These templates were prepared by attorneys at the National Immigration Project. It is not legal advice or a substitute for independent legal advice by a legal representative familiar with a client's case. Nor is it a substitute for independent research, analysis, and investigation into local practices and legal authorities in a given jurisdiction. This document was last updated on June 17, 2026.

Practitioner Notes for Template Motion to Reconsider Before the Immigration Court and Motion to Remand Before the BIA Based on Vacatur of the Circumvention of Lawful Pathways Rule

- On June 3, 2026, a federal district court in California entered a final judgment in the *East Bay Sanctuary Covenant v. Trump,* vacated the Circumvention of Lawful Pathway ("CLP") rule, codified at 8 C.F.R. § 1208.33 et seq. The vacatur means that the CLP rule has been set aside and is without legal effect unless and until the ruling is stayed, modified, or reversed on appeal. As a result, noncitizens whose asylum applications were denied solely because of the CLP rule—but who were otherwise found eligible for protection and granted withholding of removal—may have a basis to seek reconsideration, reopening, or remand to permit adjudication of their asylum claims under the legal framework now in effect.

- These template motions are intended for practitioners representing noncitizen who previously sought asylum but were granted withholding of removal solely due to application of the CLP rule. These templates are limited to the following procedural situations: (1) motions to reconsider before the Immigration Judge ("IJ") and (2) motions to remand filed with the Board of Immigration Appeals ("BIA") where an appeal is currently pending.

- These templates are not intended for cases in which asylum was denied on additional or independent grounds, or where reopening or remand is sought based on other intervening developments (including, for example, third-country removal issues, changed country conditions, or new eligibility for relief unrelated to the CLP rule).

- The templates contain bracketed placeholders for case-specific facts in [yellow highlighted text] and instructions/notes for practitioners in [*green, italicized highlighted text*]. Some arguments and/or information in this template may be inapplicable to a given case.

- Highlighting and arguing the specific facts of a client's case are key to a persuasive motion. Practitioners should cite to the record when asserting facts; assertions by counsel are not evidence. *See Matter of S-M-*, 22 I&N Dec. 49, 51 (BIA 1998) ("[S]tatements in a brief . . . are not evidence and thus are not entitled to any evidentiary weight.").

- The cases cited in these templates do not constitute an exhaustive search of relevant case law in all jurisdictions. Practitioners should conduct legal research in their jurisdiction based on the facts of their case and ensure that the arguments are viable in their jurisdiction.

TEMPLATE MOTION #1: MOTION TO RECONSIDER IN IMMIGRATION COURT

[This template is intended for use where jurisdiction remains with the IJ. If an appeal has already been filed and jurisdiction has vested with the BIA, the IJ lacks jurisdiction to adjudicate a motion to reconsider. In those circumstances, practitioners should instead consider filing the appropriate motion with the BIA. Always confirm the current jurisdictional posture of the case before filing.]

[Attorney Name, EOIR ID #]
[Firm/Organization]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
[NAME] IMMIGRATION COURT
[CITY, STATE]

In the Matter of:	)	
[Respondent's Name]	)	**File No.** **A[###-###-###]**
In removal proceedings	)	

RESPONDENT'S MOTION TO RECONSIDER

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
[NAME] IMMIGRATION COURT
[CITY, STATE]

In the Matter of:	)		
[Respondent's Name]	)	**File No.**	**A[###-###-###]**
In removal proceedings	)		

RESPONDENT'S MOTION TO RECONSIDER

Respondent, [NAME], respectfully moves this Court to reconsider its prior decision denying asylum in light of a recent intervening in change in law, namely, the nationwide vacatur of the Circumvention of Lawful Pathways ("CLP") rule in *East Bay Sanctuary Covenant v. Trump,* 4:18-cv-06810-JST (N.D. Cal. June 3, 2026).[1] Reconsideration is warranted because Respondent's asylum denial rested solely on application of the CLP rule. The CLP's rule subsequent vacatur eliminates the legal basis for that determination and renders the prior decision legally unsupportable.

