DHS Motions to Recalendar Administratively Closed Cases: Legal Framework and Defense Strategies

Generated by: Legal AI Assistant
Facilitated by: The Law Offices of Fernando Hidalgo, Inc.
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FINDINGS

DHS MOTIONS TO RECALENDAR ADMINISTRATIVELY CLOSED CASES: LEGAL FRAMEWORK AND DEFENSE STRATEGIES

This research report addresses the statutory and regulatory requirements governing Department of Homeland Security motions to recalendar administratively closed immigration proceedings, the standards immigration judges must apply when evaluating such motions, and the strategic defensive options available to respondents facing recalendaring actions. As of May 2025, the Office of the Principal Legal Advisor has initiated a nationwide initiative to recalendar cases that have been administratively closed for extended periods, potentially affecting approximately 400,000 individuals in removal proceedings.[1][16] This report synthesizes current legal authority, practitioner guidance, and litigation strategy to provide comprehensive analytical frameworks for evaluating and responding to recalendaring motions in Northern California and nationwide.

Executive Summary

The Department of Homeland Security has significantly accelerated the filing of motions to recalendar administratively closed removal cases beginning in May 2025, targeting cases closed for years or decades.[1][9][16][23] However, recalendaring is not automatic and remains subject to meaningful judicial scrutiny and a multifactorial "totality of the circumstances" analysis established by regulation and Board of Immigration Appeals precedent.[2][17][25] Respondents have substantial opportunities to oppose DHS recalendaring motions through careful procedural objections, substantive legal arguments grounded in binding precedent, and strategic relief eligibility screening.

The regulatory framework governing recalendaring appears in [8 CFR § 1003.18(c)][2] for immigration judge proceedings and [8 CFR § 1003.1(l)][38] for Board of Immigration Appeals proceedings. When one party opposes recalendaring, the immigration judge or Board must engage in a detailed analysis of eight statutory factors without elevating any single factor as dispositive.[2][17][25] The primary consideration in contested recalendaring motions is "whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits," a standard articulated in [Matter of W-Y-U-, 27 I&N Dec. 17 (BIA 2017)][7][10] and recently reaffirmed in [Matter of B-N-K-, 29 I&N Dec. 96 (BIA 2025)][31][41].

Respondents may face medium to high litigation risk depending on individual case circumstances, detention status, eligibility for discretionary relief, and the specific merits of any pending collateral applications. Strategic options include opposing the motion outright, requesting termination of proceedings on alternative grounds, filing a notice of non-opposition while pursuing relief outside immigration court, or allowing recalendaring while preparing robust defense strategies. The optimal response varies substantially based on the respondent's litigation posture, relief eligibility, current family or business ties, and exposure to more aggressive enforcement mechanisms such as expedited removal.

Regulatory Framework Governing Motions to Recalendar

Statutory Authority and Regulatory Text

Administrative closure and recalendaring authority derives from the Immigration and Nationality Act § 240 structure and its implementing regulations. Congress granted the Attorney General (and by delegation the

Executive Office for Immigration Review and the Board of Immigration Appeals) broad authority over immigration court procedures and case management.[6][35] The Secretary of Homeland Security retains independent statutory authority to conduct removal proceedings and enforce immigration law but operates within the procedural framework established by EOIR.

The foundational regulatory provision appears at [8 CFR § 1003.18(c)][2][17], which provides that an immigration judge "may, in the exercise of discretion, recalendar the case pursuant to a party's motion to recalendar." The regulation specifies that administrative closure is "the temporary suspension of a case," removing the case from the active calendar, and recalendaring "places a case back on the immigration court's active calendar."[2] A parallel provision appears at [8 CFR § 1003.1(l)(2)][38] for Board jurisdiction, which similarly grants the Board authority "in the exercise of discretion, recalendar the case pursuant to a party's motion to recalendar."[38]

Critically, the regulations establish that only parties may file motions to recalendar; neither the immigration judge nor the Board may recalendar a case sua sponte.[25][37] This procedural constraint means that the government bears the burden of filing the motion, and the respondent or respondent's counsel receives notice and an opportunity to respond. The regulations further provide that a motion to recalendar must be filed within the jurisdiction of the immigration court having administrative control over the record of proceedings.[26][42]

Standards for Joint Motions and Non-Opposition

When the parties jointly file a motion to recalendar, or when the non-moving party affirmatively indicates its non-opposition, the immigration judge "shall grant a motion...unless the immigration judge articulates unusual, clearly identified, and supported reasons for denying the motion."[2][17][25][54] This provision reflects a strong presumption in favor of recalendaring in scenarios where there is agreement or explicit non-opposition. Courts and practitioners should note that the burden shifts dramatically in this context: the immigration judge must articulate specific, clearly identified reasons with supporting rationale to deny what amounts to an agreed-upon motion.

However, a mere failure to respond within the ten-day response window does not constitute affirmative non-opposition.[15][25][37][50] The regulation requires that the non-moving party affirmatively express agreement that it does not oppose recalendaring. In practice, respondents facing DHS motions to recalendar must file an affirmative statement of non-opposition or face the application of the contested standards that follow. Silence does not constitute consent.

