DHS Motions to Pretermit Asylum Under Asylum Cooperative Agreements: Legal Framework, Defense Strategies, and Current Implementation

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FINDINGS

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Executive Summary

Asylum Cooperative Agreements (ACAs), also known as safe third country agreements, represent one of the most consequential procedural developments in contemporary immigration law affecting asylum seekers in removal proceedings. The legal landscape surrounding DHS motions to pretermit asylum applications based on ACAs has crystallized rapidly since April 2025, when the Executive Office for Immigration Review (EOIR) issued Policy Memorandum 25-28 authorizing immigration judges to summarily dismiss asylum applications without full evidentiary hearings when applications are deemed legally deficient.[5] That development was followed by the Board of Immigration Appeals' October 2025 decision in [Matter of C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025)][4], which established definitive standards for applying the safe third country bar under 8 C.F.R. § 1240.11(h)(4) and substantially limited the authority of immigration judges to evaluate whether designated third countries genuinely offer protection and fair procedures. The resulting legal framework shifts significant burdens onto respondents, creates tight procedural timelines, and eliminates traditional evidentiary hearings in many cases.

This report provides a comprehensive analysis of the legal standards governing ACA pretermission motions, identifies both procedural and substantive defense strategies available to respondents, assesses the current litigation challenging these policies, and outlines practical implementation approaches tailored to Northern California immigration practice while maintaining applicability to practitioners nationwide. The analysis draws on controlling BIA precedent, Ninth Circuit jurisprudence, federal statutory and regulatory authority, EOIR policy guidance, recent federal court litigation through January 2026, and country conditions documentation from the U.S. State Department and international human rights organizations.

Risk Assessment: Respondents facing ACA pretermission motions encounter a medium-to-high risk environment, with outcomes varying substantially based on procedural timing, respondent credibility on country-specific fear claims, quality of country conditions evidence, and the particular immigration judge's interpretation of the [C-I-G-M- precedent][4]. Immigration judges are increasingly citing [C-I-G-M-][4] for the proposition that they lack substantive authority to evaluate whether third countries offer full and fair procedures or safe conditions, constraining defenses at the trial court level. However, appellate reversal remains possible through claims that the BIA's regulatory interpretation exceeds statutory authority, that PM 25-28 violated Administrative Procedure Act requirements, or that specific factual circumstances distinguish a respondent's case from the template safe-country determination. Federal court litigation challenging the entire ACA framework (U.T. v. Bondi, pending in the U.S. District Court for the District of Columbia through December 2025) presents longer-term appellate opportunities but provides no near-term relief in individual proceedings.

Legal Framework: Statutes, Regulations, and Binding Precedent

Statutory Foundation: INA § 208(a)(2)(A) and the Safe Third Country Bar

The safe third country bar to asylum rests on [8 U.S.C. § 1158(a)(2)(A)][11], which provides that an alien otherwise eligible for asylum may be barred from applying for asylum in the United States if the Attorney General determines that the alien "may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States."[11] This statute contains three critical requirements that must be satisfied before an ACA bar applies: (1) a bilateral or multilateral agreement must exist between the United States and the designated country; (2) the designated country must offer conditions wherein the alien's life or freedom would not be threatened on the enumerated grounds; and (3) the designated country must provide access to a full and fair procedure for adjudicating asylum claims. The statute also preserves an explicit public interest exception that the Attorney General may invoke in individual cases.

The regulatory implementation of this statutory framework appears in [8 C.F.R. § 1240.11(h)][3], which creates the operational procedures for applying the safe third country bar in removal proceedings before immigration judges. Under this regulation, when DHS claims that an ACA bars a respondent from applying for asylum, the immigration judge must determine whether the safe third country bar applies prior to and separate from considering the respondent's eligibility for asylum on the merits.[4] If the respondent meets the burden to demonstrate that the bar does not apply, the immigration judge should proceed to consider the merits of the asylum and protection claims; if the respondent does not meet this burden, the bar applies and the judge shall order removal to the designated third country.[3]

Regulatory Framework and Implementation Rules

[8 C.F.R. § 1240.11(h)(2)][3] specifies the conditions under which an alien subject to an ACA is ineligible to apply for asylum, withholding of removal, or Convention Against Torture (CAT) protection in the United States. An alien subject to an ACA remains ineligible unless the immigration judge determines, by a preponderance of the evidence, that: (i) the relevant agreement does not apply to the alien or does not preclude the alien from applying for asylum in the United States; (ii) the alien qualifies for an exception to the relevant agreement as set forth in the agreement text; or (iii) "it is more likely than not that the applicant will be persecuted on account of a protected ground or tortured in the relevant third country."[3] This burden allocation is critical: respondents bear the affirmative burden of establishing by preponderance of the evidence that either the ACA does not apply or that they would face persecution or torture in the designated third country.

The regulation also specifies procedural requirements. Under [8 C.F.R. § 1240.11(h)(2)(iii)][3], a respondent must receive "reasonable opportunity to satisfy his or her burden to show by a preponderance of the evidence that the safe third country bar does not apply because he or she will more likely than not be persecuted or tortured in the relevant third country."[3] When DHS claims that an ACA bars a respondent, DHS must provide oral or written notice that it intends to remove the respondent to the relevant third country for consideration of asylum and protection claims.[4]

Critically, [8 C.F.R. § 241.15(d)(2025)][4] provides that "No commitment of acceptance by the receiving country is required prior to designation of the receiving country, before travel arrangements are made, or before the alien is transported to the receiving country."[4] This provision eliminates a significant procedural safeguard: the third country need not agree to accept the respondent before the immigration judge orders

removal. The practical consequence is that a respondent can be ordered removed to a country that has not formally committed to accepting them, creating uncertainty and potential humanitarian harm.

Board of Immigration Appeals Precedent: C-I-G-M- & L-V-S-G-

The October 2025 Board of Immigration Appeals decision in [Matter of C-I-G-M- & L-V-S-G-, 29 I&N Dec. 291 (BIA 2025)][4], represents the controlling precedent defining how immigration judges must apply the safe third country bar. In this case, respondents filed asylum applications in September 2023 after arriving in the United States from Guatemala and Honduras respectively, claiming fear of harm by gang members and "neighbors and other bad men."[4] DHS filed motions to pretermit their asylum applications, arguing they were barred from applying for asylum under the Honduras ACA and requesting that they be removed to Honduras for consideration of their asylum claims.

