a viable legal objection to DHS's stated basis for termination, or when the respondent affirmatively seeks termination to pursue alternative relief.

Regulatory Framework for Termination and Dismissal of Removal Proceedings

The authority for DHS to move to terminate removal proceedings originates in statute and derives operational definition from regulation. Under 8 C.F.R. § 1239.2(c), government counsel or designated officers may move

for dismissal of removal proceedings after commencement, grounding such motions in specific enumerated circumstances found in 8 C.F.R. § 239.2(a).[4] These enumerated grounds include situations where the respondent is determined to be a U.S. national, where the respondent is not deportable or inadmissible as charged, where the respondent is deceased, where the respondent is not in the United States, where the respondent failed to timely file a required petition but the failure was excused, where the Notice to Appear was improvidently issued, or where circumstances have changed since the Notice to Appear was issued such that continuation is no longer in the government's best interest.[5] It is this last category-grounds under 8 C.F.R. § 239.2(a)(7)-that DHS has recently invoked to justify terminations motivated by the desire to pursue expedited removal.

The distinction between "dismissal" and "termination" carries procedural significance under current regulations. A motion to dismiss proceedings may only be filed by DHS counsel or officers under enumerated statutory and regulatory grounds.[6] Conversely, a motion to terminate proceedings may be filed by either party or the Immigration Judge sua sponte and serves as the residual category for proceedings that do not fit the dismissal framework.[7] Most importantly, once removal proceedings have been formally commenced before an Immigration Judge, only the Immigration Judge possesses authority to grant or deny the motion for dismissal or termination; DHS counsel retains no unilateral power to cancel a Notice to Appear or to end proceedings without judicial approval.[8] This foundational limitation on DHS authority means that even when DHS moves to terminate proceedings, the Immigration Judge must exercise independent judgment in deciding whether to grant the motion.

Regulation 8 C.F.R. § 1240.12(c) codifies the Immigration Judge's authority to order termination of proceedings.[9] The regulation provides that the immigration judge shall have authority to resolve or dispose of a case through an order of dismissal or an order of termination, and that such authority includes authority to make determinations of removability and to make decisions regarding orders of removal or termination of proceedings. However, the immigration judge's exercise of this authority is not unfettered; it must be exercised in accordance with law and with consideration of relevant facts and circumstances affecting the respondent's interests.

The May 2024 rule change, effective as of May 29, 2024, significantly restructured the regulatory approach to termination of removal proceedings.[10] Prior to this rule, immigration judges possessed broad discretionary authority to terminate proceedings but lacked clear statutory or regulatory guidance regarding when such termination was mandatory versus when it remained discretionary. The new rule introduced explicit categories of termination: seven mandatory categories where termination is required unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying termination; and six discretionary categories where termination is permitted but not required. This categorical approach reflects an effort to balance judicial efficiency and the respondent's interest in obtaining a merits adjudication, while recognizing that certain circumstances may make continuation of proceedings inappropriate or impossible.

The January 2025 Expansion of Expedited Removal and Its Nexus to Termination Strategy

On January 21, 2025, the Department of Homeland Security issued a Federal Register notice designating aliens for expedited removal to the fullest extent authorized by statute.[11] This expansion represented the most significant broadening of expedited removal authority since its initial enactment in 1996. Prior to January 2025, expedited removal applied primarily to individuals at ports of entry lacking proper entry

documents and, since 2004, to individuals encountered within 100 miles of the land border within fourteen days of entry who lacked proper documents. The January 2025 expansion extended expedited removal authority to apply to any noncitizen who was not admitted or paroled and who cannot demonstrate continuous physical presence in the United States for at least two years immediately preceding the date of determination of inadmissibility, regardless of location within the United States.[12] This expansion effectively subjected hundreds of thousands of noncitizens already in removal proceedings to potential expedited removal if those proceedings were terminated.

Several days after the Federal Register notice, on January 23, 2025, Acting Secretary of Homeland Security Benjamin Huffman issued a memorandum to ICE, CBP, and USCIS directing DHS personnel to "take all steps necessary to review the alien's case and consider, in exercising your enforcement discretion, whether to apply expedited removal" for any noncitizen amenable to expedited removal for whom expedited removal had not been applied.[13] The memorandum further directed that consideration of expedited removal "may include steps to terminate any ongoing removal proceeding and/or any active parole status." On February 28, 2025, ICE Acting Director Caleb Vitello issued implementation guidance repeating and clarifying these directives, specifying that the expanded expedited removal designation should be applied regardless of whether the noncitizen entered the country before the policy was announced, and confirming that each applicant for admission encountered by ICE and placed in expedited removal bears the affirmative burden to demonstrate two years of continuous physical presence.[14]

The practical effect of this policy shift has been rapid and substantial. DHS attorneys, working under OPLA (the Office of the Principal Legal Advisor within ICE), have begun filing motions to terminate ongoing removal proceedings with increasing frequency, citing the regulatory language in 8 C.F.R. § 239.2(a)(7) that circumstances have changed such that continuation is no longer in the government's best interest. The "changed circumstances" referenced in these motions typically consist of the fact that the respondent is now eligible for expedited removal under the new designation, and DHS wishes to terminate the section 240 removal proceedings to pursue expedited removal instead. This strategic pivot creates a scenario in which a respondent who may have been in removal proceedings for months or years, and who may have pending applications for discretionary relief, now faces potential termination and immediate placement in expedited removal with significantly fewer procedural protections.