Standards for Contested Recalendaring: Totality of Circumstances Analysis

When one party opposes recalendaring, the immigration judge or Board must apply a "totality of the circumstances" analysis that incorporates eight non-exhaustive factors, none of which is individually dispositive.[2][17][25][54] Regulation [8 CFR § 1003.18(c)(3)(ii)][2] lists the following factors as relevant to recalendaring decisions when the case is contested:

The regulation specifies that the immigration judge shall consider the reason recalendaring is sought, the basis for any opposition to recalendaring, the length of time elapsed since administrative closure, whether the noncitizen filed any petition or application for which administrative closure was originally granted and if so the timing of that filing, the result of any adjudication of such petition or application, the likelihood of success if a petition remains pending, the ultimate anticipated outcome if the case is recalendared, and the ICE detention status of the noncitizen.[2][17][25][54]

A critical aspect of this regulatory framework is the explicit statement that "no single factor is dispositive" and

that "the immigration judge may also consider other factors where appropriate."[2][17][54] This language prevents rigid mechanical application and requires individualized assessment of each case's specific circumstances. Importantly, the regulation explicitly permits the immigration judge to grant a motion to recalendar "over the objection of a party,"[2][54] meaning that even if a respondent successfully demonstrates strong opposition, the immigration judge retains discretion to recalendar if the totality of circumstances warrants it.

Board of Immigration Appeals Precedent on Recalendaring Standards

Matter of Avetisyan: Foundational Authority on Administrative Closure and Recalendaring

[Matter of Avetisyan, 25 I&N Dec. 688 (BIA 2012)][10][34] established the foundational framework for evaluating motions to administratively close proceedings, whether filed by respondents or by DHS. The Avetisyan decision established six factors that adjudicators must consider when evaluating contested administrative closure motions: the reason closure is sought, the basis for any opposition, the likelihood the respondent will succeed on pending collateral applications, the anticipated duration of closure, responsibility of either party for delays, and the ultimate anticipated outcome upon recalendaring.[7][10][34]

Avetisyan clarified that "neither party has absolute veto power over administrative closure requests" and that immigration judges may grant administrative closure "in the exercise of independent judgment and discretion" even where one party opposes.[7][10] This held true for respondent-filed closure motions (overruling the prior Matter of Gutierrez-Lopez standard that had granted DHS an absolute veto) and applied equally to government-filed recalendaring motions.

Matter of W-Y-U-: The Primary Consideration Standard

[Matter of W-Y-U-, 27 I&N Dec. 17 (BIA 2017)][7][10][34] refined Avetisyan by identifying a hierarchy of considerations. The BIA held that "the primary consideration for an Immigration Judge in determining whether to administratively close or recalendar proceedings is whether the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits."[7][10] This language means that when a respondent opposes DHS's motion to recalendar, the respondent must articulate persuasive reasons why the case should remain closed and why the case should ultimately be resolved on its merits.

W-Y-U- further clarified that immigration judges "cannot review whether an alien falls within the DHS's enforcement priorities or will actually be removed from the United States" when evaluating administrative closure or recalendaring motions.[10][34] This constraint prohibits DHS from citing enforcement priorities or likelihood of removal as justification for recalendaring. Additionally, W-Y-U- reaffirmed that "docket efficiency or resource management" cannot override the Avetisyan factors or the respondent's interest in having the case resolved on the merits.[7][10]

Matter of B-N-K-: Recent BIA Recalendaring Decision and Primary Consideration Clarification

[Matter of B-N-K-, 29 I&N Dec. 96 (BIA 2025)][31][41][57] represents the most recent BIA precedent addressing contested recalendaring and refines the application of W-Y-U-. In B-N-K-, the respondent sought administrative closure of her removal proceedings while awaiting adjudication of a Temporary Protected Status application with USCIS. The immigration judge granted the motion, apparently finding that the parties had jointly agreed to closure. DHS filed a motion to recalendar, arguing that the respondent's asylum application could be adjudicated on its merits concurrent with the pending TPS application and that removal

proceedings should not remain suspended.

The BIA, reviewing the immigration judge's denial of DHS's recalendaring motion, emphasized that "whether there are persuasive reasons for a case to proceed and be resolved on the merits" remains "the primary consideration,"[31][41] reaffirming W-Y-U-. However, the B-N-K- opinion also suggested that administrative closure should not be utilized "to delay proceedings indefinitely" and that closure must be "limited to a temporary period" with a "reasonably short period of time" unless tied to a specific, foreseeable event outside the parties' control.[31] This language signals the BIA's concern that indefinite administrative closure is disfavored, which may influence how immigration judges view closure motions filed years after a case was originally closed.

The B-N-K- decision reversed the immigration judge's denial of DHS's recalendaring motion and remanded for further proceedings, suggesting a more government-favorable posture toward recalendaring when removal proceedings can proceed without interfering with pending collateral relief. However, the decision explicitly reaffirmed the totality of circumstances analysis and the requirement that respondents' opposition be meaningfully considered.

