

Motions to Vacate Immigration Judge Removal Orders: Legal Framework and Procedural Guidance

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FINDINGS

MOTIONS TO VACATE IMMIGRATION JUDGE REMOVAL ORDERS: COMPREHENSIVE LEGAL FRAMEWORK AND PROCEDURAL GUIDANCE

Executive Summary

Respondents facing removal orders from Immigration Judges have several limited but important opportunities to challenge those orders through motions filed with the Executive Office for Immigration Review. This report provides comprehensive legal guidance on three primary motion mechanisms: motions to reopen under [8 U.S.C. § 1229a(c)(7)][1], motions to reconsider under [8 U.S.C. § 1229a(c)(6)][2], and specialized motions to reopen in absentia orders under [INA § 240(b)(5)(C)][3]. The distinction between these motions is jurisdictionally critical, as each operates under different deadlines, substantive standards, evidentiary requirements, and venues for filing. A motion to reopen permits introduction of material evidence that was unavailable at the time of the original hearing and must be filed within 90 days of the final administrative order, subject to equitable tolling in extraordinary circumstances. A motion to reconsider challenges legal or factual errors based solely on the existing record and must be filed within 30 days with no exceptions for late filing by respondents. Motions to vacate in absentia orders require demonstration of either exceptional circumstances, lack of proper notice, or custody at the time of the missed hearing, with a 180-day deadline for exceptional circumstances-based motions but no deadline limitation for lack-of-notice motions. Filing any motion to reopen does not automatically stay removal proceedings except in the specific context of in absentia removal orders, requiring separate application for stay relief. Recent regulatory developments in 2024 have codified EOIR adjudicators' authority to administratively close and terminate removal proceedings, creating additional strategic options beyond traditional motion practice. Success depends upon careful analysis of the applicable legal standard, comprehensive evidentiary development, precise compliance with procedural requirements, and strategic venue selection based on the current posture of the case. This report addresses the complete procedural and substantive framework necessary for practitioners to evaluate, develop, and prosecute motions to vacate removal orders in Northern California and nationwide EOIR proceedings.

The Statutory and Regulatory Framework for Motions to Vacate Removal Orders

The Immigration and Nationality Act provides the foundational authority for all motions to reopen and reconsider removal orders. [8 U.S.C. § 1229a(c)(6) and (c)(7)][1] establish that respondents may file one motion to reconsider and one motion to reopen within strict time limitations, subject to enumerated exceptions. [8 C.F.R. § 1003.23][4] implements these statutory provisions at the immigration court level, specifying both the procedural requirements and the substantive standards that Immigration Judges must apply when evaluating motions. The governing regulations distinguish sharply between the two motion types, establishing separate deadlines and demonstrating congressional intent to create distinct remedial paths based on the nature of the claimed error or newly available evidence.

A motion to reconsider under [8 C.F.R. § 1003.23(b)(1)][4] challenges an Immigration Judge's legal or factual conclusions based entirely upon the record already before the court at the time of the original decision. This motion does not permit introduction of new evidence but rather asks the adjudicator to reconsider the legal interpretation of facts that were presented, or to identify factual errors in the Immigration Judge's findings

based on the existing record. The respondent bears the burden of identifying specific errors of law or fact in the prior decision, with citation to controlling authority and the record. The regulation explicitly provides that the determination to grant or deny a motion to reconsider remains entirely within the Immigration Judge's discretion, and the regulation provides no exceptions to the 30-day filing deadline for respondents. This strict deadline regime reflects the understanding that motions to reconsider address settled law questions that should be resolved quickly through an efficient administrative process.

By contrast, a motion to reopen under [8 C.F.R. § 1003.23(b)(1) and (b)(3)][4] permits the respondent to introduce material evidence that was not available at the time of the original hearing and could not have been discovered or presented at that earlier stage in the proceedings. The critical difference is that reopening is premised on the existence of previously unavailable, material facts that may change the outcome of the case, not merely legal reinterpretation of facts already known. The regulation requires that the respondent "state the new facts that will be proven at a reopened hearing" and that the motion be "supported by affidavits or other evidentiary material." The Immigration Judge must be satisfied that the evidence sought to be offered is both material and was not previously available. This distinction creates a fundamentally different evidentiary burden for reopening compared to reconsideration: reopening requires proof of new factual circumstances, while reconsideration addresses only legal or factual error claims based on an already-complete record.

The statutory framework also identifies specific exceptions to both the time and number limitations on motions to reopen. [8 U.S.C. § 1229a(c)(7)(C)(iii)][1] provides that motions to reopen based on asylum, withholding of removal, or Convention Against Torture protection are not subject to time or number limitations if the motion is premised on changed country conditions arising in the country of nationality or the country to which removal has been ordered. [8 U.S.C. § 1229a(c)(7)(B)][1] further provides that motions to reopen to rescind in absentia orders are governed by special rules: if the failure to appear was because of exceptional circumstances, the motion must be filed within 180 days of the in absentia order, but if the failure to appear resulted from lack of proper notice or custody, the motion may be filed at any time. Additionally, [8 U.S.C. § 1229a(c)(7)(C)(iii)][1] specifies that any motion to reopen that is agreed upon by all parties—that is, a joint motion to reopen filed by both the respondent and the Department of Homeland Security—is not subject to either the 90-day deadline or the one-motion limitation.