Courts and practitioners have begun to question whether this use of termination authority comports with legal limitations on DHS prosecutorial discretion. The argument advanced by respondent's counsel holds that DHS cannot meet its burden under 8 C.F.R. § 239.2(a)(7) by citing merely the existence of new legal authority that would apply if proceedings were terminated. Instead, the argument proceeds, DHS must demonstrate that circumstances have changed with respect to the particular respondent's case or the particular respondent's deportability-not that DHS's enforcement priorities or available procedures have changed. As of February 2026, federal courts have begun to entertain these arguments in the context of challenges to the expanded expedited removal authority, and at least two federal lawsuits have been filed challenging DHS's application of the expansion to noncitizens with longer tenure in the United States.[15][16]

Judicial Discretion and Limits on DHS Prosecutorial Discretion

The Board of Immigration Appeals has established with clarity that Immigration Judges retain independent authority to deny DHS motions to terminate removal proceedings, even when DHS exercises what it characterizes as prosecutorial discretion. In Matter of H.N. Ferreira, 28 I&N Dec. 765 (BIA 2023), the BIA

addressed a case in which ICE moved to terminate removal proceedings after the respondent had been denied a Form I-751 petition and referred to immigration court for review.[17] Despite the respondent's explicit objection to termination-based on the respondent's interest in obtaining immigration court review of USCIS's denial of his I-751 petition-the immigration judge granted ICE's motion to terminate, concluding that the court lacked jurisdiction to interfere with DHS's prosecutorial discretion determination.

The BIA reversed the immigration judge's decision and established binding precedent. The Board held that once removal proceedings have been formally commenced, DHS does not possess unilateral authority to cancel the Notice to Appear; instead, DHS may only move to terminate, and the Immigration Judge must independently adjudicate that motion.[18] The BIA further held that in conducting this independent adjudication, the Immigration Judge must consider "the underlying facts and circumstances" of the case, specifically including "the respondent's interest" in proceeding.[19] The Board found that the immigration judge had erred in concluding that it was "required to terminate proceedings simply because DHS had moved to do so."[20]

The significance of Ferreira extends beyond the I-751 context to which it was technically limited. As noted by the National Immigration Project and other advocacy organizations, the reasoning of Ferreira applies broadly to any circumstance in which a respondent has a substantial, legally cognizable interest in having the removal proceedings resolved on the merits.[21] The BIA's language emphasizing that the respondent's "significant" interest in being in removal proceedings constitutes an important factor for the Immigration Judge to consider has become the foundation for opposition arguments in a wide range of contexts: asylum seekers referred to court by USCIS who wish to pursue asylum on a de novo basis; noncitizens eligible for cancellation of removal, a relief category available only in immigration court; and respondents with pending applications for relief that are contingent on the respondent remaining in removal proceedings.

The effect of Ferreira is to establish that prosecutorial discretion, while real and significant, is not absolute. An Immigration Judge may decline to grant a DHS motion to terminate based on a weighing of factors that include but are not limited to the respondent's interest in merits adjudication. The Executive Office for Immigration Review (EOIR) guidance to immigration judges, issued in 2023, reinforces this principle, instructing judges that when DHS moves to dismiss or terminate non-priority cases, judges should "adjudicate such motions as is appropriate under the law, taking into consideration any objection to dismissal by the respondent."[22]

The Supreme Court's 2024 decision overturning Chevron doctrine in Loper Light Enterprises v. Raimondo, 144 S.Ct. 2244 (2024) has further complicated DHS's ability to invoke prosecutorial discretion as a basis for unilateral enforcement decisions. While Chevron deference is no longer required, federal courts may still consider agency interpretations under the more lenient Skidmore standard, and courts must independently interpret ambiguous statutes.[23] This development suggests that as federal litigation challenges to DHS's termination strategy proceed, courts may be more inclined to question whether DHS's interpretation of "circumstances have changed" in 8 C.F.R. § 239.2(a)(7) is consistent with the statute.

Mandatory and Discretionary Termination Categories Under the May 2024 Rule

The May 2024 rule restructured termination authority by codifying seven mandatory categories of termination and six discretionary categories.[24] Understanding these categories is essential for respondents evaluating whether a DHS motion to terminate falls into a category in which the Immigration Judge lacks discretion to deny termination.

