Master Calendar Hearings and Removal Proceedings Under INA § 240: A Legal Research Brief

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FINDINGS

MASTER CALENDAR HEARINGS AND REMOVAL PROCEEDINGS UNDER INA § 240: A COMPREHENSIVE LEGAL RESEARCH BRIEF

This research brief examines Master Calendar Hearings (MCH)-the initial procedural stage in immigration removal proceedings-and synthesizes current legal authority, procedural requirements, strategic considerations, and the dramatically evolving enforcement landscape as of February 2026. While the original query referenced "Special Master Hearing," no such standard proceeding exists in immigration court practice. Instead, this report focuses on Master Calendar Hearings, which are the first mandatory appearance in removal cases under [8 U.S.C. § 1229a][13], and the substantive relief and appellate options available to respondents facing removal.

Executive Summary and Key Findings

A Master Calendar Hearing (MCH) serves as the administrative gateway to immigration removal proceedings.[1][2] It is not a trial or evidentiary hearing but rather a scheduling and pleading conference where an Immigration Judge (IJ) ensures proper notice, explains rights, collects admissions or denials of deportability charges, identifies potential forms of relief, and schedules the substantive merits hearing (Individual Calendar Hearing).[1][3] Critically, MCHs typically last only five to twenty minutes and involve minimal direct dialogue between the respondent and the judge; counsel for the Department of Homeland Security (DHS) and the respondent's attorney are the primary participants.[5][9]

The current legal landscape in early 2026 presents substantial risks for respondents in removal proceedings. As of January 21, 2025, the Trump administration has expanded expedited removal to its full statutory scope, applying it to noncitizens anywhere in the United States who lack proof of two years continuous residence and entered without proper documentation.[55][58] This represents a dramatic expansion from the Biden administration policy, which limited expedited removal to persons encountered within 14 days of entry and within 100 miles of the land border.[55] Simultaneously, the administration has terminated or failed to extend Temporary Protected Status (TPS) for multiple countries, though federal courts have enjoined some terminations.[56][59] Additionally, immigration detention has surged: children in ICE custody increased more than sixfold under the Trump administration compared to the late Biden era, with 170 children detained on an average day as of mid-2026, with peaks exceeding 400 children on single days.[60] This enforcement environment amplifies the importance of understanding MCH procedures, identifying viable relief, and preserving appellate arguments.

Qualitative Risk Assessment: The procedural and substantive landscape presents medium to high risk for respondents without legal representation or those in expedited removal who may not be properly referred for credible fear screening. Respondents with viable asylum, withholding of removal, cancellation of removal, or Convention Against Torture (CAT) claims face low to medium risk if represented and if their cases proceed to full Individual Calendar Hearings (ICHs) rather than expedited removal. However, the expanded expedited removal authority and detention surge indicate that many respondents will not reach a traditional MCH but will instead undergo faster expedited removal processes unless they pass credible fear screening or establish reasonable fear of persecution.

Timeline Considerations: An MCH must be scheduled at least ten days after service of the Notice to Appear (NTA), unless the respondent waives this requirement.[1] Individual Calendar Hearings are typically scheduled four to eighteen months (or longer) in the future due to immigration court backlogs.[9] Federal

court challenges (petitions for review of Board of Immigration Appeals denials) must be filed within thirty days of the BIA's final decision.[22]

Legal Framework Governing Master Calendar Hearings and Removal Proceedings

Statutory Authority and Regulatory Requirements

Master Calendar Hearings are conducted pursuant to [INA § 240(b)][13], which establishes the procedural framework for removal proceedings, and implementing regulations at [8 CFR § 1240.10 and § 1240.15][16][41]. The Notice to Appear (NTA), Form I-862, initiates removal proceedings and must contain specific information: the nature of the proceedings, legal authority, acts or conduct alleged to violate immigration law, specific charges and statutory violations, the right to counsel, consequences of failure to appear, and notice that the alien must provide a written address and telephone number.[28]

The statute requires that at least ten days elapse between service of the NTA and the initial MCH, [8 U.S.C. § 1229b(1)][13], unless the respondent signs a "Request for Prompt Hearing" waiving this requirement.[1] This ten-day period is designed to provide the respondent reasonable opportunity to obtain counsel and prepare a response.[1]

Burden of proof principles are critical. In removal proceedings for deportability (individuals admitted to the United States), [DHS bears the burden of proving deportability by clear and convincing evidence under 8 CFR § 1240.8(a)][38]. For individuals charged as present without inspection or admission, once DHS establishes alienage, the respondent must prove by clear and convincing evidence lawful entry and current lawful status.[38] For relief from removal, the respondent bears the burden of proving eligibility and demonstrating that discretionary relief should be granted.[38]

Immigration Judge Authority and Procedure

Immigration Judges possess broad authority under [8 U.S.C. § 1229a(c)(1)][13] to decide whether an alien is removable and what relief from removal should be granted. The IJ must advise unrepresented ("pro se") respondents of their rights, including the right to be represented by counsel at no expense to the government, the right to examine evidence, the right to cross-examine witnesses, and the consequences of failing to appear.[1][29] The IJ must also advise the respondent of available pro bono legal services and ensure the respondent has received a list of providers in the jurisdiction.[1][29]

At the MCH, the IJ must accomplish several administrative tasks: verifying proper service of the NTA, determining representation status, identifying applicable grounds of removability, collecting pleadings (admission or denial of charges), identifying any relief the respondent intends to pursue, and setting deadlines and scheduling the Individual Calendar Hearing.[1] The IJ may also conduct a bond hearing on the same date if the respondent is detained and requests one.[7]

Forms of Relief Available at and After Master Calendar Hearings

The MCH is not the venue for adjudicating relief from removal. Instead, the IJ uses the MCH to identify what relief the respondent may be eligible for, set a deadline for filing applications, and schedule the merits hearing (Individual Calendar Hearing) for substantive adjudication.[1][5] The principal forms of relief potentially available are asylum, withholding of removal, protection under the Convention Against Torture (CAT), cancellation of removal, adjustment of status, and voluntary departure.