The immigration judge denied DHS's motion to pretermit, finding that the respondents had presented sufficient evidence of fear of travel to Honduras to establish an exception to the ACA bar.[4] However, the BIA reversed, holding that respondents had failed to meet their burden of establishing by preponderance of the evidence that they would face persecution in Honduras on account of a protected ground.[4] Significantly, the BIA addressed the temporal question: although the Honduras ACA was not implemented until after the respondents filed their asylum applications in the United States, the [C-I-G-M-][4] respondents entered the United States after November 19, 2019-the effective date of the ACA Rule itself.[4] The BIA found that "application of the new provision is not retroactive" because it only "affects the propriety of prospective relief" and does not affect the propriety of past relief.[4]

The [C-I-G-M-][4] decision contains two holdings particularly significant for respondent defense strategy. First, the BIA held that immigration judges lack authority to make substantive evaluations of whether the third country provides a "full and fair procedure" for asylum adjudication or whether conditions in the third country are genuinely safe. Rather, the BIA stated that the Authority General and Secretary of Homeland Security make the threshold full and fair third country determination prior to implementation of an ACA, and this determination is "separate and apart from the regulatory provisions" in the ACA rule.[4] The BIA explicitly found that immigration judges "similarly" lack authority to determine whether it is in the public interest for an alien subject to an ACA to pursue asylum in the United States, as the statute reserves this authority to the Attorney General.[4] Second, the BIA established that respondents need not have physically transited through the designated third country for the ACA bar to apply; DHS need only demonstrate the alien's legal capacity to transfer to that country under the ACA text.[4]

The practical effect of [C-I-G-M-][4] is to narrow dramatically the scope of immigration judge authority in ACA cases. Immigration judges are now interpreting this decision to mean they cannot consider evidence that Honduras (or Guatemala, El Salvador, or other ACA partners) has a corrupt judiciary, lacks functioning asylum infrastructure, or presents conditions of violence and persecution for particular groups.[4] This interpretation creates a substantial problem for respondent defense strategy, as it forecloses evidentiary approaches that might have succeeded in earlier safe third country litigation.

Pretermission Authority and Standards: Matter of C-A-R-R- and H-A-A-V-

Prior to addressing specific ACA bar applicability, immigration judges must first determine whether an asylum application is sufficiently complete and presents prima facie eligibility for relief. [Matter of C-A-R-R-, 29 I&N Dec. 13 (BIA 2025)][28], decided in March 2025, addressed standards for completeness of Form I-589 asylum applications. In that case, a pro se respondent submitted multiple incomplete versions of the I-589 form, each lacking responses to specific questions.[28] On the fourth attempt, the immigration judge accepted

the form but subsequently rejected a supporting declaration for lacking a proper certificate of translation, and deemed the entire asylum application waived and abandoned.[28] The BIA reversed, finding that a supporting statement is not a "constituent part" of the I-589 application.[28] The BIA clarified that under [8 C.F.R. § 1208.3(c)(3)][3], a Form I-589 is incomplete only if it (1) lacks a response to each question on the form, (2) is unsigned, or (3) is missing required materials, and the BIA reiterated that "required materials" do not include supporting declarations or narratives.[28]

However, the BIA also noted that the immigration judge was entitled to consider the absence of supporting evidence when evaluating the merits of the asylum application, even if the absence did not render the application itself incomplete or waived.[28] This distinction is critical in the context of ACA pretermission motions: a respondent's Form I-589 may be technically sufficient to trigger the 150-day asylum clock and be "accepted" by the court, yet the respondent may still face pretermission if the immigration judge determines that the factual allegations in the application do not establish prima facie eligibility for relief.

Later in 2025, the BIA in [Matter of H-A-A-V-, 29 I&N Dec. 233 (BIA 2025)][43], further clarified that immigration judges may pretermit asylum applications without a full evidentiary hearing if "the factual allegations underlying a claim for asylum, withholding of removal, or protection under the Convention Against Torture, viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection."[43] The respondent in that case based his asylum claim on extortion by criminal gangs in Peru, and the BIA found that the undisputed facts did not meet the requirements to establish a claim for asylum, withholding of removal, or CAT protection.[43] Notably, the BIA stated that while respondents have the right to testify and present evidence in asylum proceedings, when "the factual allegations underlying a claim for asylum... viewed in the light most favorable to the respondent, do not establish prima facie eligibility for relief or protection, an Immigration Judge may pretermit the applications" without a full evidentiary hearing on the merits.[43]

Current Legal Landscape: Policy Developments, Recent Litigation, and Enforcement Patterns

EOIR Policy Memo 25-28 and the Pretermission Authority

On April 11, 2025, EOIR Acting Director Sirce E. Owen issued [Policy Memorandum 25-28][5], explicitly granting immigration judges authority to pretermit legally insufficient asylum applications without holding hearings.[5] The memo states that adjudicators may pretermit legally deficient asylum applications, though the ultimate decision remains with the presiding adjudicator.[5] The stated rationale is administrative efficiency: with nearly four million pending cases on EOIR's docket, the memo asserts that adjudicators have a duty to efficiently manage their dockets and should take "all appropriate action to immediately resolve cases on their dockets that do not have viable legal paths for relief or protection from removal."[5]

The memo acknowledges that regulations require a hearing "to resolve factual issues in dispute" under [8 C.F.R. § 1240.11(c)(3)][3], but interprets this provision to mean that no hearing is required when there are no factual issues in dispute, including when facts are undisputed but the claim itself is legally deficient.[5] The memo cites case law establishing that adjudicators routinely pretermit asylum applications for various legal deficiencies, including untimely filing, lack of nexus to a protected ground, and disqualifying criminal convictions, as support for the proposition that asylum applications should receive similar treatment.[5]

Critically, PM 25-28 is characterized as "an interpretive rule or general statement of policy" and expressly

disclaims creating any enforceable right or benefit.[5] This characterization has implications for Administrative Procedure Act analysis and potential challenge in federal court, as interpretive rules and policy statements are generally not required to undergo notice-and-comment rulemaking. However, the memo's legal reasoning-that pretermission is permissible without a hearing when factual allegations are undisputed-may be vulnerable to challenge on the theory that it conflates substantive legal sufficiency with procedural pretermission authority, or that it exceeds the immigration judge's authority as defined by statute and regulation.

Litigation Against ACAs: U.T. v. Bondi and Federal Court Status

The Center for Gender and Refugee Studies, in partnership with the American Civil Liberties Union, Human Rights First, and the National Immigrant Justice Center, has challenged the entire ACA framework in [U.T. v. Bondi, pending in the U.S. District Court for the District of Columbia][45]. The case was originally filed in January 2020, challenging the 2019 Trump administration ACAs with Guatemala, Honduras, and El Salvador. The litigation was held in abeyance during the Biden administration when those ACAs were terminated, but was reactivated in September 2025 when the Trump administration concluded new ACAs with Guatemala, Honduras, Paraguay, Belize, Ecuador, and Uganda.[45]

On December 19, 2025, plaintiffs filed a second amended complaint and motion for class certification, adding eighteen additional individual plaintiffs beyond the original six.[45] The complaint alleges that the challenged ACAs violate the safe third country provision of the asylum statute, the Administrative Procedure Act, and the Immigration and Nationality Act, and that the government's categorical designations of ACA countries as having "full and fair" asylum systems are arbitrary and capricious.[45] Plaintiffs have submitted declarations providing detailed evidence that the designated third countries fail to offer effective asylum protection; for example, one plaintiff, H.R., is a Salvadoran woman whose family was extorted by Guatemalan police officers when they transited Guatemala en route to the U.S. border, and when forcibly returned to Guatemala under the ACA, was given only 72 hours to decide whether to apply for asylum there.[45]

The government's litigation position, articulated in opposition to plaintiffs' amended complaint motion filed in January 2026, argues that jurisdiction bars preclude review of many claims, that plaintiffs lack standing to challenge certain ACAs (particularly Belize and Liberia), and that procedural due process claims are not cognizable because current procedures already afford sufficient process.[45] The government also contends that allowing plaintiffs to amend repeatedly as new ACAs are concluded would prejudice defendants and enable indefinite litigation.[45] As of January 2026, the U.T. v. Bondi litigation remains active but has not yet resulted in preliminary or final relief; the case is unlikely to produce a court order affecting individual removal proceedings in the near term.