Procedural Requirements and Safeguards for DHS Motions to Recalendar

Immigration Court Practice Manual Requirements for Motion Filing

The [Immigration Court Practice Manual (ICPM), Chapter 3.1(b)][26], establishes procedural requirements for all motion filings, including motions to recalendar. The ICPM requires that parties "should make a good faith effort to ascertain the position of the opposing party" before filing a motion.[26] This "meet and confer" requirement applies to DHS motions to recalendar as well as to respondent motions.

A motion to recalendar filed by DHS must comply with general motion filing requirements under [ICPM Chapter 5.2][42] and Chapter 5.10(u).[59] The motion must include a cover page labeled "MOTION TO RECALENDAR," must provide the date and reason the case was closed, and should include a copy of the closure order if available.[59] The motion must be accompanied by a proposed order for the immigration judge's signature and must comply with all filing deadlines and service requirements.[26][42]

Immigration courts have reportedly rejected some DHS motions to recalendar that violate these procedural requirements, including motions where DHS failed to meet and confer with respondent's counsel before filing, failed to properly serve the motion with adequate proof of service, included inaccurate procedural histories, or failed to comply with cover page or stylistic requirements.[25][50] These procedural vulnerabilities provide respondents with potential grounds to challenge deficient DHS motions through procedural objections rather than on the merits.

Service and Notice Requirements

The regulations and Practice Manual require that all motions be served on the opposing party. For DHS motions to recalendar served by mail, the respondent has ten calendar days from receipt to file a response, calculated from the date the immigration court received the motion.[26][50] This ten-day deadline is calculated as calendar days and includes weekends and holidays; if the deadline falls on a weekend or holiday, it extends to the next business day.[26]

For respondents whose address information with the court is outdated, receipt of the DHS motion may be delayed or missed entirely. Practitioners should ensure that current address information is on file with the court by filing [Form EOIR-33][16][20], a change of address form. Failure to provide updated address

information to the court creates risk that the respondent will not receive notice of the motion or will receive it with insufficient time to respond.

Extensions of Time to Respond

The [Immigration Court Practice Manual][26] permits immigration judges to extend response deadlines "for good cause."[26] Respondents may file a "Motion for Extension of Time" requesting additional time to respond to DHS's recalendaring motion. Practitioners have reported that some immigration courts grant extensions, particularly where the case has been administratively closed for many years and the respondent has not been actively managing the case, the respondent requires time to locate case files or consult with the client, or counsel needs time to perform relief eligibility screening.[25][50]

Arguments supporting extension requests include that the motion did not comply with ICPM meet-and-confer requirements and therefore the response deadline should be tolled, that the long period of administrative closure counsels in favor of allowing respondent adequate time to respond without prejudice to DHS, that the respondent could not reasonably have anticipated the motion and has had difficulty locating the client, or that counsel recently became aware of the case and requires time to become familiar with the record.[25][50]

Available Defense Strategies and Substantive Arguments

Challenging the Reason Recalendaring is Sought

The first factor in the totality of circumstances analysis is "the reason recalendaring is sought."[2][17][54] When DHS files a motion to recalendar stating only that it "seeks to recalendar this matter in order to resolve the respondent's case on the merits and prevent unreasonable delay,"[43] this generic statement does not identify any case-specific reason tailored to the individual respondent's circumstances. Respondents may argue that DHS has articulated no specific reason pertaining to the respondent's particular situation that would warrant recalendaring.

If the respondent has engaged in no criminal activity, committed no new crimes, experienced no change in circumstances since administrative closure, and DHS identifies no change in the respondent's circumstances or status, then DHS's reason for recalendaring appears to rest on policy considerations rather than case-specific factors. The W-Y-U- decision explicitly prohibits immigration judges from considering DHS's general enforcement priorities or policy directives when evaluating recalendaring motions.[10] A motion that amounts to "we have decided to enforce against this entire category of people" does not satisfy the regulatory requirement that the judge consider "[t]he reason recalendaring is sought" in the specific case.

Additionally, respondents may argue that the stated reason-"resolve the case on the merits"-is circular and does not identify the substantive reason why merits resolution is now appropriate after years of closure. If the case was administratively closed because the respondent was pursuing a pending visa petition, and that petition remains pending or has been denied, then the circumstance justifying closure remains unchanged. If the respondent was administratively closed to pursue an I-601A provisional waiver and that application was denied years ago, the respondent can argue that circumstances have not materially changed and DHS's stated reason is insufficient.

Arguing Length of Time Elapsed as Factor Against Recalendaring

The third factor enumerated in the regulations is "[t]he length of time elapsed since the case was administratively closed."[2][54] Cases closed for ten, fifteen, or twenty years present a markedly different profile than cases closed for one or two years. The longer the period of closure, the stronger the presumption

that the closure served its purpose and that the respondent has developed settled expectations about the case's dormant status.

Respondents living in the United States continuously for extended periods following administrative closure have developed significant "equities" or connections to the country: marriage, children born or raised in the U.S., property ownership, business formation, employment, education, community integration, and financial investments. Practitioners should argue that the length of closure weighs against recalendaring because it demonstrates that the original purpose of closure has been fulfilled and that the respondent has established deep roots in the United States during the period when the case was not actively prosecuted.