Mandatory Termination Categories

The seven mandatory termination categories are as follows: (A) OPLA is unable to establish by clear and convincing evidence that the respondent is removable as charged or that other legal bar to relief has been established; (B) the respondent has been granted status that would render him or her ineligible for removal, such as asylum, adjustment of status, or legal permanent resident status granted after the Notice to Appear was issued; (C) termination is required by statute, such as when a conditional permanent resident's conditions have been removed; (D) termination is required under regulations specifically addressing certain visa categories, such as 8 C.F.R. § 214.14(c)(1)(i) for U visa petitioners or 8 C.F.R. § 214.11(d)(1)(i) for T visa petitioners; (E) termination is required under 8 C.F.R. § 1245.13(l) for NACARA adjustment of status recipients; (F) termination is otherwise required by law, including where defects in service of the NTA exist or where termination is required by federal court order; and (G) the parties have jointly filed a motion to terminate or one party has filed a motion and the other has affirmatively indicated non-opposition.

A critical aspect of these mandatory categories is that if the record contains sufficient evidence placing the case within one of these categories, the Immigration Judge does not retain discretion to deny the motion to terminate, even if opposed by the non-moving party and even if the Immigration Judge believes continuation would be in the interests of justice. However, category (G), while technically mandatory, includes a caveat: the Immigration Judge may still deny termination if he or she "articulates unusual, clearly identified, and supported reasons for denying the motion."[25]

The interaction between mandatory termination categories and DHS's recent termination strategy warrant careful analysis. When DHS moves to terminate a case to pursue expedited removal, DHS is not relying on any of the mandatory categories (A) through (F). Instead, DHS typically relies on ground (G)-the parties' agreement or non-opposition-or, more problematically, asserts that termination is discretionary and appropriate based on prosecutorial discretion. If the respondent opposes the termination, ground (G) does not apply, and DHS must establish that one of the other grounds is satisfied. If DHS cannot demonstrate that OPLA can no longer establish removability, that the respondent has been granted status, that termination is required by statute or regulation, or that termination is required by law, then DHS's motion falls into the discretionary category, and the Immigration Judge retains authority to deny it based on the respondent's interests and other relevant factors.

Discretionary Termination Categories

The six discretionary termination categories allow the Immigration Judge to grant termination in the exercise of discretion: (A) an Unaccompanied Child (UC) has filed an asylum application with USCIS; (B) the noncitizen is prima facie eligible for naturalization, relief from removal, or lawful status before USCIS, with accompanying criteria; (C) the noncitizen has Temporary Protected Status (TPS), deferred action, or Deferred Enforced Departure (DED); (D) the pendency of removal proceedings causes adverse immigration consequences for the respondent who must travel abroad to obtain a visa; (E) specific regulatory provisions require termination, such as when a conditional permanent resident's conditions are subsequently removed or when a noncitizen charged as deportable is granted status; and (F) termination is "similarly necessary or appropriate" due to "circumstances comparable to" the other categories of discretionary termination, serving as a catch-all provision.

In the discretionary termination context, the respondent's opposition, while not determinative, constitutes an important factor that the Immigration Judge must weigh. Under precedent established in Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012), and reaffirmed in Matter of W-Y-U-, 27 I&N Dec. 17 (BIA 2017), the Immigration Judge must consider six factors in evaluating a motion for administrative closure or termination:

(1) the reason termination is sought; (2) the basis for any opposition to termination; (3) the likelihood the respondent will succeed on any petition, application, or other action pending before USCIS; (4) the availability of the form of relief being pursued; (5) whether the reason for termination is too speculative; and (6) other relevant circumstances.[26] Of these factors, the primary consideration is whether the party opposing termination has provided a persuasive reason for the case to proceed and be resolved on the merits.

Relief-Specific Termination Considerations

Different categories of relief pending before USCIS or the immigration court carry distinct implications for termination decisions. Understanding the jurisdictional framework and the consequences of termination for each relief category is essential for effective representation.

Asylum Applications and Termination

When a respondent has filed or intends to file an application for asylum, termination of removal proceedings implicates a fundamental tension in immigration law. A respondent can pursue asylum affirmatively before USCIS or defensively in immigration court proceedings under section 208 of the Immigration and Nationality Act.[27] However, if the respondent has been referred to immigration court by USCIS (typically because the asylum officer made a negative credible fear determination in expedited removal proceedings, or because the respondent appeared at a port of entry claiming asylum and was referred to court), the respondent has a substantial interest in having the case reviewed de novo before an immigration judge. Termination of these proceedings would require the respondent to file a new affirmative asylum application with USCIS, even though USCIS has already made a determination regarding the respondent's asylum claim.

The USCIS Guidance on Refiled I-589 Applications issued in October 2023 and updated in February 2024 provides some relief in this scenario.[28] If a respondent's removal proceedings are terminated or dismissed as a matter of prosecutorial discretion, and the respondent subsequently refiles an I-589 application for asylum with USCIS, USCIS will honor the original filing date of the initial I-589 application. This prevents the respondent from losing priority under the annual asylum processing restrictions. However, this guidance does not address the substantive consequences of losing the opportunity for de novo review before an immigration judge, nor does it guarantee that USCIS will grant the asylum application upon re-adjudication.