Enforcement Patterns and DHS Tactical Approaches

Advocacy organizations and immigration attorneys nationwide report that DHS has dramatically accelerated filing of ACA-based pretermission motions following [C-I-G-M-][4].[1] The motions are frequently filed with minimal advance notice-sometimes on the eve of scheduled individual hearings-creating procedural disadvantage for respondents and their counsel.[1] DHS appears to be using national templates for ACA pretermission motions, suggesting centralized coordination through OPLA (Office of Principal Legal Advisor) to increase case throughput.[1] Immigration judges across the country are granting these motions at high rates, citing [C-I-G-M-][4] for the proposition that they lack authority to make substantive safe-country determinations and must apply the regulatory framework mechanically.[1]

The current universe of active ACAs includes Guatemala, Honduras, El Salvador, Paraguay, Ecuador, Belize,

Uganda, Rwanda, South Sudan, Kosovo, and Mexico.[10] Some of these ACAs do not require physical transit through the designated country-notably, the Paraguay and Ecuador agreements contain provisions allowing the transfer of third country nationals without requiring that they have passed through the destination country.[10] This expansion of the ACA framework beyond the original Northern Triangle countries significantly increases the number of respondents potentially subject to pretermission motions.

Ninth Circuit Precedent and Controlling Authority

Within the Ninth Circuit, which has jurisdiction over Northern California immigration courts, safe third country jurisprudence has historically been more protective of asylum seekers' rights than precedent in other circuits. In the context of the Asylum Transit Rule, the [Ninth Circuit in Al Otro Lado v. Mayorkas][19] (decided October 2024) affirmed a district court's permanent injunction prohibiting application of the Asylum Transit Rule to class members who were turned away at the border under the metering policy before the rule took effect, and ordered the government to unwind past denials of asylum to such individuals.[19]

However, the [C-I-G-M-][4] decision is issued by the Board of Immigration Appeals (which reviews immigration court decisions nationwide) and constitutes binding precedent for immigration judges in all circuits, including the Ninth Circuit. Thus, while the Ninth Circuit has historically interpreted asylum statutes broadly, immigration judges in San Francisco and other Northern California locations are bound by the [C-I-G-M-][4] holding that they lack authority to evaluate third-country conditions substantively.

San Francisco-Specific Context and Northern California Implementation

San Francisco Immigration Court: Procedural Expectations and Judge-Specific Factors

The San Francisco Immigration Court, located at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][1], handles a substantial asylum caseload dominated by petitioners from Central America, Mexico, and other Latin American countries. The court also has a hearing location in Concord (1855 Gateway Blvd., Suite 850, Concord, CA 94520), which serves cases from inland Northern California.

Immigration judges in the San Francisco court have begun applying the [C-I-G-M-][4] framework mechanically in ACA cases. Attorneys reporting outcomes in late 2025 and early 2026 indicate that San Francisco immigration judges are frequently denying continuance requests to allow respondents time to gather country conditions evidence, are conducting abbreviated hearings at master calendar settings rather than full merits hearings, and are finding that respondents fail to meet their burden of establishing more-likely-than-not persecution in the designated third country even when respondents present generalized country conditions evidence.[1] This pattern suggests that San Francisco judges are interpreting [C-I-G-M-][4] to require respondents to present highly particularized, individualized evidence of persecution in the third country rather than reliance on country conditions documentation.

San Francisco Asylum Office: Interview Procedures and ACA Screening

The San Francisco Asylum Office processes credible fear and asylum interviews for the Northern California region. Recent procedural changes indicate that asylum officers are conducting "threshold screening interviews" to determine whether applicants are subject to an ACA designation prior to determining whether applicants have expressed fear of persecution or have a credible fear under 8 U.S.C. § 1225(b)(1)(A)(ii).[1] This sequencing creates a procedural advantage for DHS, as if the ACA bar applies, no further consideration of fear is necessary.

Northern California ICE Enforcement and Detention

ICE Enforcement and Removal Operations (ERO) Field Office 1 (Northern California) has detained respondents in removal proceedings in various facilities including Santa Rita County Jail in Alameda County and ICE detention facilities throughout the region. Respondents who are detained face compressed timelines for gathering evidence and preparing responses to ACA pretermission motions, as detention facilities have limited access to legal resources, internet, and translation services. Counsel should prioritize requests for alternatives to detention, including own recognizance release or time served, when respondents face ACA pretermission motions, as detention status directly impacts litigation capacity.

California State Law Protections: PC § 1473.7 and Related Provisions

Under [California Penal Code § 1473.7][1], respondents with prior criminal convictions may seek post-conviction relief if they can demonstrate that prior counsel was ineffective for failing to advise them of immigration consequences or that they were not properly advised of immigration consequences at the time of conviction. While PC § 1473.7 does not directly address ACA pretermission, it may provide relief in cases where respondents face removal partly because of prior criminal convictions that rendered them ineligible for asylum on the merits but where the immigration judge's failure to adequately advise the respondent of consequences affected the prior proceeding.

[California Penal Code § 1203.43][1] permits sentencing courts to dismiss or reduce cases where defendants completed rehabilitation programs, and provides that the reduction should be made to minimize immigration consequences. While this statute does not directly address asylum cases, it may be relevant for respondents with prior convictions who are simultaneously challenging ACA pretermission motions.

[Senate Bill 54 (California Values Act)][1] limits California law enforcement cooperation with federal immigration enforcement and restricts use of state resources for certain immigration enforcement activities. However, SB 54 does not restrict immigration judges' authority to apply the ACA bar, and does not provide direct relief for respondents facing pretermission motions.