Furthermore, extended administrative closure followed by sudden recalendaring creates fairness concerns. If DHS did not pursue the case for a decade but now seeks to activate it, the respondent's expectation interests in closure and the government's apparent abandonment of enforcement against this individual may weigh against recalendaring. The procedural fairness component of the totality of circumstances analysis may favor respondents with exceptionally long periods of closure.

Highlighting Failure to File Petition or Application When Administrative Closure Was Granted for that Purpose

The fourth factor in the regulatory analysis requires examining whether the case was closed "to allow the noncitizen to file a petition, application, or other action outside of proceedings" and if so, "whether the noncitizen filed the petition, application, or other action and, if so, the length of time that elapsed between when the case was administratively closed and when the noncitizen filed the petition, application, or other action."[2][54]

If administrative closure was granted to allow the respondent to file a visa petition with USCIS or ADIT, but the respondent has already filed that petition and it has been adjudicated, then the purpose for which closure was granted has been fulfilled. If the petition was denied, administrative closure no longer serves its purpose. If the petition was approved but visa numbers are not yet available, the respondent can argue that closure should remain in effect while awaiting visa availability. However, if the petition was denied years ago and no alternative relief petition or application is pending, closure is no longer justified and the case circumstances have fundamentally changed.

Conversely, if administrative closure was not originally granted to allow the noncitizen to file a petition, then the fourth factor has limited relevance. Practitioners must review the original administrative closure order to ascertain the specific basis for closure. If no stated basis appears in the record, practitioners should argue that the absence of any clear justification for the original closure undercuts DHS's burden of establishing changed circumstances or sufficient reason for recalendaring now.

Documenting Respondent's Opposition and Desire for Merits Resolution

The second factor is "[t]he basis for any opposition to recalendaring."[2][54] The W-Y-U- decision establishes that the critical inquiry is whether "the party opposing administrative closure has provided a persuasive reason for the case to proceed and be resolved on the merits."[10] Respondents should clearly articulate in any opposition to DHS's recalendaring motion that they oppose closure and want their case resolved on the merits-whether through asylum relief, cancellation of removal, adjustment of status, or other available forms of relief.

Courts have found persuasive reasons for case resolution on the merits where the respondent expresses a desire to have removal proceedings concluded, where alternative relief is available, where the respondent has

eligibility for relief under current law, or where the respondent is detained and thus has an acute interest in prompt adjudication. Articulating clearly that the respondent wants the case resolved (not indefinitely delayed) and identifying the forms of relief the respondent intends to pursue creates a compelling opposition basis.

Challenging the Ultimate Anticipated Outcome If Case Is Recalendared

The seventh factor-"[t]he ultimate anticipated outcome if the case is recalendared"[2][54]-requires immigration judges to assess what the likely result would be if the case proceeds to a hearing. If the respondent has strong eligibility for asylum based on persecution, or clear entitlement to cancellation of removal, or viable family-based adjustment of status, then the anticipated outcome would be a grant of relief. In such scenarios, the case should proceed to merits resolution and recalendaring is appropriate.

However, if the anticipated outcome is that the respondent will be ordered removed because no relief is available, the respondent has become deportable based on criminal conduct, or the respondent is no longer eligible for relief previously sought, then the case should potentially remain administratively closed rather than consuming scarce judicial resources to produce a removal order. Practitioners should argue that forcing recalendaring when the anticipated outcome is removal serves docket management interests rather than the interests of justice or efficient resolution.

This argument also relates to the B-N-K- principle that administrative closure should serve a purpose related to a potentially foreseeable favorable resolution. If the case is destined for removal, administrative closure preserving the respondent's current equities and avoiding entry of a removal order may serve legitimate interests.

Detention Status as Substantial Factor

The eighth factor is "[t]he ICE detention status of the noncitizen."[2][54] Immigration judges and the Board are explicitly directed to consider whether the respondent is detained. Detained individuals have a much stronger interest in prompt adjudication than non-detained individuals, as detention imposes severe liberty restrictions and ongoing detention costs. If the respondent is detained, recalendaring becomes substantially more appropriate because prompt resolution (in either direction) serves the respondent's liberty interests.

Conversely, non-detained respondents with stable housing, employment, family ties, and years of presence in the community have diminished urgency for recalendaring. The regulations specifically call out detention status as a factor, suggesting that this factor may receive substantial weight in the totality analysis. Respondents who are not detained should emphasize their current non-detained status and stable community ties as weighing against recalendaring.

Challenging Applicability of B-N-K- Timeframe Requirement

The B-N-K- decision suggested that administrative closure should be "limited to a temporary period" and involve waiting for an event that will occur within a "reasonably short period of time."[31][41] However, B-N-K- must be reconciled with earlier Avetisyan language that administrative closure is appropriate "to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court and may not occur for a significant or undetermined period of time."[10][34]

Respondents awaiting visa availability or adjustment eligibility based on pending family petitions may argue that administrative closure remains appropriate despite extended time periods, as visa unavailability is an external event beyond the respondent's and the court's control. The regulatory framework does not specify any temporal limit on administrative closure, and practitioners should distinguish B-N-K-'s cautionary language (which applies to indefinite closure without a specific anchor event) from situations where a specific,

foreseeable event justifies extended closure.