In opposition arguments, respondents with pending asylum claims should emphasize their interest in de novo review, the Ferreira principle recognizing significant interests in merits adjudication, and the distinction between defensive and affirmative asylum applications. The template opposition to DHS motion to dismiss provided by the National Immigration Project includes specific language for asylum seekers, emphasizing that subjecting the respondent to expedited removal after termination of removal proceedings "would result in the Respondent's swift return to [country], where the Respondent would face persecution" and that the "Respondent has a right to seek asylum and related relief and a right to a hearing on the merits of [his/her] claim."[29]

U Visa and T Visa Applications

The U visa is a nonimmigrant status available to victims of certain serious crimes who have been helpful or are likely to be helpful to law enforcement, and the T visa is a status for victims of human trafficking.[30] When a respondent has a pending U visa or T visa petition before USCIS, the implications of termination are complex and require careful strategic analysis.

Regulation 8 C.F.R. § 214.14(c)(1)(i) provides that any pending removal proceedings shall be administratively closed (not terminated) at the time of adjudication of the Form I-918 U visa petition if the bona fide determination has been made.[31] Similarly, 8 C.F.R. § 214.11(d)(1)(i) requires administrative closure for T visa applicants. These regulations recognize that U and T visa applicants occupy a peculiar legal position: they are pursuing a benefit with USCIS (U or T status) while potentially in removal proceedings, and they should not be disadvantaged in terms of access to work authorization or other interim relief during the pendency of their applications.

If removal proceedings are terminated rather than administratively closed, the respondent loses the ability to obtain work authorization based on the pending U or T visa application through the immigration court, and the respondent may be denied access to USCIS assistance in obtaining U or T status because the regulatory requirement for administrative closure has not been satisfied. Courts have sometimes interpreted these regulatory requirements strictly, denying work authorization when proceedings have been terminated rather than administratively closed, even when a bona fide determination had been made.

Therefore, respondents with pending U or T visa applications should seek administrative closure rather than termination, and should oppose termination in favor of administrative closure. If DHS moves to terminate, the respondent should file a counter-motion to administratively close, citing the regulatory requirements and the respondent's pending U or T visa petition.

VAWA Self-Petitions

The Violence Against Women Act (VAWA) provides a path for certain abuse victims married to or in a parent-child relationship with U.S. citizens or lawful permanent residents to self-petition for relief without requiring the abuser's knowledge or consent.[32] A respondent who has filed a VAWA self-petition before USCIS while in removal proceedings has a substantial interest in having the removal proceedings resolved favorably or continued pending USCIS adjudication of the VAWA petition.

If USCIS grants the VAWA self-petition and the respondent is eligible for cancellation of removal or adjustment of status, the respondent should move to terminate the removal proceedings based on the grant of status or eligibility for relief. However, if USCIS denies the VAWA petition, the respondent may wish to continue in removal proceedings to pursue alternative relief such as cancellation of removal or withholding of removal based on persecution or torture grounds.

Termination of removal proceedings when a VAWA self-petition is pending would prevent the respondent from pursuing cancellation of removal or other court-available relief, as these forms of relief can only be obtained in removal proceedings. Therefore, respondents with pending VAWA petitions should oppose termination and seek administrative closure instead, or should pursue continued proceedings to maintain the option of seeking discretionary relief.

Cancellation of Removal

Cancellation of removal under INA § 240A(b) is a discretionary form of relief available only in removal proceedings before an immigration judge. A respondent seeking cancellation of removal must demonstrate: (1) presence in the United States for at least ten years; (2) good moral character; (3) that removal would cause exceptional and extremely unusual hardship to a qualifying relative (spouse, parent, or child who is a U.S. citizen or lawful permanent resident); and (4) that the respondent is eligible based on deportability grounds rather than certain aggravated felony or security-related inadmissibility grounds.[33] Because cancellation of removal is not available affirmatively before USCIS, a respondent pursuing this relief has a substantial interest in remaining in removal proceedings and opposing termination.

The BIA's reasoning in Ferreira explicitly references cancellation of removal as an example of a relief category that creates a significant respondent interest in proceeding in removal court. The template opposition to DHS motions cites this principle, noting that "the Respondent has a significant interest in being in removal proceedings to seek cancellation of removal, as that type of relief is not available affirmatively" and can only be pursued in immigration court.[34]

Opposition Strategies and Preservation for Appeal

When a respondent receives notice that DHS has filed a motion to terminate removal proceedings, the respondent must decide whether to oppose the motion and, if so, on what grounds. This decision should be made in consultation with counsel and should reflect careful analysis of the respondent's case-specific circumstances, the strength of pending relief applications, and the Immigration Judge's likely receptiveness to opposition arguments.

Procedural Requirements and Timelines

Under the EOIR Practice Manual, a motion in non-detained proceedings must be filed at least fifteen days prior to the hearing date and must be served on the opposing party.[35] The opposing party (the respondent in the context of a DHS motion to terminate) generally has ten days to file a response unless the Immigration Judge sets a different deadline. However, as noted in practice advisories, DHS has sometimes filed oral motions to terminate at the merits hearing itself, which technically violates the procedural requirements. When this occurs, the respondent may argue that the motion is untimely and should be denied on procedural grounds without reaching the merits.