The Department of Homeland Security is expressly exempt from the time and number limitations on motions to reopen in removal proceedings. [8 C.F.R. § 1003.23(b)(1)][4] states that "the time and numerical limitations set forth in this paragraph (b)(1) do not apply to motions by DHS in removal proceedings pursuant to section 240 of the Act." This asymmetry reflects the government's investigative and prosecutorial prerogatives, permitting the government to reopen cases based on newly discovered fraud, additional criminal convictions, or other matters that come to light after the original order. For cases brought in deportation or exclusion proceedings (rather than removal proceedings), DHS remains subject to time and number limitations except when the motion is based on fraud or a crime that would support termination of asylum.

Motions to Reopen: Substantive Standards, Evidentiary Requirements, and Strategic Application

The threshold requirement for a successful motion to reopen is that the respondent must demonstrate prima facie eligibility for the underlying relief sought upon reopening. This standard, drawn from [INS v. Abudu, 485 U.S. 94][5] and consistently applied by the Board of Immigration Appeals, requires that the respondent show "that there is a reasonable likelihood that the statutory requirements for the relief sought are satisfied."

The respondent must demonstrate, based on the new evidence presented in the motion, that if reopening is granted and the case proceeds to a hearing on the merits, there is at least a reasonable probability that the respondent will be found eligible for the relief claimed. This is a meaningful threshold: the respondent cannot simply assert that new evidence exists or that circumstances have changed, but must affirmatively establish through that evidence that the underlying statutory prerequisites for relief are or will be met.

For motions to reopen based on adjustment of status, the respondent must demonstrate that a visa petition has been approved or is approvable, that a visa number is immediately available, and that the respondent satisfies the other statutory requirements for adjustment such as admissibility or eligibility for a waiver of grounds of inadmissibility. If the visa petition has not yet been approved, the respondent must present the petition itself, all supporting documentation, and the filing receipt, and must establish that the petition has substantial likelihood of approval. [8 C.F.R. § 1003.23(b)(3)][4] expressly requires that a completed application for adjustment of status be filed with the motion to reopen, together with all supporting documents normally required for that application.

For motions to reopen based on asylum, withholding of removal, or Convention Against Torture protection, the respondent must establish that the new evidence presented makes out a prima facie case for the relief sought. This typically involves evidence that conditions in the country of origin have changed materially since the original hearing, creating new grounds for persecution or torture claims, or evidence that the respondent's individual circumstances have changed in a manner that creates eligibility for protection. The respondent must explain in detail how the new evidence affects eligibility for relief, articulating the legal and factual connections between the changed circumstances and the statutory requirements for the relief sought.

The materiality requirement is central to reopening doctrine. Evidence is material if it is relevant to the case and if there is a reasonable probability that the evidence would have affected the outcome of the original proceeding. The respondent must do more than present evidence that would be helpful; the evidence must be such that the Immigration Judge would have been required or substantially motivated to reach a different conclusion had the evidence been presented at the original hearing. Courts have consistently held that evidence is not material simply because it is favorable to the respondent or because it might be considered in exercising discretionary relief; it must actually bear on the statutory prerequisites for the relief claimed or on core factual disputes that were resolved against the respondent in the original decision.

The unavailability requirement is equally exacting. The respondent must demonstrate that the evidence was not available at the time of the original hearing and could not have been discovered or presented at that earlier stage through the exercise of reasonable diligence. The respondent bears this burden even if the original representative was unaware of the evidence or failed to investigate avenues through which the evidence could have been obtained. Courts have rejected arguments that evidence is "unavailable" simply because the respondent's prior counsel failed to develop the case; the standard is whether the evidence itself was obtainable through reasonable diligence at the time of the original hearing. However, if an Immigration Judge fully explained the respondent's right to apply for discretionary relief and afforded an opportunity to apply at the original hearing, a subsequent motion to reopen for the sole purpose of applying for that relief will not be granted unless the motion is based on circumstances that have arisen subsequent to the original hearing—that is, unless there is a basis to believe the circumstances have changed, not merely that the evidence has been located.

Equitable Tolling and the 90-Day Deadline

Although the regulation establishes a 90-day deadline for filing motions to reopen, the Board of Immigration Appeals has recognized that this deadline is subject to equitable tolling in extraordinary circumstances. [Singh

v. Holder, 658 F.3d 879][6] and related Ninth Circuit authority establish that a respondent may overcome the 90-day filing deadline if the respondent demonstrates both: (1) that the respondent was pursuing remedies diligently during the period in which the motion should have been filed, and (2) that an extraordinary circumstance prevented the timely filing of the motion. This two-prong test has been applied to permit late motions to reopen where respondents were receiving ineffective assistance of counsel, were pursuing criminal appeals that affected immigration eligibility, were engaged in good-faith negotiations with USCIS regarding pending applications like DACA or T/U visa petitions, or where the respondent was relying on government programs like DACA that provided protection from removal.

The first prong-diligence-requires that the respondent take active steps to pursue immigration remedies during the period after the removal order. This might include consulting with other attorneys to understand available options, conducting internet research to identify potential relief, filing applications with USCIS for collateral relief such as DACA or T visas, or pursuing criminal post-conviction relief that might affect removability. The respondent cannot be passive during this period and then claim extraordinary circumstances excusing the 90-day deadline; rather, the respondent must affirmatively seek to vindicate immigration rights, even if those efforts prove unsuccessful or inconclusive.