Asylum under [INA § 208][51] requires the respondent to demonstrate past persecution or a well-founded fear of future persecution on account of race, religion, nationality, political opinion, or membership in a particular

social group, and that she is unable or unwilling to return owing to that fear.[51][54] The one-year filing deadline is critical: asylum applications must be filed within one year of the respondent's last arrival in the United States, unless the respondent qualifies for an exception based on changed circumstances or extraordinary circumstances.[31][34][54] Many respondents who have been in the United States for more than one year but who have not yet been placed in removal proceedings face the challenge that their MCH triggers the one-year deadline calculation, making it urgent to identify exceptions and file promptly.[34]

Withholding of Removal under [INA § 241(b)(3)][13] provides a higher bar than asylum but lacks certain bars to eligibility. The respondent must demonstrate that it is more likely than not (a greater than 50 percent probability) that she would be persecuted on a protected ground if returned.[15] Importantly, withholding is available even if the one-year asylum filing deadline has passed, and even to some individuals with criminal convictions that would bar asylum.[15][18]

Convention Against Torture (CAT) protection provides relief when a respondent demonstrates that it is more likely than not that she would be tortured by or with the acquiescence of a government official if returned, without requiring demonstration of persecution on a protected ground.[15][18] Like withholding, CAT offers advantages for individuals with criminal histories or who have missed asylum deadlines.[18]

Cancellation of Removal under [INA § 240A][14] is available in two variants: for permanent residents (requiring five years continuous residence as a permanent resident, seven years continuous residence following admission, good moral character, and that removal would result in "exceptional and extremely unusual hardship" to a spouse, parent, or U.S. citizen or permanent resident child), and for non-permanent residents (requiring ten years physical presence in the United States, good moral character, no disqualifying criminal convictions, and demonstration of "exceptional and extremely unusual hardship" to a spouse, parent, or U.S. citizen or permanent resident child).[14][17] The hardship standard is extremely restrictive and requires substantial evidence of humanitarian consequences.[14][17]

Voluntary Departure under [INA § 240B][33][36] permits a respondent to depart at her own expense within a designated time period to avoid a final deportation order. Pre-conclusion voluntary departure (granted before or at the MCH) requires that the respondent waive or withdraw all other relief, concede removability, waive appeal rights, demonstrate clear and convincing evidence of financial ability and intent to depart, establish good moral character, and have no disqualifying criminal convictions.[33][36] Post-conclusion voluntary departure (granted after the Individual Hearing concludes) imposes a stricter standard, requiring one year physical presence before the NTA was issued, a bond (at least $500), clear and convincing evidence of financial ability and intent, good moral character for five years, and presentation of a valid travel document.[33][36] Voluntary departure avoids the ten-year bar on future immigration benefits that attaches to an order of deportation.[33][36]

Adjustment of Status to lawful permanent resident (green card) status is available to certain noncitizens who are physically present in the United States and meet statutory eligibility requirements.[32][35] However, eligibility depends on factors including manner of entry, visa availability, sponsorship, and absence of bars to adjustment.[32][35] Many respondents in removal proceedings lack adjustment eligibility due to unlawful entry or accrual of unlawful presence exceeding 180 days.

Current Legal Landscape and Enforcement Context (January-February 2026)

Expanded Expedited Removal and Its Impact on Master Calendar Hearings

The most significant development affecting removal proceedings is the Trump administration's expansion of

expedited removal authority to its full statutory scope, effective January 21, 2025.[55][58] Under the expanded authority, DHS officers may summarily remove noncitizens who lack proof of two years continuous residence in the United States, entered between ports of entry or were paroled and had parole revoked, and cannot present lawful admission or inspection documentation.[55][58] This authority applies nationwide and without temporal limitation, representing a dramatic expansion from the Biden administration's narrower policy limiting expedited removal to those encountered within 14 days and 100 miles of the border.[55]

The consequence is that many individuals who would previously have proceeded to standard removal proceedings under INA § 240 and had a Master Calendar Hearing will instead be subject to expedited removal orders issued administratively by CBP or ICE officers. Those expedited removal individuals may still access the asylum system if they express fear of persecution or torture or indicate intent to apply for asylum; they are then referred for credible fear screening by USCIS asylum officers.[55][58] However, credible fear screening occurs outside the immigration court context and imposes a "significant possibility" standard that is substantially lower than the "well-founded fear" standard for asylum but still requires preparation and presentation of evidence.[48][54]

If an individual passes credible fear screening, she is placed in formal removal proceedings and will have an MCH. However, recent reports indicate that asylum officers are screening credible fear applicants with heightened skepticism, and the Trump administration has directed asylum officers to apply the credible fear standard more restrictively.[54][55][58]

Temporary Protected Status (TPS) Terminations and Litigation

As of February 2026, DHS Secretary Kristi Noem has terminated or failed to extend TPS designations for multiple countries, including El Salvador, Nicaragua, Myanmar, Haiti, and others.[56] These terminations have generated federal court challenges. On December 31, 2025, a federal judge in the Northern District of California (Ninth Circuit) ruled that the government's termination of TPS for Honduras, Nepal, and Nicaragua was unlawful and void, ordering restoration of TPS for beneficiaries from those countries.[59] This represents a significant victory for TPS beneficiaries but does not resolve the status of terminations for other countries, which remain subject to litigation.[56][59]