I. FACTS AND PROCEDURAL HISTORY

Respondent is a [age]-year-old [nationality] who was previously granted withholding of removal. *See* I.J. at [##].

Respondent entered the United States on or about [date] and was subsequently placed in removal proceedings [if accurate: following a positive credible fear determination/other procedural posture]. Respondent timely filed an application for asylum, withholding of removal, and protection under the Convention Against Torture. *See* Exh. [##].

[1] Available at: https://www.courtlistener.com/docket/8160426/231/east-bay-sanctuary-covenant-v-trump/

Respondent appeared for an individual merits hearing on [date] and testified in support of [his/her/their] applications for relief. In a decision dated [date], the Immigration Judge ("IJ") denied Respondent's application for asylum solely pursuant to the CLP rule. Specifically, the IJ determined that Respondent was subject to the CLP rule's rebuttable presumption of asylum ineligibility because Respondent entered the United States without presenting at a port of entry pursuant to a pre-scheduled CBP One appointment. *See* I.J. at [##]. The IJ further concluded that Respondent had not established exceptionally compelling circumstances sufficient to rebut the presumption and did not qualify for any exception to the rule. *See* I.J. at [##]. Apart from the CLP rule, the IJ identified no basis for denying asylum.

The IJ granted Respondent's application for withholding of removal to [country/countries] after finding that Respondent established that it was more likely than not that [he/she/they] would suffer persecution on account of [protected ground] if removed there. *See* I.J. at [##]. Respondent [waived appeal/did not appeal], and the Department of Homeland Security [waived appeal/did not appeal, *if applicable:* and the withholding grant became final on [date]].

[Insert any additional procedural history relevant to the motion, including but not limited to: DHS efforts to remove Respondent to a third country; release from or return to DHS custody; post-order developments; or other facts bearing on Respondent's eligibility for relief and the equities supporting reconsideration.]

II. BACKGROUND: EAST BAY SANCTUARY COVENANT LITIGATION AND CLP RULE

After almost three years of litigation in *East Bay Sanctuary Covenant v. Trump*, the United States District Court for the Northern District of California vacated the CLP rule, codified at 8 C.F.R. § 1208.33 et seq. *See East Bay Sanctuary Covenant v. Trump*, No. 4:18-cv-06810-JST

(N.D. Cal. June 3, 2026). In July 2023, the district court vacated and enjoined the CLP rule, holding that it was contrary to law. *East Bay Sanctuary Covenant v. Biden*, 683 F.Supp.3d 1025, 1053-54 (N.D. Cal., July 25, 2023), vacated and remanded by *East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545 (9th Cir. 2025). The court concluded that the CLP rule unlawfully presumes asylum ineligibility based on manner of entry, despite Congress's express intent that manner of entry does not categorically bar asylum eligibility. *Id.* at 1040. The court further found that the Rule impermissibly treats failure to seek protection in a third country as a bar to asylum, even though Congress contemplated such considerations only in limited circumstances involving safe third countries. *Id.* at 1041. CLP exceeded statutory authority under INA § 208 and was therefore invalid, the court held.

In April 2025, the Ninth Circuit Court of Appeals vacated that judgment and remanded the case for further proceedings in light of intervening legal developments on an issue related to organizational standing. *East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545, 547 (9th Cir. 2025). Following remand, on May 7, 2026 the district court addressed the merits and reaffirmed its prior conclusion. The court explained that its decision "did not alter the Court's conclusion that the agency's decision to promulgate [the Rule] was arbitrary and capricious." *East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST, 2026 WL 1256873, at * 9 (N.D. Cal. May 7, 2026). The court therefore affirmed its prior summary judgment order, ordering that "the Rule is hereby vacated and remanded to the agencies."

On June 3, 2026, the court entered final judgment in favor of Plaintiffs and against Defendants and ordered the case closed. *See East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST, DCF No. 231 (N.D. Cal. June 3, 2026). Accordingly, the district court's vacatur of the CLP rule is final.