Relief Eligibility Screening and Strategic Response Options

Comprehensive Relief Screening Upon Recalendaring Motion

When an immigration attorney receives notice that DHS has filed a motion to recalendar a client's previously closed case, the attorney's first obligation is to conduct comprehensive relief eligibility screening. The respondent's circumstances may have changed substantially since the case was administratively closed, creating new eligibility for relief that was not available when closure was originally granted.[13][19][37]

Categories of relief to screen include asylum (with exceptions to one-year filing deadlines if changed country conditions exist), withholding of removal, Convention Against Torture protection, cancellation of removal for non-lawful permanent residents, adjustment of status for immediate relatives of U.S. citizens or through family preference petitions, special immigrant juvenile status (SIJS) and related derivative relief, VAWA (Violence Against Women Act) relief, U visa status for victims of certain crimes, T visa status for trafficking victims, temporary protected status (TPS), deferred action, and other discretionary forms of relief.[13][19][37]

For each potential form of relief, the attorney should determine: (1) whether the client is statutorily eligible, (2) which agency has jurisdiction to adjudicate (USCIS, immigration court, or both), (3) whether any bars or time limitations apply, (4) what evidence is required, and (5) whether pursuing that relief inside or outside removal proceedings is strategically optimal.[13][19][37]

Screening for Non-LPR Cancellation of Removal

Respondents who have accrued ten years of continuous physical presence in the United States, maintained good moral character for the past ten years, and not engaged in certain disqualifying conduct may be eligible for non-LPR cancellation of removal under [INA § 240A(b)][31][41]. However, the "stop-time rule" under [INA § 240A(b)(2)(B)][31][41] provides that physical presence stops accruing when DHS serves a Notice to Appear containing all required statutory information, including the time and place of the hearing.

Recent Supreme Court decisions have clarified the stop-time rule. [In Niz-Chavez v. Garland][52], the Supreme Court held that the "stop-time rule" is triggered only when DHS serves "a single Notice to Appear that contains all of the statutorily required information, including the time and place of the immigration court hearing."[52] This means that if the Notice to Appear lacked the time or place of the hearing, and a subsequent court notice supplied that information, time does not stop under Niz-Chavez-the client continues to accrue physical presence for cancellation purposes.[52]

Practitioners should review the original Notice to Appear for defects. If it lacked time and place of hearing information, the respondent may now be eligible for cancellation of removal even if previously ineligible. This significantly expands the pool of respondents with viable relief available upon recalendaring.[52]

Family-Based Relief: New Petitions or Changed Circumstances

Since administrative closure, a respondent may have married a U.S. citizen, had a U.S. citizen child turn twenty-one, or had a previously-filed family preference petition become current due to visa availability. These changed family circumstances may create eligibility for adjustment of status (if inside the United States) or consular processing (if outside).[13][19][37][55]

For family-based relief, respondents should determine: (1) whether a visa petition is currently approved and if so whether a visa number is available, (2) whether the respondent entered the United States with inspection

and thus is eligible to adjust without leaving the country, or (3) whether the respondent must pursue consular processing abroad with associated risks of bars to return. Respondents with recent marriages should verify whether the I-130 has been filed and when it might become current.

DACA and TPS Status Checks

Respondents with Deferred Action for Childhood Arrivals status should verify the current status of that grant, whether work authorization can be renewed, and whether any recent changes in TPS status affect eligibility. Some countries have had TPS designations expanded or reinstated as of late 2024 and early 2025.[37]

Additionally, practitioners should confirm current TPS-designated countries and explore whether late registration is available for individuals who initially missed registration periods.[37] A grant of TPS status results in termination of removal proceedings under [8 CFR § 1003.18(d)(1)(i)(B)][2][17], eliminating the need for removal adjudication altogether.

SIJS Relief for Vulnerable Immigrant Youth

If the respondent is a Special Immigrant Juvenile Status beneficiary, recent developments warrant careful attention. As of June 6, 2025, USCIS rescinded its policy of granting deferred action to SIJS recipients unable to adjust due to visa unavailability.[33][36] However, as of November 19, 2025, a federal court issued an order staying that rescission, requiring USCIS to continue processing SIJS-based deferred action adjudications and renewals pursuant to the 2022 policy pending litigation.[33]

For SIJS youth facing recalendaring, the current policy status creates both barriers and opportunities. If a youth has an approved I-360 petition but cannot adjust due to visa unavailability, USCIS should be adjudicating deferred action applications pursuant to the court order, potentially providing employment authorization and protection from removal outside the context of removal proceedings.[33][36]

U and T Nonimmigrant Status Screening

If the respondent is a victim of human trafficking, sexual assault, domestic violence, or other qualifying criminal activity, eligibility for U or T nonimmigrant status should be explored.[19][37] U visa applications are filed with USCIS (or can be transferred from removal proceedings to USCIS if removal proceedings are terminated), while T visa applications are also filed with USCIS. These forms of relief remain available even after considerable time has passed since the victimization.