The second prong-extraordinary circumstance-has been interpreted broadly to include circumstances genuinely beyond the respondent's control. Examples recognized by courts include: receipt of ineffective assistance of counsel that prevented timely filing; misrepresentation by government officers regarding the availability of relief or the consequences of deportation; discovery that a prior criminal conviction has been vacated on post-conviction appeal, thereby eliminating the deportability basis; enactment of new legislation creating relief previously unavailable; and changes in country conditions affecting asylum eligibility. The doctrine has also been applied where the respondent relied reasonably on temporary protected status or DACA, which the government explicitly made available to noncitizens with removal orders; when DACA was rescinded or when TPS was terminated, tolling extended the motion to reopen deadline to permit the respondent to seek permanent relief within a reasonable period after the protection ended.

Critically, equitable tolling applies to both the 90-day time limit and the one-motion numerical limit. [8 C.F.R. § 1003.2(c)(3)][7] and related regulations provide that when equitable tolling applies, the respondent may file what would otherwise be considered a second motion to reopen, because the respondent is treated as entitled to the one statutory motion to which the respondent is ordinarily limited. This creates an important strategic opportunity: a respondent who previously filed a motion to reopen but was denied, and who subsequently discovers extraordinary circumstances supporting tolling, may be able to file a second motion to reopen based on newly available evidence or changed circumstances, provided that equitable tolling is established.

The Burden of Proof and Standards of Review

The respondent bears the burden of establishing by clear and convincing evidence that each element of the motion to reopen has been satisfied. The Immigration Judge must affirmatively conclude that the evidence offered is material, was not previously available, could not have been discovered through reasonable diligence, and makes out a prima facie case for the relief sought. The Immigration Judge retains discretion even after these elements are established: [8 C.F.R. § 1003.23(b)(3)][4] provides that "the immigration judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief." This means that even if a respondent successfully demonstrates that newly available evidence makes out a prima facie case for relief, the Immigration Judge may still deny reopening if the judge concludes that the evidence is insufficient, that the circumstances do not warrant reopening, or that reopening would not likely result in a grant of relief given other factors in the case such as the respondent's criminal history or prior

administrative violations.

Upon appeal to the Board of Immigration Appeals, the Board reviews an Immigration Judge's denial of a motion to reopen for abuse of discretion. [Parada-Orellana v. Garland, 21 F.4th 887][8] clarifies that the Board may deny a motion to reopen on one of three independent grounds: (1) failure to establish a prima facie case for the underlying relief sought; (2) failure to introduce previously unavailable, material evidence; or (3) failure to establish entitlement to discretionary relief. An abuse of discretion occurs only if the Board concludes that the Immigration Judge's decision is arbitrary, irrational, or contrary to law. This deferential standard makes successful appeals from denials of motions to reopen relatively uncommon, and counsel must recognize that the substantive development of the motion at the immigration court level is often the most important opportunity to persuade the adjudicator that reopening is warranted.

Motions to Reconsider: Legal Error Review and Limitations

A motion to reconsider is fundamentally different from a motion to reopen in both scope and standards. A motion to reconsider asks the Immigration Judge to reverse or modify the prior decision based on legal or factual errors that are visible in the record that was before the judge at the time of the original decision. The respondent cannot introduce new evidence with a motion to reconsider; the motion must instead identify errors in the Immigration Judge's application of law to facts that were already established in the record, or errors in the Immigration Judge's factual findings based on what was presented.

Legal errors suitable for a motion to reconsider include: misapplication of the statutory definition of a particular form of relief, such as incorrectly concluding that the respondent did not qualify as a member of a particular social group for asylum purposes; failure to apply the correct burden of proof; failure to consider a piece of evidence that was in the record; misinterpretation of case law or statute; and failure to follow binding precedent from the Board of Immigration Appeals or the applicable circuit court. Factual errors suitable for a motion to reconsider include: factual findings that are contradicted by undisputed evidence in the record, such as an Immigration Judge's finding that a document was inauthentic when the document was accepted into evidence without objection and bears reliable indicia of authenticity.

[8 C.F.R. § 1003.23(b)(2)][4] provides that a motion to reconsider "must state with particularity the errors of fact or law in the prior decision, with appropriate citation to authority and the record." This requirement is exacting: the respondent must identify the specific sentence or paragraph in the Immigration Judge's decision that contains the error, quote or reference the problematic language, cite to the legal standard that the Immigration Judge violated or misapplied, and explain precisely how the decision falls short of the applicable law. Generic arguments that the Immigration Judge "misapplied the law" or "failed to consider the evidence" will not satisfy the requirement to state errors with particularity.

The motion to reconsider deadline is strictly enforced: [8 C.F.R. § 1003.23(b)(1)][4] provides that the motion "must be filed within 30 days of the date of entry of a final administrative order of removal, deportation, or exclusion." Unlike motions to reopen, there are no exceptions to this deadline for respondents, even in extraordinary circumstances. The Board has been consistently firm that equitable tolling does not apply to motions to reconsider, reflecting the understanding that legal errors in an Immigration Judge's decision should be challenged promptly or not at all. The 30-day period runs from the date the Immigration Judge issues the decision, whether orally in a decision rendered from the bench or in writing by mail or electronic notification.

[8 C.F.R. § 1003.23(b)(2)][4] further provides that "a motion to reconsider may not be based solely on an

argument that an Immigration Judge's decision should not have been affirmed without opinion" by the Board of Immigration Appeals. This limitation prevents respondents from using motions to reconsider as a mechanism to challenge summary affirmances or denials of motions to reconsider by the Board. Additionally, the regulation specifies that although a party may file a motion to reconsider the denial of a motion to reopen, a party may not file a motion to reconsider the denial of a motion to reconsider-the one-motion limitation on reconsideration thus precludes second-level reconsideration motions.

