

Fifteen Steps for Addressing Orders of Removal Issued by an Immigration Judgeⁱ**December 2, 2025**

1. Learn the date that the IJ issued the order and what immigration court issued the removal order. Visit <https://acis.eoir.justice.gov/en/> (requires A number and country of origin) or call 1-800-898-8190 (requires A number). When a person's immigration court case started determines what statutory and regulatory framework applies to the motion to reopen.ⁱⁱ
2. Because the client may not know or remember much about the order issued, it is important to file Freedom of Information Act requestsⁱⁱⁱ and request the Digital Audio Recording (DAR)^{iv} as soon as possible. See below for a sample email requesting the DAR.
3. Assess the type of removal order issued: (1) a removal order issued at a hearing where the person was present; (2) a voluntary departure order that converted to a removal order when the person failed to depart within the requisite time period; or (3) an *in absentia* order of removal, which is a removal order issued at a hearing where the respondent did not appear.
4. Based on the type of removal order issued, assess the applicable deadlines.^v If the applicable deadline has passed, the client must raise an equitable tolling argument for filing beyond the deadline and/or raise a reopening argument that is not subject to a deadline.^{vi} Alternatively, some people may benefit from a settlement agreement that provides a path to a joint motion to reopen and dismiss the removal proceedings.^{vii}
5. Assess if this will be the first motion to reopen or if the client has already filed a motion to reopen and whether the IJ or the BIA was the last adjudicator in the client's case. If this is not the first motion to reopen, the client must raise an equitable tolling argument for the one motion to reopen limitation.^{viii}
6. Create a timeline of relevant events. This timeline will expand as counsel learns new, relevant facts.
7. Once the DAR arrives, listen to it and create a transcript. The DAR will contain several files capturing the different microphones at the hearing (IJ, OPLA, and the interpreter/respondent or IJ and OPLA in an *in absentia* hearing). Combining the DAR files into one complete file will make it easier to review and create a transcript.
 - a. On Windows, use [Audacity](#) to combine the DAR files.
 - b. On a Mac, rename each of the files with an mp3 extension, open [GarageBand](#), and drag and drop all the files together into a new project.
8. Interview the client and people with personal knowledge of facts that are material to the motion to reopen arguments and draft declarations in support of the motion.^{ix}
9. Gather documentary evidence proving facts that are material to the motion to reopen arguments.
10. Draft the motion to reopen with all the applicable arguments, including a *sua sponte* argument in the alternative.^x While drafting the motion, new questions for the client and people with personal knowledge of facts that are material to the motion to reopen arguments will arise and new ideas for possible documentary evidence will emerge. This is an iterative process.
11. If the client lacks a motion to reopen argument that provides an automatic stay of removal hook, draft a motion for a discretionary stay of removal.^{xi}

12. Unless the client is raising a no notice argument to challenge an *in absentia* order of removal, a motion to reopen before the IJ now costs \$1,045 and a motion to reopen before the BIA now carries a \$1,010 fee because of the OBBBA.^{xii} If the client cannot afford this fee, draft a well-documented fee waiver request.^{xiii}
13. If not planning to file the motion to reopen within a particular timeframe, create a schedule for remaining in frequent contact with the client, obtain a signed Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, and develop a release plan, should ICE detain the client.
14. If ICE detains the client,^{xiv} file the motion to reopen and, unless an automatic stay of removal applies, a motion for a stay of removal.
15. If ICE removes the client while the motion to reopen is pending, assess the impact of the post-departure bar on the motion to reopen.^{xv} If the IJ or the BIA denies the motion to reopen citing the post-departure bar, raise this issue on appeal to the BIA or in the petition for review to the U.S. court of appeals with jurisdiction. If the motion to reopen is granted and the client is not eligible to consular process, ask ICE to facilitate the client's return to the United States^{xvi} and seek postponements of the reopened removal proceedings^{xvii} to allow time to negotiate the client's return.