Strategic Analysis Framework: Arguments Favoring and Opposing Respondent Positions

Arguments Favoring Respondent Resistance to ACA Pretermission

Procedural Due Process Challenges to Pretermission Without Merits Hearing

Respondents have substantial arguments that pretermission of asylum applications without a full evidentiary hearing violates due process under the Fifth Amendment and statutory rights under the Immigration and Nationality Act. Under [Zadvydas v. Davis, 533 U.S. 678 (2001)][36], removal proceedings must provide due process requiring "a full and fair hearing" and "a reasonable opportunity to present evidence on [respondent's] behalf."[36] The [Ninth Circuit in Oshodi v. Holder, 729 F.3d 883 (9th Cir. 2013) (en banc)][33], held that denying an applicant the chance to testify about the core of their claim is a due process violation.[33]

Respondents can argue that pretermission of asylum applications without permitting testimony violates this established due process framework. The argument is particularly strong when the immigration judge pretermits based solely on alleged Form I-589 deficiency (under PM 25-28) rather than based on application of the ACA bar itself, because the statutory framework and regulations contemplate that asylum applicants are entitled to a hearing to testify under oath regarding the truth of their applications. Pretermission based on form

insufficiency, respondents argue, conflates two distinct issues: whether the form is technically complete (a discrete procedural matter) and whether the applicant has presented a prima facie claim for asylum (which requires consideration of the factual allegations contained in the application).

Statutory Interpretation: INA § 208(a)(2)(A) Mandates IJ Authority to Evaluate Safe-Country Conditions

The statutory language of [8 U.S.C. § 1158(a)(2)(A)][11] contains specific conditions that must be satisfied before an ACA bar applies: the third country must offer conditions wherein the applicant's life or freedom would not be threatened on enumerated grounds, and the applicant must have access to "a full and fair procedure for determining a claim to asylum or equivalent temporary protection."[11] Respondents can argue that this statutory language, by its plain terms, assigns to the immigration judge the duty to make factual findings about whether these conditions are satisfied in the individual case.

The [C-I-G-M-][4] BIA decision interprets the regulation to reserve to the Attorney General the threshold determination of whether a third country offers "full and fair" procedures, and restricts immigration judges to applying a mechanical regulatory framework. However, respondents can argue that this interpretation is ultra vires-exceeding the Board's authority-because it reads the statutory requirement of "full and fair procedure" entirely out of the ACA bar mechanism. If the Attorney General's pre-ACA determination is conclusive and binding on immigration judges, the statutory requirement becomes a nullity. Moreover, respondents can point out that [C-I-G-M-][4] itself concedes that immigration judges retain authority to determine whether "the relevant agreement does not apply to the alien or does not preclude the alien from applying for asylum," which necessarily encompasses determining the agreement's scope and applicability in fact-specific cases.

Non-Refoulement Principles Under International Law and CAT

The Convention Against Torture, to which the United States is a signatory, incorporates the principle of non-refoulement-the prohibition on returning a person to a country where they are more likely than not to be tortured.[44] While domestic courts have held that CAT non-refoulement protection is narrower than asylum protection (because CAT requires no nexus to protected grounds and contains no exceptions), the principle remains that the United States cannot remove individuals to countries where torture is likely.

Respondents can argue that pretermission without considering whether a respondent would face torture in the designated third country violates CAT non-refoulement obligations. This argument is particularly strong when the designated ACA country has documented patterns of torture by government officials or has failed to control non-state actors who engage in torture. For example, if DHS seeks to remove a respondent to Honduras, respondents can point to documented evidence that Honduran government officials engage in torture and that the Honduran government is unable or unwilling to provide safe conditions.[31] While the [C-I-G-M-][4] decision suggests immigration judges lack authority to make these evaluations, respondents can argue that such an interpretation violates the non-refoulement principle embodied in CAT.

Public Interest Exception Under INA § 208(a)(2)(A)

The statutory text of [8 U.S.C. § 1158(a)(2)(A)][11] explicitly preserves a public interest exception: "unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States."[11] The [C-I-G-M-][4] BIA held that immigration judges lack authority to determine whether it is in the public interest for a respondent to receive asylum, as the statute reserves this determination to the Attorney General.[4] However, respondents can argue that the Attorney General's failure to invoke the public interest exception in a particular case does not preclude immigration judges from considering public interest factors.

Respondents can present evidence of family unity (U.S. citizen or permanent resident relatives), prior U.S.

presence (employment history, community ties, children born in the U.S.), humanitarian factors (medical conditions requiring U.S. healthcare, caretaking responsibilities for U.S. citizen relatives), or other circumstances supporting that removal to the third country is not in the public interest. While [C-I-G-M-][4] constrains this argument, it does not entirely foreclose it, particularly where the record demonstrates extraordinary circumstances.

Retroactivity Challenge to ACA Application

The [C-I-G-M-][4] respondents entered the United States after November 19, 2019 (the effective date of the ACA Rule itself), so the BIA's retroactivity analysis did not directly address the scenario of respondents who entered before 2019. Respondents who entered the United States before 2019 can argue that application of a subsequently-implemented ACA is retroactive and violates the principle that legal rules should not be applied retroactively to burden conduct that was lawful when undertaken.

The statutory language of [8 U.S.C. § 1158(a)(2)(A)][11] itself includes a temporal limitation: the statute bars removal only to countries that are "other than the country of the alien's nationality," and the regulatory framework specifically addresses the scope of applicability. Respondents who entered before 2019 can argue that at the time of their entry, no ACA with the designated country existed, so they could not have been subject to the bar at that time. Even if the ACA Rule's general framework became effective in 2019, application of a subsequently-negotiated ACA with a specific country (Honduras, for example, in 2025) to respondents who entered years earlier represents an impermissible retroactive application.

Government's Strongest Arguments and DHS Litigation Positions

The Statutory Text Authorizes Categorical ACA Designations

The government's strongest argument is that [8 U.S.C. § 1158(a)(2)(A)][11] explicitly authorizes the Attorney General to make bilateral or multilateral agreements with third countries and to determine categorically whether those countries satisfy the statutory conditions. The statute's plain language-"if the Attorney General determines"-vests discretionary authority in the Attorney General to make this determination, and the government will argue that once the Attorney General makes the determination (through the ACA and formal designation), individual immigration judges lack authority to second-guess that determination in individual cases.

The government will cite the [C-I-G-M-][4] holding that the Attorney General's pre-ACA threshold determination of whether a country offers "full and fair" procedures is "separate and apart from the regulatory provisions" and binding on immigration judges.[4] The government will argue that requiring individual immigration judges to relitigate the Attorney General's full-and-fair determination in each case would be inefficient, would create inconsistent results across cases, and would effectively nullify the ACA agreements by allowing individual judges to reject the Attorney General's categorical determinations.

Statutory Language Distinguishes Between Asylum Eligibility and ACA Bar Application

The government will argue that [INA § 208(b)][11] contains the substantive standards for asylum eligibility (persecution on account of protected ground), while [INA § 208(a)(2)(A)][11] contains a separate bar (the safe third country bar) that operates prior to and independent of asylum eligibility determinations. The structure of the statute itself separates these inquiries: Section 208(a) addresses eligibility to apply, while Section 208(b) addresses grounds for granting asylum. The government will argue that respondents must first clear the bar (Section 208(a)) before they can be considered for asylum on the merits (Section 208(b)).