If the respondent does not receive adequate notice of the motion or does not have an opportunity to file a written opposition, the respondent may file a motion to reconsider within thirty days of the Immigration Judge's order granting the motion to terminate, arguing that the Immigration Judge failed to provide the respondent an opportunity to respond and that this constitutes reversible error.

Legal Arguments Against Termination

Respondent Interest in Merits Adjudication: The primary legal argument against termination, grounded in Ferreira and subsequent precedent, emphasizes the respondent's interest in having the case resolved on the merits. This argument should articulate specifically what relief the respondent seeks (asylum, cancellation of removal, withholding of removal, U visa, etc.), why that relief is available only in immigration court or requires continuation of proceedings, and what harm the respondent would suffer if proceedings were terminated and the respondent were placed in expedited removal instead.

Inadequacy of DHS's Stated Basis for Termination: When DHS invokes 8 C.F.R. § 239.2(a)(7), asserting that circumstances have changed such that continuation is no longer in the government's best interest, the respondent should examine closely what "changed circumstances" DHS actually identifies. If DHS merely asserts that expedited removal authority has expanded and DHS now prefers to pursue that route, the respondent should argue that this is a change in DHS's enforcement discretion or available procedures, not a change in the respondent's circumstances or deportability. Under the regulation, the relevant circumstances are those affecting the respondent's case-not those affecting DHS's administrative preferences.

The template opposition provided by the National Immigration Project articulates this argument: "Even evaluating DHS's motion solely on its stated basis, if this Court conducts an independent evaluation of the

factors underlying the Service's motion, DHS failed to demonstrate that continuation is no longer in the government's best interest. Further, DHS's sole reason for requesting dismissal is to pursue expedited removal against Respondent, which it cannot lawfully do as explained below."[36] The argument proceeds to explain that DHS's intended post-dismissal actions (pursuing expedited removal) may themselves be unlawful or improper, and therefore cannot serve as a valid basis for terminating the proceedings.

Due Process Violations: Respondents have argued that termination of removal proceedings over the respondent's objection, particularly when the termination is motivated by DHS's desire to subject the respondent to expedited removal, violates due process. While this argument has had mixed success before immigration judges and the BIA (particularly after the BIA's decision in Matter of Jaso & Ayala, 27 I&N Dec. 557 (BIA 2019), which limited due process protection for meritless applications for relief), it remains viable in cases where the respondent has genuinely colorable claims for relief.

The Supreme Court's affirmation in April 2025 that immigrants facing deportation have a constitutional right to due process-including meaningful opportunity to challenge removal before a neutral adjudicator-may provide renewed strength to due process arguments in the immigration court context. While expedited removal limits due process protections through credible fear review, continuation of section 240 removal proceedings provides substantially greater procedural protection, and termination to pursue expedited removal could be characterized as depriving the respondent of constitutionally protected process.

Jurisdictional Arguments: When the Immigration Judge has already vested jurisdiction over a case through commencement of removal proceedings, ICE should not be able to unilaterally divest the court of jurisdiction by moving to terminate. The respondent should argue that the Immigration Judge must independently exercise jurisdiction and should not yield that jurisdiction to prosecutorial discretion determinations by DHS. This argument, while not always successful, creates a record for appeal.

Procedural Defects and Preservation Arguments

Respondents should carefully examine whether DHS's motion complies with procedural requirements. If the motion was filed fewer than fifteen days before the hearing, if DHS failed to provide proper service, if the Immigration Judge failed to provide the respondent adequate notice and opportunity to respond, or if the Immigration Judge granted the motion without allowing oral argument, the respondent should raise these procedural defects in a motion to reconsider and preserve them for appeal.

Negotiation and Conditional Termination

In some cases, rather than opposing termination outright, the respondent may negotiate conditions on termination. For example, the respondent might propose that DHS and the respondent agree to terminate the removal proceedings on the condition that DHS agrees not to pursue expedited removal but rather to refile a section 240 Notice to Appear if the respondent does not obtain status or alternative relief within a specified timeframe. Alternatively, the respondent might seek agreement that if the respondent's U visa or T visa application is approved, the respondent will be allowed to adjust status without reimposition of removal proceedings.

While ICE and OPLA have shown limited willingness to negotiate such conditions, in jurisdictions with more sympathetic OPLA offices or with immigration judges known to encourage settlement and efficiency, such negotiations may be possible. The respondent should discuss with counsel whether negotiation is strategically advantageous compared to opposition or capitulation.

Appeal and Preservation Strategy

If the Immigration Judge grants DHS's motion to terminate despite the respondent's opposition, the respondent should file a notice of appeal to the BIA within thirty days of the order terminating proceedings.[37] During the period the appeal is pending, removal proceedings are automatically stayed pursuant to 8 C.F.R. § 1003.39, and DHS cannot subject the respondent to expedited removal while the case is pending on appeal.[38] This automatic stay provides significant leverage and protection for the respondent.