Sample DAR Email Request

Dear Court Administrator,

Attached please find Forms EOIR-28 and EOIR-59, which are being filed for the purpose of obtaining a copy of the Digital Audio Recording (DAR) of all the hearings held by this court for the following person:

Full name:

Date of birth:

Place of birth:

A-Number:

This EOIR-28 is not intended as a formal entry of appearance on the Respondent's' matters. Instead, it is included only for the purpose of retrieving the DAR for record review. Please provide the DAR to: [Your email address].

Thank you for your attention to this matter,

[Your Name]

[EOIR ID #]

ⁱ Publication of the National Immigration Project, 2025. This resource is released under a Creative Commons Attribution 4.0 International License (CC BY 4.0), is intended for authorized legal counsel familiar with a client's case, and is not intended as a comprehensive resource. Michelle N. Méndez, National Immigration Project Director of Legal Resources and Training, created this resource.

ⁱⁱ Non-citizens whose removal proceedings commenced on or after April 1, 1997 through the filing of a Notice to Appear are subject to the changes brought by the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) of 1996. For deportation proceedings initiated with an Order to Show Cause (OSC) where the hearing notice was served on or after June 13, 1992, but before April 1, 1997, former INA § 242B(c) controls. For rescission of *in absentia* orders in deportation proceedings, 8 CFR § 1003.23(b)(4)(iii)(A) applies. For exclusion proceedings initiated with Form I-122 where the hearing notice was served before June 13, 1992, former INA § 242(b) controls. For rescission of *in absentia* orders issued in exclusion proceedings, 8 CFR § 1003.23(b)(4)(iii)(B) applies.

iii EOIR: <https://foia.eoir.justice.gov/app/Home.aspx>; USCIS: <https://myaccount.uscis.gov/sign-in/>; CBP: <https://www.cbp.gov/site-policy-notices/foia>; Office of Biometric Identity Management (OBIM): <https://www.securerelease.us/account-page/sign-in/>; ORR: UCRecords@acf.hhs.gov (requires submitting a completed Authorization for Release of Records form).

iv EOIR, Request a Record of Proceeding (ROP) [and DAR], <https://www.justice.gov/eoir/ROPrequest>. Note that ROPs for closed cases must be requested via an EOIR FOIA.

v If the client appeared at the last hearing and seeks reopening to present new facts that will be proven at a hearing if the motion is granted, the filing deadline is 90 days from the date of the final order of removal. *See* INA § 240(c)(7). If the client did not appear at the last hearing because “exceptional circumstances” prevented their appearance, the filing deadline is 180 days from the date of the *absentia* removal order. *Id.* Clients who are eligible for VAWA benefits may pursue reopening within one year of the final removal order, but this one-year deadline may be waived in extraordinary circumstances or situations of “extreme hardship to the [noncitizen’s] child.” INA § 240(c)(7)(C)(iv).

vi If the client did not appear at the last hearing because they never received notice of the hearing or were in state or federal custody during the hearing, there is no filing deadline. *See* INA § 240(b)(5)(C). Motions to reopen to pursue asylum, withholding of removal, or protection under CAT based on previously unavailable and material changed country conditions arising in the country of nationality or the country to which removal has been ordered are not subject to a deadline. *See* INA § 240(c)(7)(C)(ii). No deadlines apply to regulatory *sua sponte* or joint bases for reopening, but these motions rely solely on the discretion of EOIR adjudicators (*sua sponte* authority) or the Department of Homeland Security (joint motions to reopen) and are largely insulated from federal court review. *See* 8 CFR §§ 1003.2(a) (BIA *Sua Sponte*), 1003.23(b)(1) (IJ *Sua Sponte*); 1003.2(c)(3)(iii) (BIA Joint Motions); 1003.23(b)(4)(iv) (IJ Joint Motions).