For respondents with TPS status facing removal proceedings, the current situation is precarious. TPS beneficiaries who lose status (if their country's designation expires without extension or if a termination becomes final) revert to their prior immigration status-typically undocumented-and lose work authorization. However, TPS beneficiaries with pending removal cases may have grounds to seek stay of removal or remand pending resolution of TPS litigation.[56][59]

Massive Increase in Detention of Families and Children

Immigration detention has surged dramatically under the Trump administration. The number of children held in ICE detention on a given day increased from approximately 25 children daily during the final 16 months of the Biden administration to approximately 170 children daily as of mid-2026, with peaks exceeding 400 children on individual days.[60] The Dilley Immigration Processing Center in Texas, which had been mostly closed under Biden, reopened in late 2024 and now houses over 1,100 detainees, including families with infants.[60]

This surge directly impacts respondents in removal proceedings. Detained respondents face heightened pressure to resolve their cases quickly or request immediate bond redetermination hearings before an Immigration Judge. Federal court litigation over conditions at detention facilities and oversight access has intensified.[27] Additionally, reports of abuse, inadequate medical care, psychological trauma to children, and

retaliation against detainees who speak to media or attorneys have increased substantially.[60]

Congressional and Judicial Oversight Limitations

On January 8, 2026, DHS Secretary Kristi Noem issued a secret memo reinstating a requirement that members of Congress obtain approval from ICE seven days in advance of any visits to detention facilities, circumventing a federal court order issued in December 2025 requiring unannounced Congressional oversight visits.[27][57] This limitation on Congressional oversight coincides with reports of six additional deaths in ICE custody as of January 2026, following 30 deaths in 2025-the deadliest year for ICE detention in more than two decades.[57]

Recent Federal Court Developments Affecting Appeal Standards

The Ninth Circuit (which controls immigration law in California) continues to develop important precedent on issues including in absentia removal orders, equitable tolling of motion deadlines, and ineffective assistance of counsel. For example, in [Singh v. Garland, 117 F.4th 1145 (9th Cir. 2024)][47], the Ninth Circuit clarified that ineffective assistance of counsel constitutes an "exceptional circumstance" permitting reopening of in absentia removal orders, overturning more restrictive standards applied in other circuits.[47]

San Francisco Immigration Court Context and Ninth Circuit Precedent

San Francisco Immigration Court Structure and Locations

The Executive Office for Immigration Review maintains three San Francisco-area immigration court locations: the primary San Francisco Immigration Court at 100 Montgomery Street, Suite 800, and 630 Sansome Street, 4th Floor, Room 475, both in San Francisco; and a Concord hearing location at 1855 Gateway Blvd., Suite 850, Concord, California 94520.[1] Cases are assigned to judges based on administrative control location and workload balancing.

Master Calendar Hearings in San Francisco typically accommodate 20-30 cases during a two-hour period.[5] Immigration Judges in San Francisco generally take cases with represented counsel first, though some IJs hear pro bono cases prior to privately-retained counsel cases.[5] The tendency toward representation-first scheduling is significant for clients: unrepresented respondents may wait longer for their case to be called and have fewer attorney-judge interactions to negotiate continuances or discuss substantive issues.

Ninth Circuit Advantages and Circuit Split Considerations

The Ninth Circuit has adopted several positions favorable to respondents in certain contexts. The circuit's approach to government acquiescence in CAT cases is notably expansive: in [Reyes-Reyes v. Ashcroft, 384 F.3d 782 (9th Cir. 2004)][18], the Ninth Circuit found that government acquiescence can include "willful blindness" by officials, not requiring proof of actual knowledge that torture would occur.[18] This standard is more favorable to respondents than the approach adopted by other circuits, which impose stricter requirements of actual governmental knowledge.

Additionally, the Ninth Circuit's recognition of equitable tolling for motion-to-reopen deadlines provides an advantage: federal courts throughout the circuit have found that equitable tolling doctrines may apply to the 90-day deadline for motions to reopen under [8 U.S.C. § 1229a(c)(7)(C)][13], whereas the Board of Immigration Appeals has taken a more restrictive position.[47]

Northern California Asylum Office Procedures

The USCIS San Francisco Asylum Office conducts credible fear interviews and, under certain circumstances,

Asylum Merits Interviews (AMIs) for individuals referred from CBP or ICE. As of late 2024 and early 2025, the Asylum Office face-to-face interview backlog remains substantial, though interviews for expedited removal credible fear screening are prioritized and typically scheduled within 14 days.[39] The office has established local practices regarding interpreter availability, interpreter-as-backup policies on merits hearings, and expert witness procedures that respondents' counsel should understand when preparing for MCH and ICH dates.

State Law Interaction: Criminal Convictions and Immigration Consequences

California law provides critical protections against collateral immigration consequences of criminal convictions. Under [California Penal Code § 1473.7][8], defendants may seek vacation of convictions based on ineffective assistance of counsel regarding immigration consequences. [PC § 1203.43] permits post-conviction relief when a conviction would subject the defendant to deportation. Additionally, [Proposition 47] reclassified many felonies as misdemeanors, reducing immigration exposure for many clients with prior convictions.