Comparison of Evidentiary Burdens: Reconsider Versus Reopen

The critical distinction between motions to reconsider and motions to reopen is that reconsider motions do not require new evidence; they require only legal argument based on the record that was already before the Immigration Judge. This distinction has profound practical implications. A respondent with a newly discovered document or a newly changed country condition would file a motion to reopen and submit that evidence with the motion. The same respondent, if the removal order is based on a legal misapplication of facts that were already established, would file a motion to reconsider without new evidence, relying entirely on demonstration that the Immigration Judge misapplied law to those facts.

In practice, many motions filed before the immigration court contain both reconsideration and reopening arguments, sometimes designated as a single unified motion. The Immigration Court Practice Manual permits this, and practitioners often structure motions to argue in the alternative: "First, the motion to reconsider the Immigration Judge's decision is warranted because the decision misapplies the law. In the alternative, the motion to reopen is warranted based on newly available evidence of changed country conditions." This structure permits the Immigration Judge to grant the motion on either basis, and also provides a foundation for appeal to the Board if the motion is denied: if the immigration court applies incorrect legal standards in denying the reconsideration argument, that error is preserved for Board review; if the immigration court applies the wrong standard for evaluating materiality of new evidence in denying the reopening argument, that error is also preserved.

In Absentia Removal Orders and Specialized Reopening Standards

The Immigration and Nationality Act and implementing regulations recognize that in absentia orders-removal orders entered when the respondent failed to appear at the hearing-present unique equitable concerns. Under [8 U.S.C. § 1229a(b)(5)(A)][9], an Immigration Judge may order a respondent removed in absentia only if the government establishes by clear, unequivocal, and convincing evidence that proper written notice of the hearing was provided and that the respondent is removable. However, even when this high burden is met, the statute creates a mechanism for respondents to challenge in absentia orders through specialized motions to reopen.

[8 U.S.C. § 1229a(b)(5)(C)][9] and [8 C.F.R. § 1003.23(b)(4)(ii)][4] establish three independent grounds upon which an in absentia removal order may be rescinded through a motion to reopen. The first ground is that the failure to appear was because of exceptional circumstances. The second ground is that the respondent did not receive proper notice of the hearing. The third ground is that the respondent was in federal or state custody and the failure to appear was through no fault of the respondent. Each of these grounds carries different deadline implications and requires different evidence.

Exceptional Circumstances Standard

When a respondent files a motion to reopen to rescind an in absentia order based on exceptional

circumstances, the motion must be filed within 180 days of the in absentia order, and the respondent must demonstrate that the failure to appear was because of circumstances beyond the respondent's control. [8 C.F.R. § 1003.23(b)(4)(ii)][4] defines exceptional circumstances as "exceptional circumstances beyond the control of the alien (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances)."

The statutory language provides examples-battery, extreme cruelty, serious illness, or death of immediate family-but the regulation and case law establish that these are not exclusive categories. Rather, the statute and regulations contemplate a "totality of the circumstances" analysis to determine whether the respondent's reason for not attending the hearing constitutes an exceptional circumstance. [Matter of W-F-, 21 I&N Dec. 503][10] established the framework courts use: an Immigration Judge must consider whether a reasonable person, faced with the same set of circumstances, would have been prevented from appearing at the hearing. The burden is not trivial; the respondent's circumstances must have been genuinely beyond the respondent's control and must have made appearance impracticable or impossible.

Examples of circumstances that have been recognized as exceptional include serious medical emergencies affecting the respondent or an immediate family member; hospitalization that prevented the respondent's appearance on the scheduled hearing date; sudden death of a spouse, parent, or child that made attendance at a removal hearing impracticable; an incident of domestic violence or threat to safety that prevented appearance; and, in some cases, significant misrepresentation or misdirection by the respondent's prior counsel regarding the hearing date or the consequences of failure to appear. By contrast, circumstances that have been held insufficient include the respondent's work obligations, childcare responsibilities, financial hardship in obtaining transportation, and simple confusion or negligence regarding the hearing date. The distinction reflects an understanding that the Immigration Judge must assess whether the circumstances were truly exceptional-that is, beyond what a reasonable person in the respondent's circumstances would be expected to overcome.

The 180-day deadline for exceptional circumstances-based motions is subject to equitable tolling. [Avila-Santoyo v. Att'y Gen., 713 F.3d 1357][11] and related authority confirm that equitable tolling applies to the 180-day deadline for rescinding in absentia orders based on exceptional circumstances, using the same two-prong test (diligence and extraordinary circumstance) that applies to equitable tolling of the 90-day deadline for general motions to reopen.

Lack of Notice Standard

An in absentia removal order may be rescinded at any time-meaning no deadline applies-if the respondent demonstrates that proper written notice of the hearing was not provided. [8 U.S.C. § 1229a(b)(5)(C)(ii)][9] specifies that proper notice requires that the respondent or the respondent's counsel of record be served with a charging document (Notice to Appear or Order to Show Cause) containing the time and place of the hearing, sent to the most recent address provided by the respondent under immigration law. The Supreme Court's decision in [Campos-Chaves v. Garland, 144 S. Ct. 1043][12] (2024) clarified that to rescind an in absentia removal order on the ground that the respondent "did not receive notice," the respondent must show that the respondent did not receive notice under either the initial Notice to Appear or a valid change-of-hearing notice for the specific hearing at which the respondent was absent and ordered removed.