The vacatur of the CLP rule under the Administrative Procedures Act applies nationwide and renders the rule without legal force. The Administrative Procedure Act directs courts to "hold unlawful and set aside" agency action found to be contrary to law. 5 U.S.C. § 706(2). Vacatur operates on the validity of the agency action itself, not merely its enforcement within a particular jurisdiction (unlike an injunction, which may be limited to particular parties or geographic jurisdictions), and therefore removes the challenged rule from having continuing legal effect. *See Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (per curiam) (defining vacatur as to "annul; to cancel or rescind; … to deprive of force"); *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 50 (D.D.C. 2020) (vacatur "takes the unlawful agency action off the books"); *See* Ronald M. Levin, *Vacatur, Nationwide Injunctions, and the Evolving APA*, 98 Notre Dame L. Rev. 1997, 1999 (2023) (defining vacatur as "a judicial order declaring that the rule shall no longer have legal effect" and explaining that it is "technically distinct" from an injunction because an injunction binds the defendant and is enforceable through contempt, whereas vacatur operates by setting aside the rule itself and binding the agency rather than imposing a duty on a party).

Because the district court entered a final judgment vacating the CLP rule and a vacatur operates to invalidate the rule itself under 5 U.S.C. § 706, the CLP rule no longer has any lawful force or effect.

III. VENUE

Venue is proper where the case last rested. The last action in this case was the [date] Order signed by Judge [Judge's Name] at the [Name] Immigration Court. Tab A. Therefore, venue is proper at the [Name] Immigration Court.

IV. STANDARD FOR RECONSIDERATION

A motion to reconsider is a "request that the [IJ] reexamine its decision in light of additional legal arguments, a change of law, or perhaps an argument or aspect of the case which was overlooked." *Matter of O-S-G-*, 24 I&N Dec. 56, 57 (BIA 2006) (quoting *Matter of Ramos*, 23 I&N Dec. 336, 338 (BIA 2002)). Accordingly, "a respondent can move for reconsideration of a decision … based on an argument that that decision was incorrectly entered." *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991); *id*. at 402 ("When we reconsider a decision, we are in effect placing ourselves back in time and considering the case as though a decision in the case on the record before us had never been entered."); *see also Matter of E.W. Rodriguez*, 25 I&N Dec. 784 (BIA 2012) (granting motion to reconsider after concluding that the argument raised in the original brief was correct). Unlike a motion to reopen, which seeks a new hearing based on new or previously unavailable evidence, a motion to reconsider challenges the correctness of the original decision based on the previous factual record. *Matter of O-S-G*, 24 I&N Dec. at 57-58; *Gonzalez Hernandez v. Garland*, 9 F.4th 278, 285 (5th Cir. 2021).

A motion to reconsider must specify the errors of fact or law in the previous order and shall be supported by pertinent legal authority. INA § 240(c)(6)(C); 8 C.F.R. § 1003.23(b)(2). Reconsideration is therefore appropriate where an intervening change in law undermines the legal basis for the IJ's prior ruling.

V. ARGUMENT

a. Respondent's motion for reconsideration is timely.

Respondent moves this Court to reconsider its prior decision under INA § 240(c)(6) and 8 C.F.R. § 1003.23(b)(2). A motion to reconsider must generally be filed within thirty (30) days of the IJ's final administrative order. INA § 240(c)(6)(B). Here, the IJ entered the final

administrative order on [date], when the IJ ordered [him/her/them] removed to [country/countries] and granted withholding of removal. *See Matter of I-S- & C-S-*, 24 I&N Dec. 432 (BIA 2008) (holding that an order granting withholding of removal must include an explicit order of removal because "in order to withhold removal, there must first be an order of removal that can be withheld").