This argument is powerful because it rests on basic statutory structure. The government can point to the

parallel structure with other bars in Section 208(a)(2) (persecution bar, firmly resettled bar, changed circumstances analysis) and argue that immigration judges have traditionally applied these bars without conducting full merits hearings on the underlying asylum claim. The government will cite [Matter of C-A-R-R-][28] and [Matter of H-A-A-V-][43] for the proposition that pretermission is permissible when an applicant is facially ineligible as a matter of law.

Prima Facie Sufficiency Analysis Does Not Require Merits Hearing

The government will cite [EOIR Policy Memo 25-28][5] and the [C-A-R-R-][28] and [H-A-A-V-][43] decisions for the proposition that when factual allegations are undisputed and do not establish prima facie eligibility, immigration judges are not required to hold full evidentiary hearings. The government will argue that the regulation's requirement of a hearing "to resolve factual issues in dispute" [8 C.F.R. § 1240.11(c)(3)][3] necessarily implies that when there are no disputed facts, a hearing is not required.

Applying this logic to ACA cases, the government will argue that when DHS properly notifies a respondent that an ACA applies, and the respondent either concedes the ACA applies or presents only documentary evidence of fear in the designated country without establishing a particularized connection to persecution, the respondent has failed to present disputed facts requiring an evidentiary hearing. The government will distinguish between form incompleteness (where the respondent might deserve a second chance to supplement) and substantive legal insufficiency (where the law clearly forecloses relief).

Respondents Bear Burden of Establishing Persecution in Third Country

Under [8 C.F.R. § 1240.11(h)(2)][3] and [C-I-G-M-][4], respondents bear the burden of establishing by preponderance of the evidence that it is more likely than not they will be persecuted in the designated third country. The government will argue that respondents cannot satisfy this burden merely by presenting country conditions evidence; they must demonstrate a particularized connection between their circumstances and the alleged persecution. The government will point to cases where respondents have presented only generalized country conditions evidence (e.g., "Honduras has gang violence") without explaining why they personally would be targeted.

The government will argue that respondents who have never been to the designated third country or who passed through briefly without incident have difficulty establishing that they would be persecuted there. The government will also argue that if a respondent's persecution claim is based on gang activity in their country of origin, they have not established that the same gang would pursue them in a different country. This argument places significant evidentiary burdens on respondents and effectively requires them to present evidence specific to each ACA country.

Practical Implementation: Procedural Roadmap and Litigation Strategy

Immediate Response to DHS Motion to Pretermit

When DHS files a motion to pretermit an asylum application based on an ACA, respondent's counsel should take the following immediate steps:

1. Assess Procedural Sufficiency and Timing

First, counsel should determine whether the motion complies with procedural requirements. Under the Immigration Court Practice Manual, pre-decision motions are limited in time and may be subject to filing

deadlines established by the immigration judge.[1] Counsel should check whether the motion was filed within the appropriate deadline (typically thirty days before the individual hearing) and whether respondent was afforded reasonable time to respond.[1] If the motion was filed on the eve of the hearing or without adequate notice, counsel should immediately file an objection asserting that the late filing prejudices respondent's ability to prepare a response and violates procedural due process.[1]

Counsel should also examine whether the motion is substantively directed to ACA pretermission or merely to Form I-589 deficiency under PM 25-28. If DHS is arguing pretermission on form grounds rather than ACA grounds, the procedural defenses are somewhat different and may focus on whether the form was accepted by the court, whether the form triggered the 150-day asylum clock, and whether the claimed deficiency goes to completeness (form deficiency) or substantive legal insufficiency.

2. File Written Opposition

Counsel should prepare and file a comprehensive written opposition to the motion to pretermit, addressing both procedural and substantive grounds. The opposition should be thorough and specific, as it will create a record for appeal if the immigration judge grants the motion despite the opposition.

3. Prepare Client for Abbreviated Hearing

Even if counsel files a strong written opposition, [C-I-G-M-][4] indicates that immigration judges may conduct abbreviated hearings at the master calendar stage rather than converting the case to individual hearing status.[4] Counsel should prepare the respondent to testify concisely and persuasively regarding their fear of removal to the designated third country, focusing on particularized facts connecting the respondent to potential persecution in that country.

Substantive Arguments in Opposition Brief

Procedural Due Process Violation

The opposition brief should argue that pretermitting an asylum application without permitting the respondent to testify violates procedural due process under the Fifth Amendment. Respondents should cite [Oshodi v. Holder, 729 F.3d 883 (9th Cir. 2013) (en banc)][33], [Grigoryan v. Barr, 959 F.3d 1013 (9th Cir. 2020)][36], and [Montes-Lopez v. Holder, 694 F.3d 1085 (9th Cir. 2012)][36], all of which require that asylum applicants receive meaningful opportunity to testify and present evidence unless the law clearly forecloses relief.

Respondents can argue that the safe third country bar is not a matter of law that clearly forecloses relief on its face; rather, it requires factual findings about whether the respondent would be persecuted in the designated country. These are precisely the types of findings that require respondent's testimony and live cross-examination to evaluate credibility. Pretermission without a hearing therefore violates due process.

Statutory Authority to Evaluate Safe-Country Conditions

Respondents should argue that [8 U.S.C. § 1158(a)(2)(A)][11], by its plain language, requires the immigration judge to make a factual finding that "the alien would have access to a full and fair procedure for determining a claim to asylum" in the designated country.[11] This requirement is not satisfied by the Attorney General's categorical pre-ACA determination; rather, the statute requires individualized findings in each case. Respondents should argue that [C-I-G-M-][4] misinterprets the statutory and regulatory framework by suggesting immigration judges have no authority to evaluate these conditions.

Respondents should point to the regulatory language at [8 C.F.R. § 1240.11(h)(2)(i)][3], which requires the immigration judge to determine whether "the relevant agreement does not apply to the alien or does not

preclude the alien from applying for asylum in the United States."[3] This language necessarily authorizes the immigration judge to consider the agreement's scope, applicability, and effect in the individual case. Determining whether an agreement's conditions are satisfied in an individual case is not equivalent to relitigating the Attorney General's pre-ACA determination; rather, it is a straightforward application of the regulatory framework to individual facts.

Country Conditions Evidence and Failure to Provide Full and Fair Procedures

Respondents should present specific country conditions evidence demonstrating that the designated country does not provide a full and fair procedure for asylum adjudication or that conditions there do not satisfy the statutory requirement that the applicant's life or freedom not be threatened. For respondents facing removal to Honduras, evidence should focus on: (1) documented weakness or corruption in the Honduran asylum system; (2) documented gang violence and government inability or unwillingness to control gang activity; (3) gender-based violence; (4) persecution of LGBTQ+ individuals; and (5) lack of due process protections for asylum claimants.

Respondents should cite recent Human Rights Watch reports on Honduras (available through [Refugees International][13] and [Human Rights Watch Honduras page][31]), which document systematic corruption, political interference in the justice system, human rights violations, gang violence, femicide rates among the highest in the Americas, persecution of LGBTQ+ people, and lack of comprehensive anti-LGBT discrimination legislation.[31] Similar evidence is available for Guatemala, El Salvador, and other ACA partner countries.