These state law tools are often relevant in the MCH context: respondents with prior convictions should have counsel immediately investigate whether any convictions can be vacated or modified to eliminate categorical bars to relief (such as crimes of moral turpitude, aggravated felonies, or drug offenses that bar cancellation of removal, asylum, or withholding relief).[1][4][17]

Procedural Architecture of Master Calendar Hearings

Pre-Hearing Preparation and Documentation Review

Before a respondent's MCH, counsel should conduct a comprehensive intake focusing on eligibility for all available forms of relief.[4] This intake should cover: manner of entry into the United States; current or prior immigration status; derivation or acquisition of U.S. citizenship (a critical issue often overlooked); grounds of removability alleged in the NTA; any criminal convictions and dates; fear of return or persecution; family relationships in the United States and abroad; employment; length of residence; and all other facts bearing on relief eligibility.[4] Counsel must also verify the respondent's case status through the EOIR hotline at 1-800-898-7180 and confirm the scheduled MCH date and time.[4]

Counsel should obtain and thoroughly review the Form I-213, Record of Deportable/Inadmissible Alien, which DHS files with the immigration court and summarizes the circumstances of apprehension, manner of entry, biographical information, and any criminal or security issues.[4] Inconsistencies between the I-213 and the respondent's account should be noted and prepared for discussion at the MCH.

Filing Notices of Appearance

Counsel must file Form EOIR-28 (Notice of Entry of Appearance as Attorney or Representative) with the immigration court prior to the MCH or at the hearing itself.[4][21] The EOIR-28 must be filed through ECAS (Electronic Case Assessment System) where available, or in paper form to the immigration court clerk.[4][21] If counsel files the EOIR-28 at the hearing, the practice is to provide it to the court clerk during a break between cases and advise the clerk of the respondent's calendar number.[9] Until the EOIR-28 is filed and accepted, the respondent is not represented for purposes of the court record, and any representations made by the respondent pro se may bind the respondent.

The MCH Hearing Itself: Sequence and Required Elements

When a case is called, the Immigration Judge typically addresses counsel off-the-record to ascertain

preliminary matters and resolve procedural issues.[9] This off-the-record discussion is an important opportunity for counsel to flag jurisdictional issues, request a continuance for evidence gathering, or notify the judge of credibility concerns regarding DHS's allegations.[1][4]

On the record, the Immigration Judge must:

(1) Turn on recording equipment, as all proceedings must be recorded except off-the-record discussions;[1]

(2) Identify the type of proceeding (e.g., removal proceeding), the respondent's name and A-number, the date and time, and the presence of counsel and DHS representatives;[1]

(3) If the respondent is unrepresented, advise of rights, including the right to counsel, the right to present evidence, the right to cross-examine witnesses, the right to appeal, and the availability of pro bono services;[1][29]

(4) If represented, confirm that the respondent consents to counsel's representation;[1]

(5) Determine whether the respondent received the NTA and whether the notice was legally sufficient;[1]

(6) Collect pleadings from the respondent (through counsel if represented) regarding admission or denial of each factual allegation and charge in the NTA;[1][2][4]

(7) Advise the respondent of potential relief available to her;[1]

(8) Identify what applications for relief the respondent intends to file and set deadlines for filing;[1]

(9) Estimate the time necessary for the Individual Calendar Hearing and schedule the hearing date;[1]

(10) Advise the respondent of the consequences of failing to appear and of complying with background check and biometrics requirements;[1]

(11) If the respondent is detained, offer the opportunity to request a bond hearing.[7][10]

Pleadings and Their Strategic Importance

Admission or denial of factual allegations and charges is critical.[1][2][4][5] If counsel admits to all factual allegations and the charges, the proceeding may be shortened; the respondent concedes deportability and the focus shifts to relief.[1][5] However, admission is often strategic: if DHS's factual allegations contain errors (e.g., wrong date of entry, mischaracterization of manner of entry), counsel should deny those allegations and state the correct facts on the record.[1][5] Even if the respondent may ultimately be found deportable, correcting the record on factual details may be important for establishing a timeline for eligibility for certain relief (e.g., the ten-year residence period for cancellation of removal begins from the date of entry as established at the hearing, not from the date alleged by DHS).[4][5]

In asylum cases, counsel typically admits to the charge of deportability (e.g., overstay of visa, entry without inspection) because the focus is not on contesting removability but on establishing persecution or fear of persecution that would warrant asylum or withholding.[5] Counsel then states that the respondent intends to file an application for asylum, withholding of removal, and CAT protection.[5]

Oral Pleading Format

The immigration courts encourage use of a standardized oral pleading format to expedite MCHs.[1] The recommended format includes: respondent's and counsel's names and current address; admission or denial of each alleged fact; admission or denial of each alleged ground of removability; statement of relief sought;

explanation of eligibility for relief if time permits; designation of country of removal if relevant; interpreter requests; and time estimate for the Individual Hearing.[1] Counsel for DHS should be provided advance notice of the pleading to permit response.

Continuances and Request for Additional Time

If counsel requires more time to prepare or to obtain evidence of eligibility for relief, counsel may request that the Immigration Judge continue (postpone) the MCH to a subsequent MCH date.[1][4] The Immigration Judge has discretion to grant or deny continuance requests, but continuances to allow counsel to obtain representation or to gather evidence are generally viewed favorably.[1][4] Counsel should be prepared to explain what evidence will be gathered and by what date it will be available.[1][4]

If a respondent does not have counsel at the first MCH, the Immigration Judge will typically offer a continuance to permit the respondent to obtain counsel, and the respondent will be expected at the next MCH to explain efforts to secure counsel.[1] If the respondent appears at multiple successive MCHs without counsel, the judge may decide to proceed with pleadings at that point and require the respondent to enter pleadings without representation, though the respondent retains the right to obtain counsel before the next hearing.[1]

Bond Hearings: Procedure and Strategic Considerations

Bond Hearing Basics and Timing

Individuals detained by DHS may request a bond hearing (also called a bond redetermination hearing) before an Immigration Judge.[7][10] DHS initially sets a bond amount or determines that the individual is subject to mandatory detention (ineligible for bond).[7][8] Upon the respondent's request, an Immigration Judge may redetermine the bond amount and may lower it, maintain it, or increase it.[8]

Bond hearings may be requested at any time but are often requested at or immediately before the MCH.[7][10] If requested at the MCH, the Immigration Judge may conduct the bond hearing on the same date, complete the MCH and conduct the bond hearing subsequently on the same date, complete the MCH and schedule the bond hearing for a later date, or stop the MCH and schedule the bond hearing for a later date.[7] In practice, detained respondents often request bond hearings immediately to address custody status before proceeding with substantive removal case issues.