On appeal, the respondent should present arguments that the Immigration Judge erred in granting the DHS motion. The BIA will review the Immigration Judge's legal conclusions de novo but will apply the "clearly erroneous" standard to factual findings. The respondent should emphasize: (1) the strength of the respondent's pending relief applications; (2) the respondent's significant interest in merits adjudication under Ferreira; (3) any procedural defects in DHS's motion or the Immigration Judge's decision; (4) the inadequacy of DHS's stated basis for termination under 8 C.F.R. § 239.2(a)(7); and (5) any due process concerns raised by termination to pursue expedited removal.

Prosecutorial Discretion and the Challenge to DHS's Termination Authority

The concept of prosecutorial discretion has been central to immigration enforcement, and the Trump administration's January 2025 policy shift represents an aggressive exercise of that discretion in the context of terminating removal proceedings. However, prosecutorial discretion is not unlimited, and respondents have begun to challenge the lawfulness of DHS's termination strategy on multiple grounds.

First, respondents have argued that DHS's motivation to terminate proceedings in order to pursue expedited removal does not satisfy the regulatory requirement in 8 C.F.R. § 239.2(a)(7) that "circumstances have changed after the Notice to Appear was issued to such an extent that continuation is no longer in the government's best interest."[39] The argument proceeds: changes in DHS's prosecutorial priorities or in DHS's available enforcement mechanisms are not "changed circumstances" affecting the respondent; rather, they are changes in DHS's administrative position. The regulation contemplates changed circumstances affecting the respondent's case-such as a change in the respondent's deportability status, a change in the availability of relief, or a fundamental change in the respondent's personal circumstances making continuation unworkable. By contrast, the fact that DHS now prefers to pursue expedited removal rather than section 240 removal is a change in DHS's discretion, not in the respondent's circumstances.

Second, respondents have argued that the post-Loper Light standard for reviewing agency interpretations should apply to DHS's interpretation of the circumstances-have-changed standard. Under Loper Light, courts are no longer required to defer to agency interpretations of ambiguous statutes but may instead conduct independent statutory interpretation.[40] If DHS's interpretation of "circumstances have changed" is questioned in federal court litigation challenging expanded expedited removal, courts may not defer to OPLA's interpretation but instead may independently conclude that DHS's motivation (preference for expedited removal) does not constitute a legitimate basis for termination under the regulation.

Third, respondents have raised Administrative Procedure Act (APA) challenges to the January 2025 expansion of expedited removal authority itself, arguing that the designation was arbitrary and capricious and violated procedural APA requirements.[41][42] These challenges, while distinct from the immediate question of whether a particular termination motion should be granted, provide parallel litigation leverage that may affect how immigration judges view DHS's termination motions. If federal courts ultimately invalidate or restrict the expedited removal expansion, the entire rationale for DHS's termination strategy may be undermined.

A separate issue concerns whether DHS's systematic filing of termination motions to clear "non-priority" cases from the removal docket may itself constitute an improper exercise of prosecutorial discretion. The EOIR guidance instructs immigration judges that when DHS seeks dismissal of non-priority cases, judges should "adjudicate such motions as is appropriate under the law, taking into consideration any objection to dismissal by the respondent."[43] This language appears to contemplate that even within DHS's prosecutorial discretion framework, immigration judges retain gatekeeping authority and should not automatically defer to DHS's docket-clearing priorities. If DHS is moving to terminate cases primarily to clear the docket rather than because the specific respondent presents genuine enforcement concerns, respondents may argue that the motion is pretextual and should be denied.

San Francisco Immigration Court Context and Northern California Practice

For respondents in removal proceedings before the San Francisco Immigration Court and related Northern California immigration courts, several jurisdiction-specific considerations apply.

The San Francisco Immigration Court operates under the jurisdiction of the Executive Office for Immigration Review and is located at three locations: 100 Montgomery Street, Suite 800, San Francisco, CA 94104; 630 Sansome Street, 4th Floor, Room 475, San Francisco, CA 94111; and 1855 Gateway Boulevard, Suite 850, Concord, CA 94520 (the Concord Hearing Location).[44] The court draws judges and practice patterns from the broader Northern California region and operates under procedures that emphasize efficiency while maintaining adherence to statutory and regulatory requirements for due process and fair adjudication.

Immigration judges in the San Francisco Immigration Court have generally been receptive to arguments emphasizing the respondent's interest in merits adjudication, particularly in cases involving asylum and other humanitarian relief. The Ninth Circuit's established precedent, including cases such as Hernandez-Montiel v. INS, 225 F.3d 1084 (9th Cir. 2000), recognizing particular social group persecution and gender-based violence persecution, provides strong controlling law that immigration judges in this circuit tend to respect. Cases involving VAWA, gang persecution, and gender-based violence have historically received favorable treatment in the Ninth Circuit and before Northern California immigration judges.