Recalendaring as Strategic Vehicle to Pursue Relief

In many cases, recalendaring may be strategically favorable for the respondent because it allows the respondent to litigate available relief before an immigration judge. If the respondent has newly-discovered eligibility for cancellation of removal, asylum relief, or other forms of relief available in immigration court, the respondent may choose not to oppose recalendaring. Instead, the respondent can file a notice of non-opposition and begin building evidence for the relief available upon recalendaring.

The respondent may also request that DHS agree to recalendaring and expedited scheduling so that relief can be adjudicated promptly. Strategic non-opposition to recalendaring does not prevent the respondent from vigorously litigating relief once the case is on the calendar.

San Francisco Immigration Court Context

San Francisco Immigration Court Procedural Tendencies

The San Francisco Immigration Court, located at [100 Montgomery Street, Suite 800, San Francisco, CA 94104][6] with additional locations in Concord and at 630 Sansome Street, has specific procedural patterns that affect recalendaring strategy. Immigration judges in San Francisco reportedly expect comprehensive written motions with full citations to binding authority. Oral motions are discouraged; written motions with cover pages, proposed orders, and detailed explanations are required.[6][26]

San Francisco immigration judges appear receptive to procedurally proper recalendaring opposition motions that cite to BIA precedent and apply the regulatory factors to specific case circumstances. Judges in this court have reportedly denied some DHS recalendaring motions that violated ICPM requirements or appeared to lack case-specific justification, suggesting that procedural rigor and substantive legal argument are meaningful.

San Francisco Asylum Office Interview Patterns

The San Francisco Asylum Office, which conducts credible fear interviews and processes asylum applications, has historically been receptive to asylum protection claims and has higher grant rates than many other asylum offices. If a respondent is seeking to pursue asylum relief through administrative closure and eventual recalendaring, the availability of asylum relief through the San Francisco Asylum Office may support arguments for continued administrative closure pending asylum adjudication.

Ninth Circuit Precedent and Favorable Authority

The Ninth Circuit, which has appellate jurisdiction over Northern California and includes the San Francisco district, has generally been protective of asylum seekers and cautious about removal orders where asylum relief may be available. Practitioners should review recent Ninth Circuit decisions on asylum standards, credible fear screening, and procedural requirements for removal proceedings to identify favorable precedent applicable to San Francisco cases.

California State Law Protections and Criminal Record Modification

California practitioners handling Northern California cases should be alert to opportunities for criminal record modification under [California Penal Code § 1473.7][34][36], which permits vacation of convictions that carry immigration consequences. Additionally, [California Penal Code § 1203.43][34][36] addresses certain forms of post-conviction relief. A successful motion to vacate or modify a criminal conviction can eliminate grounds for removal and may revive eligibility for relief such as cancellation of removal or asylum.

Furthermore, [California's AB 1352][34][36] and related discovery statutes may require disclosure of immigration consequences at plea negotiations, potentially supporting ineffective assistance of counsel claims or post-conviction relief. State level criminal record modification can be a powerful strategy to eliminate removability grounds before or concurrent with recalendaring opposition.

Timing, Deadlines, and Response Mechanisms

Initial Response Deadline and Computation

The standard response deadline to a DHS motion to recalendar is ten calendar days from the date the immigration court receives the motion, not from the date the respondent receives it.[26][50] This means that if DHS mails the motion and respondent's counsel does not receive it promptly, the ten-day deadline may be running. The immigration court's date stamp on the motion controls the start date for response calculation.

The ten days are calculated as calendar days, including weekends and holidays.[26] If the tenth day falls on a Saturday, Sunday, or legal holiday, the deadline extends to the next business day.[26] Practitioners should

immediately upon receipt of notice that a recalendaring motion has been filed calculate the precise deadline and verify the motion's receipt date with the immigration court if the receipt date is unclear.

Motion for Extension of Time

If the respondent cannot meet the ten-day deadline due to inability to locate the client, need to perform comprehensive relief screening, or other good cause, [ICPM Chapter 3.1(c)][26] permits filing a "Motion for Extension of Time." This motion should clearly state the current deadline, the reasons for requesting an extension (with as much specificity as possible), evidence of good faith efforts to meet the deadline, a proposed new deadline, and whether the opposing party consents.[26]

Courts have granted extensions in recalendaring contexts where the case has been closed for many years and the respondent requires time to assess changed circumstances, where counsel recently became the respondent's representative, where service was defective or delayed, or where the respondent has been difficult to locate or contact.[25][50] The argument that extending the deadline does not prejudice DHS, particularly where the case has been closed for years, appears persuasive to some judges.

Notice of Non-Opposition (Strategic Non-Opposition)

In cases where the respondent determines that recalendaring is strategically favorable (because relief is available upon recalendaring, or because detention status or other factors favor prompt adjudication), the respondent may file a "Notice of Non-Opposition" indicating that the respondent does not oppose recalendaring.[26][50] This allows the motion to be granted without full briefing of the contested recalendaring standard.

Filing a notice of non-opposition should not be interpreted as a waiver of the respondent's right to litigate relief on the merits. The respondent can simultaneously be preparing evidence of eligibility for asylum, cancellation of removal, or other relief available once the case is recalendared. Strategic non-opposition is a procedural choice about how to handle the motion to recalendar, not a substantive concession about the respondent's removal eligibility.