[If filed within 30 days of the IJ's decision. This motion is timely filed pursuant to 8 C.F.R. § 1003.2(b)(2) because it is being filed within 30 days of the IJ's decision. The vacatur of the CLP rule by the Northern District of California on June 3, 2026, constitutes a material change in law directly affecting Respondent's eligibility for relief and provides a proper basis for reconsideration.]

[If filed more than 30 days after IJ's decision: However, this deadline is subject to equitable tolling where an extraordinary circumstance prevents timely filing and the noncitizen exercises reasonable diligence in pursuing relief. *See Holland v. Florida*, 560 U.S. 631, 649 (2010) (recognizing that equitable tolling applies if the person (1) has been pursuing their rights diligently, and (2) that some extraordinary circumstance stood in their way to prevent timely filing). [Practitioners should also review circuit-specific standards. For example, although the First Circuit has not definitively resolved the issue, it has recognized that every circuit to address the issue had held that equitable tolling applies to motions to reopen. *Bolieiro v. Holder*, 731 F.3d 32, 39 n.7 (1st Cir. 2013). Certain circuits apply additional or more specific tolling frameworks. *See*, e.g., *Mezo v. Holder*, 615 F.3d 616, 620 (6th Cir. 2010) (setting forth 5-part tolling test); *Kuusk v. Holder*, 732 F.3d 302, 307 (4th Cir. 2013) (setting forth a more limited tolling test).] Here, equitable tolling is warranted because the CLP rule constitutes an extraordinary circumstance that prevented Respondent from meaningfully seeking reconsideration. Respondent

could not have reasonably pursued relief until the Northern District of California entered final judgment vacating the CLP rule on June 3, 2026, which constitutes the operative change in law giving rise to eligibility for relief.] *See Lugo-Resendez v. Lynch*, 831 F.3d 337 (5th Cir. 2016) (recognizing that an intervening legal change can constitute an "extraordinary circumstance," as required to equitably toll a deadline); *Shelton v. Purkett*, 563 F.3d 404, 407 (8th Cir.2009) (holding that a change in an applicable circuit precedent would constitute an "extraordinary circumstance" that would serve to equitably toll AEDPA's statute of limitations, if a petitioner had otherwise been diligently pursuing his rights). Accordingly, this motion is filed outside the 30-day statutory filing window, but equitable tolling applies transforming it into a timely motion.

Respondent filed this motion within [##] days of the June 3, 2026 final judgment. The Supreme Court has held that the tolling standard requires "reasonable diligence, not maximum feasible diligence." *Holland*, 560 U.S. at 653. Reasonable diligence is measured by the specific facts in each case. *See e.g., Lugo-Resendez v. Lynch*, 831 F.3d 337, 344-45 (5th Cir. 2016) (citation and quotation marks omitted) (noting that "[c]ourts must consider the individual facts and circumstances of each case in determining whether equitable tolling is appropriate."). Respondent acted with reasonable diligence by [DESCRIBE ACTIONS TAKEN, e.g., promptly seeking legal advice, obtaining records, preparing filings, and pursuing relief without delay]. These actions satisfy the requirement that the noncitizen exercise due diligence throughout the period sought to be tolled, including by acting expeditiously once the legal basis for reconsideration became available.

[If a respondent has previously filed a motion to reconsider, practitioners should consider arguing that the numerical limitation should be equitably tolled. Practitioners should consult controlling circuit precedent and raise the argument where available. *See Garcia Morin v. Bondi*, 152 F.4th

626 (5th Cir. 2025) (holding that the INA's numerical limits on motions to reopen are not subject to equitable tolling).]

b. Reconsideration is warranted based on post-hearing vacatur of the CLP rule.

A motion to reconsider must identify errors of law or fact in the prior decision and is properly granted where there has been a change in controlling law that undermines the basis for the decision. 8 C.F.R. § 1003.23(b)(2). Respondent satisfies this standard because the IJ's denial of asylum rested solely on application of the CLP rule. The CLP rule has now been invalidated by an Article III court, demonstrating that the IJ previously denied Respondent's asylum application based on an unlawful legal framework. Because "that decision was incorrectly entered," Respondent now moves for and merits reconsideration of [his/her/their] asylum application under the correct legal framework. *Matter of Cerna*, 20 I&N Dec. 399, 403 (BIA 1991).

c. In the alternative, Respondent requests sua sponte reconsideration.