Significantly, Campos-Chaves held that even if the initial Notice to Appear contained defects (such as failing to include the time and place of the hearing), a subsequent change-of-hearing notice can be valid and sufficient for notice purposes, provided that change-of-hearing notice contains the required time and place of

hearing. This means that a respondent challenging an in absentia order based on lack of notice must demonstrate that neither the initial charging document nor any subsequent change-of-hearing notice contained the required information, or that the respondent genuinely did not receive either notice. The decision significantly narrowed the opportunity to rescind in absentia orders based on alleged defects in the Notice to Appear alone.

Custody Standard

An in absentia removal order may be rescinded at any time if the respondent demonstrates that the respondent was in federal or state custody and the failure to appear was through no fault of the respondent. [8 U.S.C. § 1229a(b)(5)(C)(ii)][9] and [8 C.F.R. § 1003.23(b)(4)(ii)][4] provide this ground for rescission. This provision addresses situations where a respondent is incarcerated in a state prison or county jail and Immigration and Customs Enforcement (ICE) fails to arrange the respondent's appearance at an immigration court hearing, or where a respondent is held in federal custody for criminal charges and cannot appear at an immigration hearing because the federal facility does not release the respondent for that purpose. The respondent must establish that custody prevented attendance and that the failure to appear was not the respondent's fault—that is, that the respondent did not refuse to consent to transfer or otherwise deliberately prevent the custody institution from making the respondent available.

Automatic Stay Provision

Critically, [8 U.S.C. § 1229a(b)(5)(C)][9] and [8 C.F.R. § 1003.23(b)(4)(ii)][4] provide that the filing of a motion to reopen to rescind an in absentia removal order automatically stays removal pending the Immigration Judge's ruling on the motion. This automatic stay is unique and distinguishes in absentia motions from other motions to reopen: ordinarily, filing a motion to reopen does not stay deportation and the respondent must file a separate motion for stay of removal to prevent deportation while the motion to reopen is pending. But for in absentia orders, the stay is automatic, meaning the respondent cannot be removed while the motion to rescind the in absentia order is pending before the Immigration Judge.

Procedural Requirements: Filing, Service, and Administrative Compliance

Successful motion practice requires strict compliance with procedural requirements established in the Immigration Court Practice Manual and the Board of Immigration Appeals Practice Manual. Failure to comply with these requirements can result in summary denial of a motion without substantive consideration of its merits.

Proper Venue Determination

Before filing any motion, counsel must determine proper venue. [8 C.F.R. § 1003.23(b)(1)(ii)][4] provides that "motions to reopen or reconsider a decision of an immigration judge must be filed with the immigration court having administrative control over the Record of Proceeding." In most cases, this means the immigration court where the Immigration Judge issued the original removal order. However, [8 C.F.R. § 1003.2(c)(4)][13] provides important guidance for cases where an appeal to the Board of Immigration Appeals has been filed: "A motion to reopen that is filed with the Board during the pendency of an appeal is generally treated as a motion to remand for further proceedings before an immigration judge" and the Board may consolidate the motion to reopen with the underlying appeal, or the Board may remand the motion to the immigration court for initial consideration. Additionally, if a petition for review has been filed in federal court and the Board subsequently grants a motion to reopen, the federal court loses jurisdiction over the original petition for review

because the removal order is no longer final once the motion to reopen is granted.

Entry of Appearance Requirements

If the respondent is represented, [8 C.F.R. § 1003.23(b)(1)][4] and [8 C.F.R. § 1003.17][14] require that the motion be accompanied by either a Form EOIR-28 (Notice of Entry of Appearance Before the Immigration Court) if counsel is entering an appearance before the immigration court, or a Form EOIR-27 (Notice of Entry of Appearance Before the Board of Immigration Appeals) if the motion is being filed with the Board. These forms establish the attorney or representative as the practitioner of record and authorize the practitioner to receive service of all future documents in the proceeding. Counsel must be registered with EOIR's eRegistry system prior to filing a motion, and attorneys must maintain current registration with their bar and accreditation representatives must maintain current accreditation status. Unaccredited individuals may not file motions or appear before EOIR on behalf of respondents, except in limited circumstances involving document preparation assistance.

Motion Structure and Content Requirements

[8 C.F.R. § 1003.23(b)(1)(i)][4] requires that motions "shall be in writing and signed by the affected party or the attorney or representative of record, if any," and that motions "and any submission made in conjunction with it must be in English or accompanied by a certified English translation." The motion should be filed with a cover page clearly labeled to identify the type of motion being filed, such as "MOTION TO REOPEN" or "MOTION TO RECONSIDER." [8 C.F.R. § 1003.23(b)(1)(i)][4] further requires that motions "shall state whether the validity of the exclusion, deportation, or removal order has been or is the subject of any judicial proceeding and, if so, the nature and date thereof, the court in which such proceeding took place or is pending, and its result or status." This disclosure requirement ensures that the Immigration Judge and the Board are aware of any federal court proceedings that may affect the motion.

A well-structured motion to reopen should contain: (1) an introduction explaining the purpose of the motion and identifying the specific removal order being challenged; (2) a statement of facts and case background, including the circumstances that led to the original removal order and the respondent's current situation; (3) identification of the applicable legal standard for reopening, with citation to statute and regulation; (4) the substantive arguments for reopening, organized by the basis for reopening (e.g., changed country conditions, newly available evidence, ineffective assistance of counsel, etc.); (5) a detailed explanation of how the new evidence meets the requirements of materiality and unavailability, or how changed circumstances affect the respondent's eligibility for relief; (6) if applicable, a prima facie showing of eligibility for the underlying relief; and (7) a conclusion clearly stating the specific relief requested (e.g., "Respondent respectfully requests that the Immigration Judge grant this motion to reopen, rescind the removal order dated [date], and permit Respondent to be heard on Respondent's application for [relief]").