Bond Hearing Standard and Evidentiary Requirements

At a bond hearing, the Immigration Judge determines: (1) whether the respondent is eligible for bond (i.e., not subject to mandatory detention); (2) if eligible, whether the respondent poses a danger to persons or property; (3) whether the respondent is likely to appear for future immigration proceedings; and (4) whether the respondent is a threat to national security.[7] Bond hearings are less formal than merits hearings, and the Immigration Judge has discretion regarding whether testimony will be taken under oath.[7]

DHS must present evidence of the bond amount set and the justification for that amount.[7] The respondent (or her attorney) presents an oral statement ("offer of proof" or "proffer") addressing whether release would pose danger, whether the respondent is likely to appear, and whether the respondent poses national security concerns.[7] The respondent may present witnesses and evidence, such as family members testifying about ties to the community, employment letters, character references, evidence of community involvement, bank statements showing financial resources to appear at hearings, and documentation of residence, family relationships, and any prior court compliance history.[8][11]

The Immigration Judge's decision is discretionary and based on any information available to the judge or presented by the parties.[7] Immigration Judges typically require bonds of at least $1,500, though no statutory maximum exists, and judges may set bonds at much higher amounts.[11] Judges heavily weigh criminal history, arrests (even if resulting in acquittal), family ties, employment, and residential stability.[10][11]

Mandatory Detention and Challenges Thereto

Certain noncitizens are subject to mandatory detention without a bond hearing: individuals who have entered unlawfully, have engaged in certain crimes of violence, fraud, theft, or other serious offenses, or pose national security concerns.[10] However, mandatory detention determinations are often factually disputed, and respondents should challenge them through affidavits, witness testimony, and legal argument regarding applicability of mandatory detention statutes.[8]

The Supreme Court and federal courts have considered due process and other constitutional concerns regarding prolonged mandatory detention. Many immigration judges will grant a bond hearing after prolonged detention (e.g., six months), regardless of whether mandatory detention appears to apply, on due process grounds.[8] Counsel representing detained respondents should investigate whether mandatory detention lawfully applies and should prepare to challenge the government's position through evidence and legal argument.[8]

Forms of Relief and Strategic Eligibility Analysis

Asylum: Filing Deadline and Exception Requirements

Asylum applications must be filed within one year of the applicant's last arrival in the United States.[34][51][54] This one-year deadline is strictly enforced and presents a critical eligibility gate. However, exceptions exist for "changed circumstances" and "extraordinary circumstances."[34][51]

Changed circumstances include changes in the applicant's country conditions, changes in the applicant's personal circumstances materially affecting asylum eligibility (including changes in U.S. law), or activities the applicant becomes involved in outside the country of feared persecution that place her at risk.[34][51] The applicant must file within a reasonable period after the changed circumstance occurs.[34][51]

Extraordinary circumstances include serious illness or mental/physical disability during the first year after arrival; legal disability (e.g., unaccompanied minor status, mental impairment); ineffective assistance of counsel; maintenance of Temporary Protected Status, lawful status, or parole until a reasonable time before filing; prior rejection of an application that was re-filed within a reasonable period; and death or serious illness of the applicant's representative or family member.[31][34] The applicant must show that the circumstances were not created by the applicant through her own action or inaction, that they directly relate to the failure to file within one year, and that delay was reasonable.[34]

For respondents in the MCH stage, this deadline analysis is urgent. If more than one year has passed since entry, counsel must immediately investigate and document any exception. If an exception potentially applies, counsel should file the asylum application during the MCH stage or at the earliest opportunity, with supporting evidence and detailed legal argument explaining how the exception applies.[4][5][9]

Withholding of Removal: Higher Standard, No Deadline

Withholding of removal under [INA § 241(b)(3)][13] requires demonstration that it is more likely than not that the applicant would be persecuted on a protected ground if returned.[15] The standard is higher than the "well-founded fear" required for asylum (which is lower than 50 percent), but withholding has important

advantages: (1) no one-year filing deadline applies; (2) some individuals with disqualifying criminal convictions for asylum may still be eligible; and (3) the claim can be raised at any stage of proceedings.[15][18]

The persecution must be based on race, religion, nationality, political opinion, or membership in a particular social group-the same protected grounds as asylum.[15] Government acquiescence is required (meaning the applicant must establish that a government official or person with government consent or acquiescence would persecute her).[15][18]

Convention Against Torture (CAT): No Protected Ground Required

Deferral or withholding of removal under CAT requires demonstration that it is more likely than not that the applicant would be tortured if returned to her country.[15][18] Torture is defined narrowly and must be severe, inflicted by or with acquiescence of a government official.[15][18] Critically, the applicant need not show that torture would be inflicted on account of a protected ground-it suffices that the applicant would be tortured based on her personal circumstances, criminal history, gang involvement, or other factors.[15][18]