The IJ retains authority to reconsider or reopen a case sua sponte at any time. 8 C.F.R. § 1003.23(b)(1). This authority is reserved for exceptional circumstances and is exercised sparingly, including where necessary to serve the interests of justice and correct fundamentally unjust outcomes. This authority is not intended to serve as a general mechanism to circumvent procedural requirements or to relitigate matters absent compelling circumstances. *Matter of J-J-*, 21 I&N Dec. 976, 984 (BIA 1997). The Board has further recognized that extraordinary use of its discretionary authority is appropriate in "unique situations where it would serve the interest of justice," *Matter of X-G-W-*, 22 I&N Dec. 71, 73 (BIA 1998), and constitutes "an extraordinary remedy reserved for truly exceptional situations." *Matter of G-D-*, 22 I&N Dec. 1132, 1134 (BIA 1999).

Here, Respondent was denied asylum solely because of the CLP rule, a rule that was subsequently held unlawful and vacated by the United States District Court for the Northern District of California. As discussed above, the CLP rule's vacatur constitutes a fundamental change in law because it eliminated the legal framework that served as the basis for denying Respondent asylum. *See Matter of G-D-*, 22 I&N Dec. 1132, 1134 (BIA 1999) (fundamental change in law may warrant sua sponte reopening notwithstanding otherwise applicable time and number limitations on motions). The CLP rule's vacatur qualifies as exceptional circumstance warranting reconsideration because the prior legal impediment that previously prevented Respondent from obtaining asylum has been deemed unlawful and no longer exists.

Changes in law can qualify as exceptional circumstances. The Board has repeatedly exercised sua sponte authority where intervening legal developments created new relief eligibility. *See, e.g.,* Appeal ID 5355062 (BIA July 22, 2024) (reopening and terminating proceedings sua sponte following intervening Supreme Court precedent establishing that respondent's Florida conviction was no longer an aggravated felony); *M-M-M-*, AXXX XXX 940 (BIA Dec. 31, 2020) (reopening sua sponte based on evidence establishing membership in the certified class in *Al Otro Lado v. McAleenan*, 423 F. Supp. 3d 848 (S.D. Cal. 2019)); *G-M-*, AXXX XXX 500 (BIA May 22, 2020) (remanding for consideration of asylum eligibility following injunction against enforcement of the Third Country Transit Rule). Federal circuit courts have also consistently recognized that an intervening change in law may constitute an exceptional circumstance warranting reconsideration. *See United States v. Flores*, 995 F.3d 214, 226 (D.C. Cir. 2021) (recognizing that "an intervening change in the law can constitute an exceptional circumstance" justifying consideration of an issue not previously raised); *Salazar ex rel. Salazar v. District of Columbia*, 602 F.3d 431, 437 (D.C. Cir. 2010) (identifying an

"intervening change in the law" as an exceptional circumstance permitting appellate review of an issue raised for the first time on appeal); *United States v. Vazquez–Rivera*, 407 F.3d 476, 487 (1st Cir. 2005) (holding that an intervening change in law is an exceptional circumstance permitting supplemental briefing on an issue not raised in an opening brief); *Jones v. United States*, 178 F.3d 790, 796 (6th Cir. 1999) (recognizing that relitigation of a previously decided issue may be warranted in "highly exceptional circumstances, such as an intervening change in the law"). These decisions reflect a consistent principle: where intervening legal authority demonstrates that a respondent was denied relief under an invalid legal framework, reconsideration serves the interests of justice and faithful administration of the immigration laws. *See Matter of Yadav*, 29 I&N Dec. 438, 439 (BIA 2026) (recognizing that the immigration adjudicatory system's administrative role "is to faithfully apply the laws and regulations"). Accordingly, sua sponte reconsideration is warranted because the vacatur of the CLP rule presents a truly exceptional circumstance and reconsideration serves the interests of justice.

d. This Court should grant asylum on the existing record.