However, the composition of immigration judges and the administrative priorities under the current administration have shifted significantly. Some judges have been reported as more favorable to DHS enforcement motions and more skeptical of humanitarian relief claims. Respondents' counsel should research the specific immigration judge assigned to the case and consider the judge's known preferences and decision patterns. This information is often available through AILA networks, practice groups, and local counsel with recent court experience.

The San Francisco Asylum Office, which adjudicates affirmative asylum applications and conducts credible fear interviews, has historically been known for relatively thorough interview practices and careful review of country conditions evidence. However, credible fear interviews under the expanded expedited removal authority may be conducted more summarily, and credible fear officers may apply the standard more restrictively. Respondents in expedited removal proceedings who successfully pass credible fear review may have their cases referred to immigration court for merits review, at which point the San Francisco Immigration Court's traditional procedural fairness may provide important protection.

California's state law protections, including Penal Code § 1473.7 (vacatur of convictions with immigration consequences) and Penal Code § 1203.43 (post-conviction relief for immigration-affected convictions), may

be available in criminal cases where the respondent has convictions that are removable offenses. Immigration counsel should coordinate with criminal defense counsel to explore whether criminal conviction modification is available, as this could eliminate the removability ground and provide a basis for opposing termination or seeking termination to then pursue re-adjustment of status.

SB 54, the California Values Act, limits cooperation between state and local law enforcement and federal immigration authorities, and creates certain protections for immigrants in state custody. While SB 54 does not directly govern immigration court proceedings, it may affect ICE's ability to apprehend respondents in certain contexts and may provide collateral leverage in some cases.

Practical Implementation, Procedures, and Timeline

When a respondent receives notice that DHS has filed a motion to terminate, several practical steps should be taken immediately.

Upon Notice of Motion: Respondent's counsel should request a copy of DHS's motion from the immigration court or DHS counsel, review the motion carefully to identify the specific grounds DHS is asserting, and note the deadline for filing a response (typically ten days unless the immigration judge specifies a different deadline). Counsel should interview the client immediately to understand the client's preferences regarding continuation or termination of proceedings, to identify any pending relief applications, and to assess the client's likelihood of success on relief claims.

Case Development: If the respondent wishes to oppose termination, counsel should gather documentation of any pending relief applications (I-589 for asylum, I-918 for U visa, Form I-751 for conditional residence, etc.), country conditions evidence supporting persecution or torture claims, evidence of family relationships and hardship if pursuing cancellation of removal, and any other evidence that would support the respondent's interest in merits adjudication.

Motion to Oppose: Respondent's counsel should file a written opposition to the DHS motion to terminate, within the response deadline or as soon as practicable. The opposition should: (1) articulate the respondent's specific interest in merits adjudication; (2) cite Ferreira and related precedent supporting the respondent's interest; (3) identify the specific relief the respondent seeks and why it is available in immigration court; (4) analyze the adequacy of DHS's stated basis for termination; (5) present evidence of the strength of the respondent's relief claims; and (6) address any procedural defects in DHS's motion. For respondents facing DHS motions to pursue expedited removal, the template opposition provided by the National Immigration Project should be adapted to the respondent's specific circumstances.

Oral Argument: At the hearing, whether a master calendar hearing or a merits hearing at which the motion will be addressed, respondent's counsel should be prepared to present oral argument opposing the motion. This argument should be concise, focused on the respondent's strongest points, and should emphasize the respondent's concrete interest in merits adjudication rather than abstract legal principles.

Appeal and Stay: If the immigration judge grants the DHS motion to terminate despite opposition, respondent's counsel should immediately file a notice of appeal to the BIA. The automatic stay pursuant to 8 C.F.R. § 1003.39 will prevent DHS from subjecting the respondent to expedited removal while the appeal is pending. The respondent should advise counsel immediately if ICE attempts to place the respondent in expedited removal while an appeal is pending, as this may constitute violation of the automatic stay and grounds for federal court intervention.

Processing Timeline: BIA appeals in immigration court matters typically take between six and eighteen months to receive a decision, depending on the complexity of the case and the BIA's caseload. During this period, the respondent remains in legal limbo but protected from removal by the automatic stay. Respondent's counsel should keep the client informed of the status of the appeal and should be prepared to file additional briefs or oral argument as requested by the BIA.

Emerging Litigation Challenges to DHS's Termination Strategy

As of February 2026, federal litigation challenging DHS's expanded expedited removal authority and the associated termination strategy is ongoing and may significantly affect the legal landscape within the next six to eighteen months.

The cases Make the Road New York v. Noem (D.D.C. Nos. 25-cv-00190, 25-cv-02279) challenge both the January 21, 2025 expansion of expedited removal and the February 28, 2025 implementation guidance extending expedited removal to noncitizens with more than two years of continuous presence.[45][46] In August 2025, a federal district court granted a motion to stay the expanded expedited removal designation, finding that it likely violates the Due Process Clause of the Fifth Amendment by denying meaningful opportunity to contest the predicate bases for expedited removal.[47] However, in September 2025, the D.C. Circuit dissolved a partial administrative stay, allowing DHS to continue applying expedited removal to certain noncitizens, though the circuit remained concerned about application to long-term residents.[48]

These litigation developments create uncertainty regarding the legal validity of DHS's termination strategy. If federal courts ultimately invalidate the expansion or restrict it to noncitizens who entered without inspection and cannot prove two years of presence, DHS's motivation for terminating existing cases would be substantially undermined, and termination orders granted on that basis might be subject to challenge as based on invalid legal theory.