Respondent's Personal Fear of Removal to Designated Country

Respondents must present evidence-through testimony, client declaration, or both-establishing that they personally have a well-founded fear of persecution in the designated country. This evidence should explain: (1) whether the respondent has been to the designated country; (2) what connections the respondent has to the designated country; (3) what specific persecutor or group the respondent fears in the designated country; (4) whether the feared persecutor has territorial reach beyond the respondent's country of origin; and (5) why the respondent believes they would be persecuted on account of a protected ground.

For respondents with gang-related claims, counsel should present evidence that the gang operates in the designated country and has transnational reach. For respondents with gender-based violence claims, counsel should present evidence that gender-based violence is rampant in the designated country and that government protection is inadequate. For LGBTQ+ respondents, counsel should present evidence that LGBTQ+ people face persecution in the designated country and that the government does not provide protection. Counsel should also consider whether respondents have family or community in the designated country who could confirm the respondent's particular vulnerability.

Public Interest Exception

Even though [C-I-G-M-][4] suggests immigration judges lack authority to invoke the public interest exception, respondents should present evidence supporting public interest considerations, preserving the argument for appeal. Evidence should address: (1) family unity (U.S. citizen or permanent resident relatives, particularly minor children); (2) prior U.S. presence and community ties (employment, business, property, long-term residence); (3) humanitarian factors (medical conditions requiring specialized U.S. healthcare, caretaking responsibilities for U.S. relatives); (4) extraordinary circumstances relating to the respondent's migration journey or trauma; and (5) any other factors weighing in favor of the public interest.

Evidentiary Submissions and Document Preparation

Country Conditions Documentation

Respondents should submit the most current available country conditions reports, including: (1) U.S. State Department Country Reports on Human Rights Practices (available through [state.gov][20]); (2) Human Rights Watch World Reports (available through [hrw.org][31]); (3) Amnesty International country briefings; (4) United Nations Office of the High Commissioner for Human Rights reports on the designated country; (5) Congressional Research Service reports on Central America; and (6) specialized reports from organizations like Refugees International addressing asylum systems and protection gaps.

All country conditions documentation should be accompanied by a detailed written analysis explaining how the evidence establishes either that the designated country does not provide a full and fair asylum procedure or that the respondent would face persecution there. The analysis should explicitly connect general country conditions to the respondent's particular circumstances where possible.

Expert Witness Testimony

Respondents should consider retaining expert witnesses with knowledge of country conditions, asylum systems, gang operations, or persecution patterns in the designated country. Expert testimony is particularly valuable for establishing: (1) that the designated country's asylum system is non-functional or corrupt; (2) that gang activity in the designated country is widespread and likely to target individuals from the respondent's demographic or background; (3) that LGBTQ+ people or gender-based violence survivors face persecution; or (4) that the respondent's particular background or characteristics would expose them to persecution in the designated country.

Expert witnesses should be identified and prepared well in advance of any evidentiary hearing, as immigration judges may be reluctant to grant continuances to allow expert preparation after an ACA pretermission motion is filed. Counsel should provide experts with detailed factual information about the respondent and ask them to render opinions specific to that respondent's circumstances.

Client Declaration and Testimony Preparation

Respondents should prepare a detailed written declaration addressing: (1) specific facts regarding their circumstances, background, and history of persecution or threats; (2) specific facts regarding the persecutor(s) they fear; (3) specific facts explaining why they fear removal to the designated country; (4) evidence of connections to the designated country (if any) and whether the respondent fears persecution there; (5) evidence of connections to the United States (family, employment, community) and hardship resulting from removal; and (6) any other relevant factual circumstances.

The declaration should be translated into the respondent's native language (with certification of translation), and respondent should be prepared to testify live regarding the declaration's contents and to be cross-examined by DHS counsel.

Country Conditions and Persecution Evidence: Comparative Assessment

Honduras: Documented Failures of Asylum System and Safety Concerns

Honduras presents among the starkest country conditions concerns for respondents facing removal under the ACA. [Human Rights Watch 2025 World Report on Honduras][31] documents that Honduras continues to

struggle with widespread corruption, a compromised judiciary, high levels of violence, and attacks against environmental defenders and human rights defenders. The report notes that the UN Office of the High Commissioner for Human Rights reported 453 human rights defenders and journalists harassed, threatened, or intimidated in 2023, with 15 killed.[31] Human rights defenders face intense violence: Juan López, an environmental defender, was murdered in September 2023 in Tocoa, and three activists working for the same environmental organization were killed in 2023.[31]

The judiciary in Honduras lacks independence and effectiveness. The mechanism Honduras created in 2015 to protect journalists, human rights defenders, and justice officials has serious flaws, including lack of financial autonomy, qualified staff with human rights expertise, and trust from defenders.[31] Land rights disputes-affecting Indigenous peoples, Afro-Honduran communities, and peasants-remain a pressing issue, with people disproportionately affected by violence, illegal land seizures, and forced displacement.[31]

Honduras has the highest rate of femicides in Latin America and the Caribbean, with approximately 7 femicides per 100,000 women.[31] A state of emergency, adopted in December 2022 to fight extortion and related crimes, was extended 15 times and remains in place, suspending rights to freedom of association and peaceful assembly and the right to be informed of arrest reasons, among others.[31] The UN Office of the High Commissioner for Human Rights and UN Human Rights Committee expressed concern about the extended state of emergency without a comprehensive, rights-based security policy, noting it resulted in abuses.[31]

LGBTQ+ people in Honduras suffer high levels of violence and discrimination. Honduras lacks comprehensive civil law protections against discrimination, lacks legal recognition procedures for transgender people, does not allow same-sex marriage, and has failed to comply with measures ordered by the Inter-American Court of Human Rights, including creation of legal gender recognition procedures.[31] As of 2023, there were 216,000 Honduran asylum seekers abroad, mostly in the United States and Mexico, with 84,000 others recognized as refugees, demonstrating the scale of protection gaps in Honduras.[31]

Guatemala: Judicial Independence Failures and Persecution Evidence

Guatemala presents similar concerns. Human Rights Watch 2025 World Report on Guatemala documents that the lack of judicial independence remains a critical issue, undermining the rule of law and threatening human rights protections.[39] Former anti-corruption prosecutor Stuardo Campo remained imprisoned on charges of "abuse of authority" and "breach of duties" with postponed hearings, undermining due process.[39] According to UDEFEGUA, at least 91 people fled into exile due to criminal prosecution, threats, or harassment since 2022, including 44 legal professionals and 26 human rights defenders.[39]

UDEFEGUA documented over 9,000 instances of aggression-including criminalization, harassment, defamation, stigmatization, threats, intimidation, and violence-against human rights defenders, journalists, organizations, and communities, the highest recorded number to date.[39] The Attorney General's Office and sections of the judiciary have created a hostile environment for freedom of expression and press, with journalists facing arbitrary detention and online harassment; at least 25 journalists fled the country in recent years.[39]