The IJ denied Respondent's asylum application solely because Respondent was deemed subject to the now-vacated CLP rule. The IJ did not deny asylum based on any adverse credibility determination, failure to establish a protected ground, lack of a well-founded fear of persecution, or the exercise of discretion.

Because the vacatur of the CLP rule eliminates the sole legal basis for denying asylum, the Court should grant Respondent's asylum application based on the existing record and prior factual findings, subject only to completion of any required processing or background checks. There is no need for additional factfinding or further evidentiary proceedings where the relevant facts have already been established and the only obstacle to relief was a legal rule that has since

been invalidated. *See Francois v. Garland*, 120 F.4th 459 (5th Cir. 2024) (holding that the agency improperly sought additional factfinding where the IJ had already made the factual findings necessary to resolve the claim and that “[n]o further factfinding was needed”).

VI. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Court grant the motion to reconsider, set aside the prior order denying asylum, and grant Respondent’s application for asylum in light of the vacatur of the Circumvention of Lawful Pathways Rule in *East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST (N.D. Cal. June 3, 2026).

Dated: [Month ##], 2026

Respectfully submitted,

[Signed]

[Attorney Name, EOIR ID #]
[Firm/Organization]
[Address, Phone, Email]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
[NAME] IMMIGRATION COURT
[CITY, STATE]

In the Matter of:	)	
	)	
[Respondent's Name]	)	**File No.** A**[###-###-###]**
	)	
In removal proceedings	)	
	)	

INDEX OF EXHIBITS

Tab	**Description**	**Pages**
A	Copy of Immigration Judge Order dated [date] (to identify the prior decision and the basis for Respondent's request for reconsideration)	
B	Declaration of Respondent [Name] (addressing diligence for equitable tolling purposes, if applicable)	
C	*East Bay Sanctuary Covenant v. Trump,* 4:18-cv-06810-JST (N.D. Cal. June 3, 2026) (establishing the intervening change in law and vacatur of the CLP rule)	
D	Appeal ID 5355062 (BIA July 22, 2024) (reopens and terminates proceedings sua sponte in light of intervening Supreme Court decision rendering conviction for unlawful sexual activity with certain minors under Fla. Stat. 794.05 no longer an aggravated felony) [attach the decision, which is available here: https://www.scribd.com/document/902634763/Appeal-ID-5355062-BIA-July-22-2024?secret_password=ghVyNxNkwsDWZUf0RZNC	
E	*M-M-M-*, AXXX XXX 940 (BIA Dec. 31, 2020) (reopens proceedings sua sponte in light of evidence demonstrating respondent's membership in class certified in *Al Otro Lado v. McAleenan,* 423 F. Supp. 3d. 848 (S.D. Cal. 2019), consisting of "all non-Mexican noncitizens who were denied access to the U.S. asylum process before July 16, 2019 as a result of the Government's metering policy") [attach the decision, which is available here: https://www.scribd.com/document/491811925/M-M-M-AXXX-XXX-9	

Tab	**Description**	**Pages**
	40-BIA-Dec-31-2020?secret_password=42BiemOjGfWh2JLzVrvy	
F	*G-M-*, AXXX XXX 500 (BIA May 22, 2020) (remands for IJ to consider respondent's eligibility for asylum in light of injunction entered by *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848 (S.D. Cal. 2019), prohibiting enforcement of Third Country Transit Rule against non-Mexicans who arrived at southern border seeking asylum before July 16, 2019, but were denied entry and prevented from making an asylum claim under the metering policy) [attach the decision, which is available here: https://www.scribd.com/document/466555744/G-M-AXXX-XXX-500-BIA-May-22-2020?secret_password=kTYZH4B3EysRDlzw9rq3	

PROOF OF SERVICE

This document was electronically filed through ECAS and both parties are participating in ECAS. Therefore, no separate service was completed.