vii The [Calderon Settlement Agreement](#) requires ICE to presumptively join motions to reopen and dismiss removal proceedings for class members who are eligible to adjust status or consular process. *Ms L*, class members and their QAFMs, as appropriate, may request that OPLA join or not oppose motions, including motions to reopen and/or dismiss removal proceedings. *Franco* class members have the opportunity to seek a joint motion to reopen. Under the [J.O.P. Settlement Agreement](#), if USCIS has approved the class member’s asylum application, ICE will generally join a motion to reopen their removal proceedings. Temporary Protected Status beneficiaries who requested a joint motion to reopen and dismiss from OPLA prior to the [CARECEN Settlement Agreement](#) sunset date of January 19, 2025 should still be able to benefit from the agreement.

viii *See* INA § 240(c)(7)(A); *see also* *Matter of B-S-H-*, 29 I&N Dec. 313 (BIA 2025) (holding that the numerical bar cannot be waived by the statutory provision under INA § 240(c)(7)(C)(iv)(III) (VAWA reopening provision). The regulations exempt changed country conditions motions to reopen from the numerical limitations. 8 CFR § 1003.23(b)(4); 8 CFR § 1003.2(c)(3)(ii) (same). However, in the Fifth Circuit, motions to reopen based on changed country conditions are subject to the number bar. *See Djie v. Garland*, 39 F.4th 280, 282 (5th Cir. 2022) (holding regulation providing exception to number bar is invalid because it contradicts INA § 240(c)(7)(C)(ii)). There is no numerical limit to a joint motion to reopen. *See* 8 CFR §§ 1003.2(c)(3)(iii) (BIA Joint Motions); 1003.23(b)(4)(iv) (IJ Joint Motions).

ix If pursuing a [Lozada](#) argument, note that procedural and substantive compliance requires additional filings that take time.

x For possible arguments, refer to NILA resources available at <https://immigrationlitigation.org/practice-advisories/>. National Immigration Project members may seek Technical Assistance from our staff, <https://nipnlg.org/membership/technical-assistance>.

xi National Immigration Project, *Practice Advisory: Stays of Removal* (Jan. 17, 2025), <https://nipnlg.org/work/resources/stays-removal>.

xii National Immigration Project, *Comparison Chart of the Immigration-Related Fee Changes Brought by H.R.1 the So-Called One Big Beautiful Bill Act* (last updated Dec. 1, 2025), <https://nipnlg.org/work/resources/comparison-chart-immigration-related-fee-changes-brought-hr1-so-called-one-big>.

xiii Consider [Matter of Garcia Martinez](#), 29 I&N Dec. 169 (BIA 2025), and [EOIR Policy Memorandum 25-36](#) during this fee waiver request process. If the IJ or the BIA denies the fee waiver request, there is a 15-day cure period to refile the motion to reopen with a new fee waiver request or the filing fee, and any applicable filing deadline is tolled during this time. *See* 8 CFR §§ 1003.24(d) (IJ); 1003.8(a)(3) (BIA).

xiv Based on recent anecdotes, people with prior orders are typically removed within a couple of weeks and counsel have been unable to reach the clients once detained and before removal. Therefore, it is important to have the motion to reopen ready to file with all the required signatures.

xv National Immigration Project, *Practice Advisory: Post-Departure Motions to Reopen and Reconsider* (July 11, 2023), <https://nipnlg.org/work/resources/practice-advisory-post-departure-motions-reopen-and-reconsider>.

xvi Immigration and Customs Enforcement, FAQs: Facilitating Return for Lawfully Removed Aliens (updated Feb. 2, 2024), <https://www.ice.gov/remove/facilitating-return>.

xvii OPLA may move to dismiss the reopened removal proceedings citing 8 CFR § 239.2(a)(4) (“The respondent is not in the United States.”). Counsel should assess whether it is in the client’s interests to oppose a DHS motion to dismiss and, if so, be ready to oppose a motion to dismiss.