High levels of poverty and inequality, structural discrimination, and corruption limit access to fundamental rights, particularly for Indigenous peoples, Afro-descendant communities, and rural communities.[39] The homicide rate declined from a peak of 46 per 100,000 in 2009 to 16.1 per 100,000 in 2023, but significant challenges including high levels of human trafficking, extortion, and violence against women persist.[39]

El Salvador and Other ACA Countries: Documented Persecution and Asylum System Gaps

Human Rights Watch reports on El Salvador, referenced in litigation documents, document patterns of gang violence, lack of government protection, and persecution of LGBTQ+ individuals similar to Honduras and Guatemala.[56] Multiple NGOs have documented that El Salvador's asylum system lacks capacity to process claims, provides inadequate protection for persecution-based claims, and exposes asylum claimants to re-trafficking or extortion by criminal organizations.[56]

Ecuador, added to the ACA framework in July 2025, has documented gang violence, particularly affecting LGBTQ+ migrants.[59] Colombia (noted by WOLA) experiences ongoing violence affecting LGBTQ+ migrants and asylum seekers.[59] Paraguay's asylum system, while newer to the ACA framework, has documented limitations in asylum adjudication capacity and protection mechanisms.

Preservation and Appeal Strategy

Immigration Court Level: Record-Building for Appeal

If the immigration judge grants DHS's motion to pretermit despite respondent's opposition, counsel should immediately begin preserving arguments for appeal. Counsel should ensure that the record clearly reflects: (1) the full text of the written opposition to the motion to pretermit; (2) any country conditions evidence and expert declarations submitted; (3) respondent's testimony (if permitted) or a detailed proffer of testimony that would have been presented; (4) any other evidence relevant to the safe-country determination; and (5) the immigration judge's explicit findings and reasoning in granting the motion.

Counsel should file a notice of appeal to the Board of Immigration Appeals within the required timeframe (typically 30 days after the removal order becomes final). The notice should be drafted carefully to flag all potential appellate arguments, as some arguments may be deemed waived if not preserved in the notice of appeal.

BIA Appeal Level: Certification vs. Appeal Decision

When appealing an immigration judge's pretermission order to the Board of Immigration Appeals, counsel must decide whether to file a full appeal or to certify the case under the BIA's certification authority. A full appeal requires counsel to file briefs addressing the legal and factual errors in the immigration judge's decision. Certification is available under limited circumstances when the immigration judge or DHS requests that the BIA review certain legal questions or facts that the immigration judge has declined to decide.

In ACA pretermission cases, certification may be strategic if the immigration judge's pretermission order involves application of a novel or contested interpretation of the ACA or the safe third country statute. For example, if the immigration judge has pretermitted an application based on a finding that a respondent who entered the United States before the effective date of the ACA Rule is nonetheless subject to the bar (raising the retroactivity question), certification of that legal question to the BIA might be strategically preferable to a full appeal if counsel believes the immigration judge's factual findings were sound but the legal conclusion was incorrect.

However, in most ACA pretermission cases, a full appeal will be more effective. Counsel should file detailed briefs addressing: (1) whether the safe third country bar applies to the respondent's circumstances; (2) whether the respondent has established by preponderance of the evidence that they would face persecution or torture in the designated country; (3) whether pretermission without a full evidentiary hearing violates due process; and (4) whether the immigration judge applied [C-I-G-M-][4] correctly or whether the respondent's case can be

distinguished.

Federal Court Challenge: Habeas Corpus Petition or APA Challenge

If the Board of Immigration Appeals affirms the immigration judge's pretermission order, counsel can file a habeas corpus petition in the appropriate U.S. District Court (the Northern District of California for cases arising from San Francisco immigration court; the Central District of California for cases arising from other Northern California locations). Under 28 U.S.C. § 2241, respondents can challenge the legality of immigration court and BIA decisions through habeas corpus petitions.

Habeas corpus challenges to ACA pretermission orders can raise: (1) due process violations arising from lack of full hearing; (2) statutory interpretation arguments regarding INA § 208(a)(2)(A); (3) Administrative Procedure Act challenges to PM 25-28 (arguing it was not properly promulgated); (4) challenges to the BIA's interpretation of [C-I-G-M-][4]; and (5) claims that the designated ACA country does not satisfy the statutory "full and fair procedure" requirement, making the bar inapplicable.

The habeas corpus petition should include a detailed factual record supporting the respondent's claim that they would face persecution or torture in the designated country. The petition should cite not only individual country conditions evidence but also legal authorities recognizing that certain country conditions preclude the application of safe third country bars. For example, counsel can cite federal court decisions recognizing that ACAs with countries that fail to provide adequate asylum procedures or safe conditions are inapplicable as a matter of law.

Alternative Strategies and Contingencies

Strategy 1: Seeking Affirmative Relief Before Asylum Office (Expedited Removal Context)

If the respondent is in expedited removal proceedings at the port of entry or shortly after entry, counsel may attempt to obtain affirmative asylum relief through the credible fear interview process or USCIS asylum office processing, potentially avoiding removal proceedings and the ACA pretermission issue entirely. This strategy requires counsel to work with the respondent to schedule appointments with asylum offices and to gather evidence of persecution or torture before DHS initiates removal proceedings.

However, as of early 2026, the Trump administration has accelerated expedited removal and reduced opportunities for affirmative asylum applications. Asylum officers are reportedly conducting "threshold screening interviews" to determine ACA applicability prior to adjudicating credible fear, which may foreclose this alternative in many cases.[1]

Strategy 2: Requesting Waiver of ACA Bar Under Public Interest Exception

Counsel should consider requesting that DHS exercise its prosecutorial discretion to decline application of the ACA bar as not being in the public interest. While the [C-I-G-M-][4] BIA decision suggests immigration judges lack this authority, counsel can petition DHS (through OPLA or the local ICE office) to file a written notice invoking the public interest exception and permitting the respondent to pursue asylum in the United States despite the ACA bar.

Public interest factors supporting such a request include family unity, prior U.S. presence, humanitarian circumstances, and extraordinary facts. While DHS prosecutors currently have few incentives to invoke the public interest exception given the Trump administration's restrictive immigration stance, making the written

request preserves the argument for appeal and creates a record of the respondent's extraordinary circumstances.

Strategy 3: Seeking Other Forms of Relief from Removal (VAWA, U Visa, T Visa, CAT)

Respondents facing ACA pretermission should not abandon other potential remedies. Counsel should thoroughly evaluate whether the respondent may qualify for other forms of relief, including: (1) Violence Against Women Act (VAWA) self-petitioning under INA § 204(a)(1)(A)(iii), which does not require proof of persecution on account of a protected ground and provides a path to lawful permanent residence; (2) U nonimmigrant status (also called "U visa") for victims of certain crimes who have suffered substantial abuse and are willing to cooperate with law enforcement; (3) T nonimmigrant status for victims of trafficking; or (4) Convention Against Torture protection under INA § 241(b)(3)(C) and implementing regulations at 8 C.F.R. § 208.16-17.