Respondents and their counsel should monitor developments in Make the Road New York and related litigation and should consider whether such litigation developments provide grounds for motions to reconsider or reopen before the immigration judge or the BIA.

Conclusion

A respondent confronted with a DHS motion to terminate removal proceedings faces a decision that may fundamentally affect the respondent's ability to pursue humanitarian relief and avoid expedited removal. The regulatory framework governing termination, as codified in 8 C.F.R. § 1239.2 and the May 2024 rule, provides Immigration Judges with both mandatory and discretionary authority to terminate or deny termination. The January 2025 expansion of expedited removal authority and DHS's associated policy directing termination of ongoing cases to pursue expedited removal represent significant developments in prosecutorial enforcement strategy, but they do not eliminate the respondent's legal protections or the Immigration Judge's independent authority.

Key legal principles controlling the respondent's response to a DHS termination motion include: first, that Immigration Judges retain independent authority to deny DHS motions to terminate and are not bound by prosecutorial discretion determinations; second, that respondent's significant interests in merits adjudication, particularly for relief available only in immigration court such as cancellation of removal, or for relief

requiring continuation of proceedings such as U or T visa applications, constitute important factors weighing against termination; third, that DHS's stated basis for termination must be evaluated critically, with attention to whether the "changed circumstances" referenced in 8 C.F.R. § 239.2(a)(7) are genuine changes in the respondent's circumstances or merely changes in DHS's enforcement preferences; and fourth, that procedural safeguards and due process protections continue to apply even in the context of prosecutorial discretion motions.

For respondents in Northern California and particularly in the San Francisco Immigration Court, the combination of Ninth Circuit precedent emphasizing respondent protections, California state law limitations on immigration cooperation, and immigration judges' general receptiveness to humanitarian relief claims provides a relatively favorable procedural environment for opposing termination motions. Respondents should engage experienced counsel immediately upon notice of a termination motion, should carefully evaluate whether opposition is strategically sound, and should be prepared to preserve claims for appeal if termination is granted.

The interaction between removal court proceedings and expedited removal authority will continue to evolve as federal courts resolve ongoing litigation regarding the validity of the January 2025 expansion. Respondents and their counsel should remain vigilant for developments in this litigation and should consider whether such developments provide grounds for challenging termination orders or seeking relief through federal court habeas corpus petitions. The stakes-involving possible swift removal through expedited removal versus the opportunity for full merits adjudication in immigration court-make careful legal analysis and strategic decision-making essential.

Primary Legal Authorities and Citations

8 U.S.C. § 1225(b) - Expedited removal authority

8 U.S.C. § 1229a - Section 240 removal proceedings

8 U.S.C. § 1252(e)(2) - Habeas corpus jurisdiction for expedited removal

8 C.F.R. § 1239.2(c) - Cancellation of Notice to Appear; motion to dismiss

8 C.F.R. § 239.2(a) - Grounds for cancellation

8 C.F.R. § 1240.12(c) - Immigration judge authority to terminate proceedings

8 C.F.R. §§ 1003.1(m), 1003.18(d) - Administrative closure and termination procedures

8 C.F.R. § 214.14(c)(1)(i) - U visa petition administrative closure requirement

8 C.F.R. § 214.11(d)(1)(i) - T visa petition administrative closure requirement

8 C.F.R. § 212.7 - I-601A waiver administrative closure requirement

Matter of H.N. Ferreira, 28 I&N Dec. 765 (BIA 2023) - Immigration judge must independently adjudicate DHS motion to terminate; respondent interest factor

Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012) - Factors for administrative closure

Matter of W-Y-U-, 27 I&N Dec. 17 (BIA 2017) - Primary consideration in administrative closure is persuasive reason for merits adjudication

Matter of Jaso & Ayala, 27 I&N Dec. 557 (BIA 2019) - Due process and dismissal for meritless applications

Matter of Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022) - Discretionary authority to terminate in limited circumstances

Loper Light Enterprises v. Raimondo, 144 S.Ct. 2244 (2024) - Overruling Chevron; independent judicial interpretation of statutes

Designating Aliens for Expedited Removal, 90 Fed.Reg. 8139 (Jan. 24, 2025) - January 2025 expansion of expedited removal

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This report provides a comprehensive framework for understanding DHS motions to terminate removal proceedings in the context of the January 2025 expedited removal expansion and the applicable regulatory and case law framework. Respondents and their counsel should use this analysis in conjunction with case-specific facts and local court practices to develop effective opposition strategies or to make informed decisions regarding settlement and negotiation of termination issues.