A motion to reconsider should similarly be well-organized, but with the following differences: rather than new evidence, the motion presents legal and factual arguments based on the existing record; it must identify with particularity the specific errors in the Immigration Judge's decision; it must cite to the controlling law that the Immigration Judge misapplied or misinterpreted; and it should explain precisely how application of the correct legal standard would change the outcome. A motion to reconsider should include a detailed discussion of precedent cases supporting the respondent's interpretation of law, with full citations and explanations of how those cases are factually similar to or distinguishable from the respondent's case.

Evidentiary Support and Documentation

[8 C.F.R. § 1003.23(b)(2) and (b)(3)][4] require that a motion to reopen "be supported by affidavits or other

evidentiary material." The supporting affidavits should be from persons with personal knowledge of the facts asserted. An affidavit from the respondent describing changed country conditions, detailing a newly discovered medical condition, or explaining extraordinary circumstances for an in absentia order is standard. Affidavits from family members, employers, service providers, or others with direct knowledge of relevant facts strengthen the motion. Country conditions reports from organizations such as Human Rights Watch, Amnesty International, or the State Department can support claims that conditions in the country of origin have changed materially since the original hearing. Medical evidence, school records, employment letters, and other documentary evidence should be organized, labeled, and referenced in the motion so that the Immigration Judge can easily locate and understand the significance of each piece of evidence.

For motions to reopen based on application for relief (such as adjustment of status or asylum), the respondent must file a completed application for that relief with all supporting documents normally required. [8 C.F.R. § 1003.23(b)(1)][4] specifies that "prima facie eligibility for that relief cannot be shown without it." For example, a motion to reopen based on adjustment of status must be accompanied by a completed Form I-485 (Application to Register Permanent Residence or Adjust Status), together with evidence of an approved visa petition, proof of visa availability, and documentation of admissibility or waiver of grounds of inadmissibility.

Filing Fees and Fee Waivers

Motions to reopen and reconsider generally require payment of filing fees to the Department of Homeland Security prior to filing. [8 C.F.R. § 1003.24][15] specifies the fee schedule, and as of the date of this report, the filing fee for a motion to reopen or reconsider before the immigration court is \$1,045, and the fee before the Board is \$1,010. Exceptions exist: motions to reopen that are based exclusively on asylum, withholding of removal, or Convention Against Torture protection do not require a filing fee. Additionally, motions filed while removal proceedings are still pending before the immigration court (that is, before a final removal order has been issued) do not require a filing fee. A motion requesting only a stay of removal also does not require a filing fee.

If the respondent is unable to pay the required fee, the respondent may request a fee waiver by filing Form EOIR-26A (Application for Fee Waiver Request) along with the motion. [8 C.F.R. § 1003.24(d)][15] provides that an Immigration Judge may waive the fee "upon a showing that the filing party is unable to pay the fee." The form requires the respondent to provide information about monthly income and expenses and to declare under penalty of perjury that the respondent is unable to pay the fee due to personal economic hardship. Fee waivers are discretionary and are not automatic; the Immigration Judge must affirmatively grant the waiver request based on the respondent's showing of financial inability to pay. If the Immigration Judge or Board denies the fee waiver request, the respondent is given 15 days to re-file the rejected motion with either the filing fee or a revised fee waiver request, and any applicable filing deadline is tolled during this 15-day cure period.

Service and DHS Response Procedures

When a motion is filed with the immigration court, counsel must serve DHS with a copy of the motion and all attachments. [8 C.F.R. § 1003.23(b)(1)(ii)][4] requires that "if necessary under § 1003.32, a motion to reopen or a motion to reconsider shall include a certificate showing service on the opposing party of the motion and all attachments." The method of service depends on whether ECAS (EOIR Courts & Appeals System) is available for the particular case. For cases eligible for electronic filing through ECAS, electronic service through the system satisfies the service requirement. For paper cases, service may be accomplished by personal delivery, mail, email, or other reliable means, with proof of service documented in a certificate of service attached to the motion.

[8 C.F.R. § 1003.23(b)(1)(iv)][4] provides that DHS "may set and extend time limits for replies to motions to reopen or reconsider" and that "a motion shall be deemed unopposed unless timely response is made." By default under the Immigration Court Practice Manual, DHS has 10 days from receipt of the motion within which to file a written opposition. If DHS fails to file a timely opposition, the respondent may file a statement indicating that the motion is unopposed. Notably, the regulation provides that "unopposed motions are not necessarily granted"-the Immigration Judge may deny an unopposed motion if the motion fails to meet the legal requirements for reopening or reconsideration, even without an opposition from DHS.

Recent Developments: Administrative Closure, Termination Authority, and Strategic Alternatives

Recent regulatory and precedential developments have expanded the toolkit available to respondents and their counsel beyond traditional motions to reopen and reconsider. These developments, occurring primarily in 2024-2025, create important strategic alternatives that practitioners must carefully evaluate.

Restoration of Immigration Judge Termination Authority

[Matter of Coronado Acevedo, 28 I&N Dec. 648 (A.G. 2022)][16] restored the authority of Immigration Judges to terminate removal proceedings in specific circumstances. This decision overruled [Matter of S-O-G- & F-D-B-, 27 I&N Dec. 462 (A.G. 2018)][17], which had severely restricted immigration judges' ability to end removal proceedings. Garland determined that immigration judges may terminate removal proceedings when: (1) the respondent has obtained lawful permanent residence after removal proceedings were commenced; (2) the pendency of removal proceedings causes adverse immigration consequences for a respondent who must travel abroad to obtain a visa; or (3) termination is necessary for the respondent to be eligible to seek immigration relief before USCIS. The Attorney General noted in the decision that termination is also appropriate when DHS cannot sustain the charges of removability, as reflected in [8 C.F.R. § 1240.12(c)][18].