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[Phone]

TEMPLATE MOTION #2: BOARD OF IMMIGRATION APPEALS

[This template is intended for use where Respondent's appeal is currently pending before the BIA. This template is not intended for cases in which the BIA has already dismissed the appeal or issued a final decision. Always confirm the current jurisdictional posture of the case before filing.

NOTE: This template provides two options: (1) a request for the BIA to grant asylum based on the existing record and the IJ's prior factual findings, or, in the alternative, to grant asylum and remand solely for the limited purpose of completing any required background or security checks; or (2) a request for the BIA to remand to the IJ for to adjudicate Respondent's asylum application based on the existing record and prior factual findings, with instructions to grant of asylum if Respondent is otherwise eligible. Practitioners should select the option that best fits the procedural posture of the case and the desired outcome keeping in mind that a BIA denial of asylum on the existing record will make the case ripe for a petition for review.]

[Attorney Name, EOIR ID #]
[Firm/Organization]
[Address, Phone, Email]

[DETAINED/NON-DETAINED]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)	
	)	
[Respondent's Name]	)	**File No. A[###-###-###]**
	)	
In removal proceedings	)	

RESPONDENT'S MOTION TO REMAND

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)	
[Respondent's Name]	)	**File No.** **A[###-###-###]**
In removal proceedings	)	

RESPONDENT'S MOTION TO REMAND

Respondent, [NAME], respectfully moves the Board of Immigration Appeals ("BIA") to remand these proceedings to the Immigration Judge ("IJ") for reconsideration of Respondent's asylum application in light of an intervening change in law: the nationwide vacatur of the Circumvention of Lawful Pathways ("CLP") rule in *East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST (N.D. Cal. June 3, 2026).

The IJ denied Respondent's asylum application solely based on application of the CLP rule. Because that rule has now been vacated and is no longer legally valid, Respondent's asylum application should be considered under the correct legal framework based on the existing record and the IJ's prior factual findings.

I. FACTS AND PROCEDURAL HISTORY

Respondent is a [age]-year-old [nationality] who was granted withholding of removal on [date]. *See* I.J. at [##].

Respondent entered the United States on or about [date] and was subsequently placed in removal proceedings [if accurate: following a positive credible fear determination/other procedural posture]. Respondent timely filed an application for asylum, withholding of removal, and protection under the Convention Against Torture. *See* Exh. [##].

Respondent appeared for an individual merits hearing on [date] and testified in support of [his/her/their] applications for relief. In a decision dated [date], the IJ denied Respondent's application for asylum solely pursuant to the CLP rule. Specifically, the IJ determined that Respondent was subject to the CLP rule's rebuttable presumption of asylum ineligibility because Respondent entered the United States without presenting at a port of entry pursuant to a pre-scheduled CBP One appointment. *See* I.J. at [##]. The IJ further concluded that Respondent had not established exceptionally compelling circumstances sufficient to rebut the presumption and did not qualify for any exception to the rule. *See* I.J. at [##]. Apart from the CLP rule, the IJ identified no basis for denying asylum.

The IJ granted Respondent's application for withholding of removal to [country/countries] after finding that Respondent established that it was more likely than not that [he/she/they] would suffer persecution on account of [protected ground] if removed there. *See* I.J. at [##]. On [date], [DHS appealed the IJ's decision/Respondent appealed the IJ's decision] to the Board, and the case is currently pending before the Board.