Opposition to Motion to Recalendar: Key Argumentative Elements

If the respondent determines that opposition is appropriate, the motion should follow [ICPM Chapter 5.2 requirements][42] and include the following elements: a cover page labeled "MOTION TO RECALENDAR," a clear identification of the specific factors enumerated in [8 CFR § 1003.18(c)(3)(ii)][2][54] and how each factor applies to the respondent's case, citation to [Matter of W-Y-U-][7][10] and [Matter of B-N-K-][31][41] for the "persuasive reason" standard, articulation of the respondent's opposition to closure and desire for merits resolution, evidence or explanation of changed circumstances (or absence thereof) since original closure, attachment of the original administrative closure order if available, and proposed order for the judge's signature.[25][43][56]

The opposition should avoid generic arguments and instead address specific facts of the respondent's case. For example: "The respondent opposes recalendaring because her Case was administratively closed on [date] to allow her to pursue an I-360 petition for Special Immigrant Juvenile Status. That petition was approved on [date], but visa numbers for her category have not become available. The respondent continues to accrue continuous physical presence for purposes of cancellation of removal eligibility and has remained in continuous legal status as a lawful permanent resident. Recalendaring would interrupt her continued accrual and would not serve the purpose for which closure was originally granted, as her underlying SIJS petition has been approved and her relief depends on visa availability, not on adjudication of her removal proceedings."

Current Enforcement Landscape and Expedited Removal Context

Trump Administration Policy Shift and Expedited Removal Expansion

As of January 2025, the Trump administration expanded expedited removal to its full statutory extent.[21] Expedited removal, under [INA § 235(b)(1)][21], permits summary removal of individuals apprehended at or between ports of entry within two years of entry (or indefinite periods for post-entry apprehensions) who cannot establish lawful status. The expansion removed temporal and geographic limitations that had previously constrained expedited removal to individuals apprehended within fourteen days of entry and within 100 miles of the border.[21]

This expansion creates a significant collateral consequence for individuals whose removal proceedings are terminated or dismissed. If removal proceedings in the context of [INA § 240][21] are terminated, the individual becomes potentially subject to expedited removal under [INA § 235(b)(1)][21], which provides no hearing before an immigration judge and instead uses CBP credible fear screening. This risk must be considered when evaluating whether to oppose recalendaring, request termination of proceedings, or pursue other strategies.

Interaction Between Administrative Closure and Expedited Removal

Administrative closure preserves the individual in removal proceedings under [INA § 240][21], preventing the shift to expedited removal procedures. This creates a perverse incentive structure: individuals who oppose recalendaring and remain administratively closed avoid the risk of expedited removal, but cannot pursue relief available only through removal proceedings. Conversely, individuals who allow recalendaring and request termination of proceedings to pursue relief outside court may become subject to expedited removal if they subsequently encounter immigration enforcement.

Practitioners must carefully assess this risk with clients. For individuals vulnerable to expedited removal (those present less than two years, those who entered without inspection, those with limited grounds for belief that they have removal defenses), maintaining administrative closure within [INA § 240][21] removal proceedings may be preferable to seeking termination to pursue relief outside court.[25][44][50]

Prosecutorial Discretion and Current DHS Enforcement Policy

As of the date of this report, the Trump administration has largely abandoned the framework of prosecutorial discretion that characterized enforcement under prior administrations. The Doyle Memorandum, which had established guidance on prosecutorial discretion, has been rescinded and no current replacement memorandum exists.[13] DHS now operates under explicit instructions to enforce against broad categories of individuals rather than focusing enforcement resources on priority cases.

This policy shift is reflected in the nationwide initiative to recalendar administratively closed cases. Where prior administrations exercised discretion to maintain closure for cases deemed to be lower enforcement priorities, the current approach appears to be to reactivate enforcement across broad categories.

Motion to Terminate Removal Proceedings as Alternative Strategy

Mandatory and Discretionary Termination Grounds

The new regulations governing [8 CFR § 1003.18(d)][2][17] establish categories of cases where termination of removal proceedings is mandatory, and additional categories where termination is discretionary. Mandatory termination applies when: no charge of deportability or inadmissibility can be sustained, the respondent has

obtained citizenship since initiation of proceedings, the respondent is prima facie eligible for adjustment of status, the respondent has been granted provisional unlawful presence waiver, or the respondent has obtained Temporary Protected Status, deferred action, or Deferred Enforced Departure.[2][17][54]

Discretionary termination may be granted where the respondent is prima facie eligible for asylum, withholding of removal, or Convention Against Torture relief, where the respondent obtained a criminal conviction vacated that eliminated grounds for removal, or where termination otherwise serves justice and fairness.[2][17][54]

Strategy of Seeking Termination Upon Recalendaring

If a respondent has become eligible for discretionary relief such as VAWA relief (which is applied in immigration court), asylum (if an exception to the one-year filing deadline is established), or other relief available through immigration court, the respondent may file a motion to recalendar (or agree to DHS's motion) and simultaneously request termination of removal proceedings to pursue relief through USCIS, or request that the immigration judge adjudicate the relief on the merits.[13][19][37]