Coronado Acevedo is particularly significant for respondents with applications pending before USCIS. A respondent with an approved visa petition but pending adjustment of status, or a respondent with a pending DACA application, T visa application, or Violence Against Women Act (VAWA) self-petition, may file a motion to terminate removal proceedings, allowing the respondent to pursue the pending application without the risk that the removal proceedings will culminate in deportation. The decision explicitly authorizes termination pending the outcome of rulemaking that would establish standards for when termination is appropriate.

Codification of Administrative Closure and Termination Standards

The Department of Justice issued final regulations in May 2024, effective July 29, 2024, codifying the authority of EOIR adjudicators (Immigration Judges and Board members) to administratively close and terminate removal proceedings. [8 C.F.R. § 1003.18][19] now explicitly provides standards under which administrative closure is permissible. Administrative closure is distinct from termination: administrative closure suspends the proceedings without a final decision on the merits, permitting the parties to pursue other remedies (such as applications before USCIS) while the case remains within the immigration court's jurisdiction; termination ends the proceedings entirely unless reopened through a motion. The regulations establish factors that adjudicators must consider when determining whether to grant motions for administrative closure or termination, including the reason closure or termination is sought, any opposition to

the motion, the length of time elapsed since the case was administratively closed, whether underlying applications have been filed or approved, and whether there are pending applications likely to succeed.

These regulatory developments create strategic options beyond traditional motions to reopen. A respondent with a pending application before USCIS can now file a motion for administrative closure or termination, asking the immigration court to suspend or end the removal proceedings pending resolution of the USCIS application. If the USCIS application is approved, the respondent's immigration status changes and the removal proceedings may be terminated. If the USCIS application is denied, the respondent can file a motion to recalendar the removal proceedings and continue the case.

Equitable and Procedural Considerations in Selecting Among Motion Types

Practitioners must evaluate carefully which motion type is most appropriate for the respondent's circumstances and must consider the strategic advantages and disadvantages of each option. A motion to reconsider is faster (30-day deadline) but is limited to legal and factual errors based on the existing record and does not permit introduction of new evidence. A motion to reopen permits new evidence but requires a 90-day filing deadline (subject to equitable tolling) and a much higher factual burden in establishing materiality, unavailability, and prima facie eligibility. A motion to terminate or administratively close can address pending applications before USCIS and may be the most appropriate mechanism when the respondent's immigration status is pending determination in another forum.

San Francisco and Northern California-Specific Considerations

Immigration courts and asylum offices within Northern California operate within the Ninth Circuit, which has issued binding precedent on motion practice that differs in important respects from precedent in other circuits. Practitioners representing respondents before San Francisco Immigration Court, the Oakland and Concord hearing locations, and the San Francisco Asylum Office should be aware of these distinctive legal standards and procedural tendencies.

The Ninth Circuit has consistently recognized equitable tolling as applicable to the 90-day deadline for motions to reopen, and has interpreted the doctrine broadly to permit late motions where respondents were pursuing collateral relief such as DACA or relying on government-protected status. [Singh v. Holder, 658 F.3d 879][6] remains good law in the Ninth Circuit, and the circuit has continued to apply equitable tolling in cases involving ineffective assistance of counsel, government misrepresentation, and changed law. San Francisco Immigration Judges, knowing they sit within the Ninth Circuit, generally apply these standards and are receptive to equitable tolling arguments supported by evidence of diligence and extraordinary circumstances.

The San Francisco Asylum Office has particular expertise in asylum and withholding of removal cases, and respondents seeking to reopen removal orders to apply for asylum based on changed country conditions should note that the office has developed specific practices regarding country conditions evidence and credibility assessment. The office frequently interviews clients regarding persecution or torture in Central American countries (Guatemala, El Salvador, Honduras, Nicaragua) and Mexico, and officers are familiar with patterns of gang violence, gender-based violence, and cartel activity in those countries. Practitioners should submit country conditions evidence from sources familiar to the San Francisco office, such as State Department Country Reports, Human Rights Watch reports on Central America, and regional news sources documenting recent developments.

Northern California practitioners should also be aware that San Francisco Immigration Court has experienced

significant delays in calendar management, meaning that motions to reopen or reconsider may take months to be adjudicated. Respondents facing imminent deportation should consider filing separate motions for stay of removal while the motion to reopen or reconsider is pending, or should explore administrative closure or termination as more immediately accessible alternatives.

Strategic Framework for Practitioners: Risk Assessment and Decision-Making

Practitioners evaluating a motion to vacate strategy should work through the following analytical framework to advise clients of the strengths, weaknesses, and risks of proceeding with motion practice.

First, the type of motion should be selected based on the primary basis for challenge: If the respondent has new evidence (changed country conditions, newly obtained family relationship documentation, criminal conviction vacatur), the appropriate motion is a motion to reopen. If the primary challenge is that the Immigration Judge misapplied law or made factual findings contradicted by the record, a motion to reconsider may be more efficient. If the respondent has a pending application before USCIS that might change immigration status, a motion to terminate or administratively close may be most strategic.