The Ninth Circuit's expansive view of government acquiescence is favorable to applicants: willful blindness by officials can satisfy the acquiescence requirement.[18] This is particularly relevant for applicants facing torture by non-state actors (e.g., gangs) if the government is indifferent or complicit in the face of widespread gang violence.[18]

Cancellation of Removal: Extreme Hardship Standard

Cancellation of removal requires demonstration of "exceptional and extremely unusual hardship" to a spouse, parent, or U.S. citizen or lawful permanent resident child.[14][17] This is an extraordinarily strict standard; courts require evidence of medical, financial, emotional, or other compelling hardship that goes substantially beyond the typical hardship of family separation.[14][17] Examples include medical conditions requiring ongoing treatment unavailable in the applicant's home country, severe disability of a family member dependent on the applicant's care, and documented severe mental health consequences of family separation.[17]

The applicant must also establish: (1) physical presence in the United States for the required period (three years for cancellation following deportation or removal, ten years for standard cancellation); (2) good moral character for that period; (3) no disqualifying criminal convictions; and (4) that the family member would experience hardship.[14][17] Good moral character is assessed on all relevant conduct during the statutory period and can be negated by prior arrests, even if not resulting in conviction, or by conduct that violates law or moral standards.[17]

Voluntary Departure: Strategic Trade-offs

Voluntary departure avoids the ten-year bar to reentry and other benefits that attach to a deportation order.[33][36] However, it requires the respondent to leave the United States within the specified time (30-120 days pre-conclusion, 60 days post-conclusion) at her own expense, with significant penalties for noncompliance (fines and future inadmissibility bars).[33][36]

The strategic calculus depends on: (1) the likelihood of success on asylum, withholding, or cancellation; (2) the respondent's desire to remain in the United States regardless of legal status; (3) family considerations; and (4) financial constraints.[33][36] If the respondent has a viable asylum claim and a reasonable probability of success, voluntary departure would not be appropriate. However, if the respondent's case is weak and departure is likely inevitable, voluntary departure preserves future reentry options.[33][36]

At the MCH stage, counsel should not automatically offer voluntary departure unless the case assessment indicates its appropriateness. The fact that voluntary departure is available should not be disclosed to an IJ unless counsel determines it is strategically beneficial.[1][4]

Appeals to the Board of Immigration Appeals and Federal Court Review

Notice of Appeal and Deadline

If an Immigration Judge denies relief or issues a removal order, the respondent has the right to appeal to the Board of Immigration Appeals.[22][28] The respondent must file a Form EOIR-26 (Notice of Appeal) with the immigration court and pay the appeal fee (or request a fee waiver) within thirty days of the judge's decision.[22][28] This thirty-day deadline is jurisdictional; failure to meet it results in waiver of the right to appeal.[22][28]

During the pendency of an appeal, the respondent generally cannot be deported, and if she has a work permit, she may renew it.[22] The BIA conducts appeals on the paper record; the respondent and DHS submit written briefs addressing legal and factual arguments regarding the judge's decision.[19][26]

BIA Decision and Standard of Review

The BIA, located in Falls Church, Virginia, exercises nationwide jurisdiction and is the highest administrative body for interpreting immigration law.[19] The BIA reviews immigration judge decisions for legal error and for whether substantial evidence supports factual findings.[19] The BIA generally does not conduct oral argument; decisions are issued based on written briefs.[19]

BIA decisions are binding on all immigration judges and DHS officers unless modified or overruled by the Attorney General or a federal court.[19] Decisions designated for publication are printed in bound volumes of Administrative Decisions Under Immigration and Nationality Laws of the United States (the official citation format: [Matter of [Name], [Volume] I&N Dec. [Page] (BIA [Year])]).[19]

Judicial Review: Petition for Review to Federal Court

If the BIA denies the respondent's appeal, the respondent may petition for review to a federal Court of Appeals within thirty days of the BIA's decision.[22][54] For cases arising from San Francisco Immigration Court, the appropriate forum is the United States Court of Appeals for the Ninth Circuit.[22]

The Ninth Circuit conducts de novo review of legal questions but applies the "substantial evidence" standard of review to the immigration judge's factual findings, meaning that factual findings will be upheld if supported by reasonable, substantial evidence on the record.[22] The Ninth Circuit has exclusive jurisdiction over petitions for review of BIA removal decisions, with limited exceptions; district courts lack jurisdiction.[22]

In petitions for review, the respondent may raise challenges to the immigration judge's credibility assessments, but such challenges face a high bar-the judge's credibility determination is accorded substantial deference, particularly if based on demeanor, candor, and responsiveness.[22][40] However, a respondent may challenge an immigration judge's legal conclusions, procedural errors, evidentiary rulings, and factual findings not based on credibility assessments with greater success.

Stays of Removal Pending Appeal and Federal Court Review

Filing an appeal to the BIA does not automatically stay the removal order.[22] However, the BIA may grant a stay of removal upon motion, or in some circumstances automatic stays apply (e.g., when a motion to reopen in absentia orders is timely filed).[20][22][47]

For petitions for review filed with the Ninth Circuit, a stay of removal pending judicial review is discretionary with the court. The respondent must establish a reasonable probability of success on the merits and irreparable harm (namely, that removal cannot be undone if the petitioner ultimately prevails).[22] The standard for obtaining a stay is favorable compared to other emergency relief, but courts are not obligated to grant stays, and removals can proceed while judicial review is pending unless a stay is obtained.