Unlike asylum, these alternative forms of relief are generally not subject to the safe third country bar or pretermission under PM 25-28. A respondent who qualifies for U visa status or CAT protection may obtain status in the United States even if their asylum application has been pretermitted and the ACA bar applies. Counsel should thoroughly evaluate the respondent's background, circumstances, and eligibility for these alternative forms of relief and should raise them in immigration court even if asylum seems unavailable.

Strategy 4: Requesting Continued Removal Proceedings to Gather Evidence

Even if an immigration judge appears inclined to pretermit an asylum application, counsel can request a continuance to gather additional evidence regarding country conditions, the respondent's fear of the designated country, or other relevant factors. While immigration judges are increasingly denying continuance requests in the Trump administration's enforcement climate, [C-A-R-R-][28] recognized that the immigration judge has discretion to set deadlines for evidentiary submissions and to permit respondents reasonable opportunities to supplement evidence.

Counsel can frame the continuance request in terms of due process: respondents cannot meet their burden of establishing persecution in the designated country without adequate time to gather country conditions documentation, locate expert witnesses, prepare detailed declarations, and prepare testimony. A continuance request, if granted, provides time to strengthen the record for any appeal.

Strategy 5: Collateral State Law Relief (Post-Conviction Modification Under PC § 1473.7)

For respondents with prior criminal convictions that affect their asylum eligibility, counsel should evaluate whether the respondent can obtain post-conviction relief under California Penal Code § 1473.7, which permits vacatur of convictions where counsel failed to advise of immigration consequences or where the respondent was not properly advised of consequences at the time of conviction. If a respondent can obtain vacatur or modification of a prior conviction, this may eliminate a bar to asylum (such as the particularly serious crime bar) and may allow the respondent to pursue asylum on the merits after the conviction-based bar is removed.

This strategy requires coordination between criminal appellate counsel and immigration counsel and requires immediate action when a respondent discloses a prior conviction, as remedies may be time-limited.

Risk Warnings, Ethical Considerations, and Client Communication

Explaining the Pretermission Process to Clients

Immigration counsel has an obligation under California Rules of Professional Conduct to clearly explain the procedures and risks to clients. When a client first discloses that DHS has filed an ACA pretermission motion, counsel should explain: (1) what pretermission means (the judge will dismiss the asylum application without holding a full hearing); (2) what this means for the client's ability to present testimony and evidence; (3) what the safe third country bar is and how it works; (4) what country or countries DHS proposes as the removal destination; (5) what the client's likelihood of success is in responding to the motion; and (6) what appellate options exist if the motion is granted.

Counsel should use plain language and should provide the explanation both orally and in writing. For clients with limited English proficiency, counsel should ensure that the explanation is provided in the client's primary language, either through a qualified interpreter present in person or through written materials translated into the client's language.

Informed Consent for Strategic Decisions

When a respondent faces a choice between different litigation strategies (e.g., contesting the ACA bar through testimony at master calendar versus requesting a continuance to gather additional evidence), counsel should obtain the respondent's informed consent to the chosen strategy. The consent should be documented in writing and should explain the advantages and disadvantages of each option, the likely outcomes, and the client's role in the chosen strategy.

Collateral Consequences Counseling

Counsel should advise the respondent of potential collateral consequences of removal, including: (1) bar on returning to the United States (deportation makes future legal entry to the U.S. difficult or impossible); (2) impact on derivative family members (children or spouses may lose immigration status or benefits); (3) impact on pending family-based immigration applications; (4) impact on employment-based immigration applications; and (5) possible safety risks or persecution in the removal destination country.

For respondents with minor children in the United States or elsewhere, counsel should discuss the impact of the respondent's deportation on the children's custody, guardianship, and immigration status.

Declining Representation

If counsel believes that the respondent cannot afford adequate representation or that counsel lacks the expertise necessary to adequately represent the respondent (for example, if the respondent has complex claims requiring expert witnesses), counsel has an ethical obligation to discuss this with the respondent and to consider declining representation or seeking co-counsel. Similarly, if conflicts of interest arise (for example, if counsel's firm has a prior relationship with DHS or the immigration court that creates an appearance of conflict), counsel should disclose this to the respondent.

Conclusion: Synthesis and Forward-Looking Analysis

The legal landscape governing DHS motions to pretermit asylum applications pursuant to Asylum Cooperative Agreements has crystallized into a framework substantially unfavorable to respondents, established by [EOIR Policy Memo 25-28][5], the Board's [Matter of C-I-G-M- & L-V-S-G-][4] decision, and supporting BIA precedent from [C-A-R-R-][28] and [H-A-A-V-][43]. The framework creates multiple procedural barriers: immigration judges are authorized to pretermit applications without full evidentiary hearings when deemed legally insufficient; respondents bear the burden of establishing by preponderance of the evidence that they

would face persecution in the designated country; and immigration judges are restricted from making substantive evaluations of whether designated countries provide full and fair procedures or safe conditions.

Despite these obstacles, respondents retain meaningful defenses, particularly through appellate and federal court review. Procedural due process arguments grounded in Fifth Amendment jurisprudence and established Ninth Circuit precedent (Oshodi, Grigoryan, Montes-Lopez) remain viable, especially where immigration judges deny respondents any opportunity to testify or present evidence. Statutory interpretation arguments challenging the BIA's reading of INA § 208(a)(2)(A)-particularly the proposition that immigration judges lack authority to evaluate the statutory requirement of "full and fair procedure"-represent another avenue for appellate reversal. Arguments based on non-refoulement principles (both under the Refugee Convention and Convention Against Torture) remain available, particularly for respondents who can demonstrate torture risks in the designated country.

The federal court litigation in U.T. v. Bondi presents a longer-term opportunity for systemic relief, as plaintiffs challenge the entire ACA framework and have now secured class certification and moved for summary judgment. However, this litigation will not produce near-term relief for respondents in individual immigration court proceedings, as appeals of district court decisions would take years.

For Northern California practitioners, the imperative is thorough preparation, careful preservation of the record for appeal, creative use of alternative forms of relief, and aggressive advocacy at the immigration court level even in the face of [C-I-G-M-][4]'s restrictive legal framework. Counsel should treat ACA pretermission motions not as dispositive but as opening moves in a multi-stage litigation process, with substantial appellate and federal court opportunities remaining available even after unfavorable immigration court rulings.

The current legal landscape reveals fundamental tensions in U.S. asylum law: between executive discretion (the Attorney General's authority to designate safe third countries) and judicial review (the immigration judge's traditional role in fact-finding); between administrative efficiency (pressure to pretermit cases quickly) and individual rights to due process and full hearings; and between the global humanitarian obligation of non-refoulement and the domestic political commitment to border restriction. These tensions will likely persist as cases move through the appellate process and as federal courts weigh constitutional challenges to the ACA framework. Counsel should remain attuned to this evolving legal landscape and should position respondents to benefit from future appellate developments or potential shifts in legal standards.

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