Second, deadline compliance must be meticulously verified. The respondent should identify the exact date the removal order was entered (either orally from the bench or by mail if a written order), and should calculate the applicable deadline (30 days for motion to reconsider; 90 days for motion to reopen; 180 days for in absentia motion based on exceptional circumstances). If the deadline has passed, counsel must analyze whether equitable tolling is available based on evidence of the respondent's diligence and extraordinary circumstances preventing timely filing.

Third, evidentiary adequacy must be assessed. For a motion to reopen, counsel should evaluate whether the proposed new evidence is genuinely material to the case (likely to change the outcome), whether it was truly unavailable at the time of the original hearing, and whether it establishes prima facie eligibility for relief. For a motion to reconsider, counsel should identify specific errors in the Immigration Judge's legal analysis or factual findings and should research whether controlling precedent supports the respondent's position that the Immigration Judge misapplied law.

Fourth, risk assessment should be conducted. Filing a motion to reopen or reconsider does not automatically stay removal; if removal is imminent, counsel should coordinate filing of a separate motion for stay of removal or should seek emergency stay relief from the Board or federal court. Counsel should also consider whether the motion, if denied, might negatively affect the respondent's position in subsequent proceedings, such as federal court review. In some circumstances, it may be preferable to forgo a motion to reopen and to proceed directly to federal court petition for review, especially if counsel believes the motion would be unlikely to succeed and the respondent's legal position would benefit from federal court review under a less deferential standard.

Fifth, client communication is essential. Counsel should explain to the respondent that motions to reopen and reconsider have relatively low success rates, that the process can take many months, and that denial of the motion does not preclude federal court review but may affect the posture of that review. Counsel should discuss with the respondent the risks, timeline, and potential outcomes, and should obtain the respondent's informed consent before filing.

Conclusion: Comprehensive Motion Practice in Context of Immigration Court Proceedings

Motions to vacate Immigration Judge removal orders represent a critical procedural mechanism for respondents, but success requires careful selection of the appropriate motion type, strict compliance with procedural requirements, strong evidentiary development, and realistic assessment of the likelihood of success. The distinction between motions to reopen (based on new evidence with a 90-day deadline), motions to reconsider (based on legal error with a 30-day deadline), and specialized in absentia motions (with 180-day or indefinite deadlines depending on the ground) is legally and strategically significant. Practitioners must understand not only the applicable statutory and regulatory frameworks but also the substantive standards established through Board of Immigration Appeals precedent and relevant circuit court authority, particularly the Ninth Circuit for counsel representing respondents in Northern California.

Recent developments in administrative closure and termination authority have expanded the available strategic options beyond traditional motion practice, permitting practitioners to pursue alternative remedies that may be more effective for respondents with pending applications before USCIS or those whose circumstances have changed materially since the original removal order. The doctrine of equitable tolling provides limited but important relief from strict filing deadlines when extraordinary circumstances prevented timely filing, provided the respondent has diligently pursued immigration relief.

Practitioners should approach motion practice not as a guaranteed path to relief but as one strategic option within a broader immigration defense framework that may also include federal court petition for review, requests for administrative closure or termination, and exploration of collateral relief through USCIS. Success depends upon comprehensive factual development, precise legal analysis, meticulous procedural compliance, and honest assessment of the strengths and weaknesses of the respondent's legal position.

References

- [1] 8 U.S.C. § 1229a, <https://www.law.cornell.edu/uscode/text/8/1229a>
- [2] Executive Office for Immigration Review, Immigration Court Practice Manual, Chapter 5.7 (Motions to Reopen), <https://www.justice.gov/eoir/reference-materials/ic/chapter-5/7>
- [3] Executive Office for Immigration Review, Immigration Court Practice Manual, Chapter 5.8 (Motions to Reconsider), <https://www.justice.gov/eoir/reference-materials/ic/chapter-5/7>
- [4] 8 C.F.R. § 1003.23, <https://www.law.cornell.edu/cfr/text/8/1003.23>
- [5] *INS v. Abudu*, 485 U.S. 94 (1988)
- [6] *Singh v. Holder*, 658 F.3d 879 (9th Cir. 2011)
- [7] 8 C.F.R. § 1003.2, <https://www.ecfr.gov/current/title-8/chapter-V/subchapter-A/part-1003/subpart-A/section-1003.2>
- [8] *Parada-Orellana v. Garland*, 21 F.4th 887 (5th Cir. 2022)
- [9] 8 U.S.C. § 1229a(b)(5)(C), <https://www.law.cornell.edu/uscode/text/8/1229a>
- [10] *Matter of W-F-*, 21 I&N Dec. 503 (BIA 1996)

[11] *Avila-Santoyo v. Att'y Gen.*, 713 F.3d 1357 (11th Cir. 2013)

[12] *Campos-Chaves v. Garland*, 144 S. Ct. 1043 (2024)

[13] 8 C.F.R. § 1003.2(c)(4),
<https://www.ecfr.gov/current/title-8/chapter-V/subchapter-A/part-1003/subpart-A/section-1003.2>

[14] 8 C.F.R. § 1003.17, <https://www.law.cornell.edu/cfr/text/8/1003.17>

[15] 8 C.F.R. § 1003.24, <https://www.justice.gov/eoir/reference-materials/ic/chapter-3/4>

[16] *Matter of Coronado Acevedo*, 28 I&N Dec. 648 (A.G. 2022),
<https://www.justice.gov/eoir/media/1260411/dl?inline>

[17] *Matter of S-O-G- & F-D-B-*, 27 I&N Dec. 462 (A.G. 2018)

[18] 8 C.F.R. § 1240.12(c)

[19] 8 C.F.R. § 1003.18, <https://www.justice.gov/eoir/reference-materials/ic/chapter-5/7>

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