Motions to Reopen and Special Procedural Mechanisms

Motions to Reopen After In Absentia Orders

If a respondent fails to appear at a removal hearing and the Immigration Judge issues an in absentia removal order, the respondent may file a motion to reopen within 180 days of the order if the failure to appear was due to "exceptional circumstances."[20][45][46][47] The respondent must file the motion with supporting affidavits or evidence establishing the exceptional circumstances, and the motion triggers an automatic stay of removal.[20][45][47]

Exceptional circumstances include serious illness, death of immediate family members, issues preventing travel to court despite efforts to appear, and (as recently clarified by the Ninth Circuit) ineffective assistance of counsel.[47] The respondent must establish that the circumstances were not intentionally created by the respondent and that the delay in filing the motion was reasonable.[45][46]

The 180-day deadline can be extended through equitable tolling doctrines in the Ninth Circuit; the circuit has recognized that extraordinary circumstances (such as lack of counsel, language barriers, or detained status) may toll the deadline.[47]

Motions to Reopen Based on New Evidence and Relief Applications

The respondent may also file a motion to reopen within 90 days of a final order of removal if she presents material, previously unavailable evidence (such as newly discovered documentation of persecution, marriage to a U.S. citizen, or changed country conditions).[20] The respondent is permitted one motion to reopen unless an exception applies (such as motions to reopen in absentia orders or motions based on changed circumstances).[20][47]

For motions to reopen based on applications for relief (e.g., newly discovered evidence supporting asylum or cancellation of removal), the motion must include the completed application for relief and supporting evidence.[20][23]

Pro Se (Unrepresented) Respondents and Access to Justice

Rights and Warnings for Unrepresented Respondents

Unrepresented respondents have the same substantive and procedural rights as represented respondents, but immigration judges must provide heightened procedural warnings.[1][29] If a respondent appears without counsel, the judge must advise of the right to counsel, the availability of pro bono services, the right to examine evidence, the right to cross-examine witnesses, and the consequences of all decisions.[1][29]

The respondent may request a continuance to obtain counsel, and judges are permitted (and typically do) grant such continuances.[1][4][29] If the respondent appears at multiple MCH dates without obtaining counsel, the judge may eventually decide to proceed with pleadings and require the respondent to enter pleadings pro se, though the respondent retains the right to obtain counsel before the Individual Hearing.[1]

Pro Bono Legal Services and Immigration Clinic Resources

EOIR maintains lists of pro bono legal service providers in each immigration court region, and judges must provide these lists to unrepresented respondents.[1][29] In Northern California, pro bono resources include the International Refugee Assistance Project (IRAP), the Immigrant Legal Resource Center (ILRC), the American Immigration Council, the American Civil Liberties Union (ACLU) immigration project, and numerous law school immigration clinics.

Pro bono attorneys may appear as counsel of record for respondents and are subject to the same ethical obligations as private counsel. Limited appearance (document assistance) is also available; an attorney may provide document preparation assistance while another attorney represents the client in court, or an attorney may represent the client in specific proceedings only.[21] This permits leveraging pro bono resources even for clients with limited means who cannot afford full representation.

Strategic Considerations and Practical Implementation

Pre-MCH Case Assessment and Relief Eligibility Screening

Before the MCH, counsel should complete a detailed relief eligibility matrix addressing: asylum (including one-year deadline analysis and exception eligibility); withholding of removal (country conditions evidence, family connections); CAT (torture risk, government acquiescence); cancellation of removal (length of U.S. residence, hardship evidence); adjustment of status (visa availability, sponsorship); voluntary departure (if appropriate); VAWA (for domestic violence survivors); U visa (for crime victims); T visa (for trafficking victims); and any other specialized relief.[4][17]

Counsel should identify evidentiary gaps and develop a strategy for gathering evidence before filing applications. For asylum cases, this includes country conditions reports, police reports if persecution involved law enforcement, medical or psychological evidence, and if possible, expert witness declarations on persecution patterns.[4][5][9]

Managing the Individual Calendar Hearing Scheduling and Time Estimation

At the MCH, counsel must provide an honest time estimate for the Individual Hearing.[1][9] Counsel should request at least three to four hours for a thorough asylum or related protection hearing.[9] Immigration Judges often resist allocating more than four hours, but counsel should not underestimate time needs; inadequate hearing time compromises the ability to present testimony, evidence, and argument.[9] If counsel underestimates, the judge may adjourn mid-hearing, requiring a second hearing date, or may cut off testimony prematurely.[9]

The scheduling timeline is important: Individual Hearings are typically scheduled four to eighteen months in the future, depending on court backlogs.[9] This provides time to gather evidence, conduct country conditions research, prepare the respondent for testimony, and coordinate expert witnesses.

Representation Strategy and Counsel Substitution

If the respondent's initial counsel becomes unavailable or if the respondent desires to change representation, counsel must file a motion for substitution of counsel or a motion to withdraw, with the respondent's consent and explanation of efforts to notify the respondent of pending deadlines and hearing dates.[21] The court may deny a substitution motion if the timing suggests it is a delay tactic.[21] Counsel should manage these administrative matters carefully to avoid jeopardizing the respondent's case through missed deadlines or hearing dates.