For relief requiring USCIS adjudication (VAWA self-petitioner applications, SIJS petitions, I-360 employment-based petitions), the respondent may request termination so that the case can be removed from removal proceedings and the respondent can pursue relief through the appropriate USCIS service center.[2][54]

Termination strategy must be carefully considered in light of the expedited removal expansion. Individuals vulnerable to expedited removal may face greater risk if removed from [INA § 240][21] proceedings, so termination may not be advisable for all respondents.[25][44][50]

Conclusion: Synthesis and Practitioner Guidance

DHS motions to recalendar administratively closed removal proceedings are subject to meaningful judicial scrutiny under the "totality of circumstances" framework established by regulation and Board of Immigration Appeals precedent. Recalendaring is not automatic, and respondents facing such motions have substantial opportunities to oppose, delay, or strategically navigate the recalendaring process while advancing eligibility for available relief.

The regulatory framework at [8 CFR §§ 1003.18(c) and 1003.1(l)][2][17][38][54] requires immigration judges and the Board to consider eight non-dispositive factors, with the primary consideration being whether the respondent opposing closure has provided a persuasive reason for the case to proceed on the merits.[7][10][31][41] This standard, articulated in [Matter of W-Y-U-][7][10] and reaffirmed in [Matter of B-N-K-][31][41], creates a meaningful procedural protection for respondents.

Practitioners should respond to DHS recalendaring motions through a multi-stage process: first, immediately confirm the respondent's address is current with the court and calculate the precise response deadline; second, conduct comprehensive relief eligibility screening to identify any newly-available forms of relief; third, assess whether recalendaring is strategically favorable or problematic given the respondent's circumstances, relief prospects, detention status, and vulnerability to expanded expedited removal; fourth, determine whether opposition, non-opposition, or alternative motions (for extension, termination, or other relief) best serve the respondent's interests; and finally, prepare and file the appropriate motion with careful citation to controlling authority and application to specific case facts.

The current enforcement landscape, marked by expanded expedited removal, elimination of prosecutorial

discretion, and the aggressive recalendaring initiative, creates heightened risks for respondents. However, it also creates opportunities: respondents with newly-viable relief eligibility, family changes enabling adjustment of status, criminal convictions that can be vacated, or changed country conditions supporting asylum claims may find that recalendaring, properly handled, allows them to pursue relief that administrative closure had indefinitely suspended.

Northern California practitioners should remain attentive to San Francisco Immigration Court's procedural expectations, Ninth Circuit precedent, and California state law opportunities for criminal record modification. The interaction between administrative closure, removal proceedings under [INA § 240][21], expedited removal under [INA § 235(b)][21], and the various forms of relief available through USCIS or immigration court creates a complex strategic landscape requiring individualized case assessment and carefully-calibrated responses to DHS recalendaring motions.

Legal Citations & Hyperlinks

[1] PW Scott Law, "Motion to Recalendar: What to Do"

[2] 8 CFR § 1003.18 - Docket Management

[3] American Immigration Council, "Practice Advisory: Administrative Closure and Motions to Recalendar"

[4] CLINIC Legal, "Template Opposition to Motion to Recalendar Proceedings"

[5] 8 CFR § 1003.18 (eCFR)

[6] Immigration Court Practice Manual

[7] Matter of W-Y-U-, 27 I&N Dec. 17 (BIA 2017)

[8] Immigration Issues, "Administratively Closed Cases and Motions to Recalendar"

[9] The Asylumist, "More Court Chaos: The DHS Push to Re-Open Closed Cases"

[10] CLINIC Legal, "New BIA Precedent Decision on Administrative Closure"

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[12] EOIR, "5.8 - Motions to Reconsider"

[13] ILRC, "Responding to DHS Motions to Recalendar" (July 2025)

[14] CLINIC Legal, "Opposing ICE Motions to Recalendar Administratively Closed Cases"

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[31] Matter of B-N-K-, 29 I&N Dec. 96 (BIA 2025)

[32] NIPNLG, "Practitioner Notes for Template Opposition to DHS Unilateral Motion to Dismiss"

[33] CILA Academy, "Court Grants Stay of Rescission of SIJS-Based Deferred Action Policy"

[34] CLINIC Legal, "New BIA Precedent Decision on Administrative Closure"

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[38] 8 CFR § 1003.1 - Organization, Jurisdiction, and Powers of the Board

[39] EOIR, "5.2 - Filing a Motion (Board)"

[40] CLINIC Legal, "Opposing ICE Motions to Recalendar Administratively Closed Cases"

[41] Matter of B-N-K-, 29 I&N Dec. 96 (BIA 2025)

[42] EOIR, "5.2 - Filing a Motion (Immigration Court)"

[43] CLINIC Legal, "Template Opposition to Motion to Recalendar (May 2025)"

[44] ILRC, "Responding to DHS Motions to Recalendar" (July 2025)

[45] EOIR, "9.3 - Bond Proceedings"

[46] Federal Register, "Appellate Procedures and Decisional Finality in Immigration Proceedings" (2023)

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