Preserving Arguments for Appeal Even if Likely to Lose at IJ Level

Even if counsel assesses that the Immigration Judge is unlikely to grant relief, counsel should present legal arguments and evidence in the record that may support appellate review. For instance, if an asylum officer in a credible fear interview made statements suggesting the IJ may apply a higher standard of proof than required by law, counsel should obtain and preserve those statements in the record for potential federal court review.[45][54] If the IJ makes credibility findings that are not supported by demeanor observations or are based on speculation, counsel should cross-examine or object on the record, creating a record of the judge's apparent error for appellate purposes.[22]

Interaction with Criminal Conviction Issues

For respondents with prior criminal convictions, counsel must investigate whether any conviction constitutes a categorical bar to relief. For instance, crimes of moral turpitude (except for crimes with a sentence of less than six months), aggravated felonies, drug offenses, domestic violence offenses, and crimes of violence categorically bar asylum and some forms of relief.[14][15][17][51] However, California law provides tools to address this: [PC § 1473.7] permits vacation of convictions based on ineffective assistance of counsel on immigration consequences, and [PC § 1203.43] permits post-conviction relief when a conviction would mandate deportation.[8]

If a conviction appears to create a categorical bar, counsel should immediately investigate whether it can be vacated or modified under California law before proceeding with removal proceedings. A successful PC 1473.7 motion in state court can eliminate a categorical bar and permit an otherwise barred respondent to apply for asylum or other relief.[8]

Document Preparation and Evidence Organization

Counsel should organize all evidence into a coherent package for filing with the immigration court. At the ICH, evidence must be submitted in advance unless the judge has granted permission for live witness testimony.[1][6] Each exhibit should be labeled, translated (if not in English), and accompanied by a certificate of translation signed by a qualified translator.[1][4][6] Country conditions evidence, medical reports, psychological evaluations, police reports, birth certificates, marriage certificates, educational certificates, employment letters, tax returns, and any other supporting documentation should be compiled and organized by category.[4][17]

Current Detention and Enforcement Reality: Practical Implications for Respondents

Likelihood of Detention and Bond Considerations

As of early 2026, immigration detention has surged, and ICE has shifted toward detaining individuals with no criminal records at dramatically higher rates.[57][60] Respondents should expect that if encountered by CBP or ICE, detention is likely. For respondents in removal proceedings, the first MCH may involve a request for bond redetermination if the respondent is detained.

Bond amounts have increased; judges typically set bonds of at least $1,500 and often significantly higher depending on perceived flight risk and danger.[11] Counsel should prepare comprehensive bond hearing packages including character letters, employment documentation, community ties evidence, and family testimony to support a request for bond reduction or release on recognizance.[8][11]

Expedited Removal and Referral for Credible Fear Screening

Respondents encountered by CBP after January 21, 2025, are likely to be subjected to expedited removal unless they demonstrate two years continuous U.S. residence. If the respondent expresses fear of persecution or torture or indicates intent to apply for asylum, she must be referred for credible fear screening by a USCIS asylum officer.[55][58] Credible fear screenings occur outside immigration court; a positive finding results in referral to removal proceedings and an MCH. A negative finding can be challenged by requesting review by an immigration judge, who must provide review within 24 hours to seven days.[58]

Credible fear standards appear to be applied more strictly by the Trump administration; respondents should prepare carefully for credible fear interviews, presenting clear, credible evidence of fear and supporting documentation.[54] Representation during credible fear interviews is permitted and often helpful.

Conditions of Detention and Medical Care Concerns

Federal litigation and media reports document concerning conditions at detention facilities, particularly the reopened Dilley facility in Texas where families with infants are detained.[60] Respondents in family detention report inadequate food, water quality concerns, insufficient medical care, and psychological trauma to children.[60] Counsel should document any detention conditions that may constitute due process violations, provide grounds for compassionate release, or support hardship arguments in bond hearings.

Stay of Removal and ICE Prosecutorial Discretion Considerations

As of January 2026, prosecutorial discretion-the practice of ICE declining to pursue removal based on humanitarian or equitable considerations-is no longer being exercised as policy.[11] The Doyle Memo, which established a framework for considering prosecutorial discretion, is no longer in effect, and DHS has not issued a replacement.[11] This means respondents cannot rely on immigration officers exercising discretion to terminate removal cases based on family ties, long U.S. residence, or community contributions.

However, judicial discretion remains available: respondents may seek stay of removal from courts if a petition for review is pending, and immigration judges retain discretion to grant voluntary departure, reduce bonds, and exercise discretion in granting relief if the respondent meets statutory eligibility requirements.[22][33]

Conclusion and Recommended Next Steps

Master Calendar Hearings represent a critical procedural juncture in immigration removal proceedings. While the MCH itself is brief and administrative, the decisions made and issues raised at the MCH-including admission or denial of charges, identification of available relief, setting of deadlines, and scheduling of the substantive Individual Hearing-shape the entire course of the case. Respondents should enter the MCH fully prepared with relief eligibility analysis, evidence collection plans, and strategic direction informed by comprehensive legal advice.

The current enforcement landscape of early 2026 presents heightened risks for respondents, particularly those subject to expanded expedited removal, those with expiring or terminated TPS status, and those detained in an overcrowded and under-resourced immigration detention system. These developments amplify the importance of early legal consultation, careful case assessment, and proactive pursuit of available relief.

Recommended immediate actions for respondents facing MCH:

(1) Obtain legal counsel immediately; pro bono resources are available if cost is prohibitive.

(2) Conduct comprehensive intake covering all relief eligibility, criminal history, and family circumstances.

(3) Investigate any potential state law criminal conviction remedies that might eliminate categorical bars to

relief.

(4) For respondents with TPS status, verify current TPS designation status and determine whether litigation-based extensions apply.

(5) Gather all documentary evidence supporting relief eligibility and organize into a coherent package.

(6) Prepare detailed country conditions research if asylum or withholding is viable.

(7) If detained, immediately request bond redetermination and prepare comprehensive bond hearing package.

(8) At the MCH, carefully control pleadings to correct any factual errors in DHS's allegations and clearly identify relief being sought.

(9) Advocate for adequate time allocation for the Individual Hearing (minimum three to four hours).

(10) Preserve all arguments and evidentiary issues for potential appellate review, even if judge appears unlikely to grant relief at IJ level.

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