II. BACKGROUND: EAST BAY SANCTUARY COVENANT LITIGATION AND CLP RULE

After almost three years of litigation in *East Bay Sanctuary Covenant v. Trump*, the United States District Court for the Northern District of California vacated the CLP rule, codified at 8 C.F.R. § 1208.33 et seq. *See East Bay Sanctuary Covenant v. Trump*, No. 4:18-cv-06810-JST (N.D. Cal. June 3, 2026). In July 2023, the district court vacated and enjoined the CLP rule, holding that it was contrary to law. *East Bay Sanctuary Covenant v. Biden*, 683 F.Supp.3d 1025, 1053-54 (N.D. Cal., July 25, 2023), vacated and remanded by *East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545 (9th Cir. 2025). The court concluded that the CLP rule unlawfully presumes asylum ineligibility based on manner of entry, despite Congress's express intent that

manner of entry does not categorically bar asylum eligibility. *Id.* at 1040. The court further found that the Rule impermissibly treats failure to seek protection in a third country as a bar to asylum, even though Congress contemplated such considerations only in limited circumstances involving safe third countries. *Id.* at 1041. CLP exceeded statutory authority under INA § 208 and was therefore invalid, the court held.

In April 2025, the Ninth Circuit Court of Appeals vacated that judgment and remanded the case for further proceedings in light of intervening legal developments on an issue related to organizational standing. *East Bay Sanctuary Covenant v. Trump*, 134 F.4th 545, 547 (9th Cir. 2025). Following remand, on May 7, 2026 the district court addressed the merits and reaffirmed its prior conclusion. The court explained that its decision "did not alter the Court's conclusion that the agency's decision to promulgate [the Rule] was arbitrary and capricious." *East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST, 2026 WL 1256873, at * 9 (N.D. Cal. May 7, 2026). The court therefore affirmed its prior summary judgment order, ordering that "the Rule is hereby vacated and remanded to the agencies."

On June 3, 2026, the court entered final judgment in favor of Plaintiffs and against Defendants and ordered the case closed. *See East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST, DCF No. 231 (N.D. Cal. June 3, 2026). Accordingly, the district court's vacatur of the CLP rule is final.

The vacatur of the CLP rule under the Administrative Procedures Act applies nationwide and renders the rule without legal force. The Administrative Procedure Act directs courts to "hold unlawful and set aside" agency action found to be contrary to law. 5 U.S.C. § 706(2). Vacatur operates on the validity of the agency action itself, not merely its enforcement within a particular jurisdiction (unlike an injunction, which may be limited to particular parties or

geographic jurisdictions), and therefore removes the challenged rule from having continuing legal effect. *See Action on Smoking & Health v. C.A.B.*, 713 F.2d 795, 797 (D.C. Cir. 1983) (per curiam) (defining vacatur as to "annul; to cancel or rescind; … to deprive of force"); *Kiakombua v. Wolf*, 498 F. Supp. 3d 1, 50 (D.D.C. 2020) (vacatur "takes the unlawful agency action off the books"); *See* Ronald M. Levin, *Vacatur, Nationwide Injunctions, and the Evolving APA*, 98 Notre Dame L. Rev. 1997, 1999 (2023) (defining vacatur as "a judicial order declaring that the rule shall no longer have legal effect" and explaining that it is "technically distinct" from an injunction because an injunction binds the defendant and is enforceable through contempt, whereas vacatur operates by setting aside the rule itself and binding the agency rather than imposing a duty on a party).

Because the district court entered a final judgment vacating the CLP rule and a vacatur operates to invalidate the rule itself under 5 U.S.C. § 706, the CLP rule no longer has any lawful force or effect.

III. LEGAL STANDARD

A motion to remand is subject to the same substantive requirements as motions to reopen. *See Matter of Coelho*, 20 I&N Dec. 464, 471 (BIA 1992). The substantive requirements for motions to reopen found at 8 CFR § 1003.2(c)(1) require that the motion: state whether the underlying removal order is the subject of any judicial proceedings; state the new facts that will be proven at a hearing to be held if the motion is granted and shall be supported by affidavits or other evidentiary material; and be accompanied by the appropriate application for relief and all supporting documentation, if pursuing an application for relief. Reopening is not granted unless the IJ finds that the evidence offered is material and was not available and could not have been discovered or presented at an earlier stage of the proceedings. *Id*. Additionally, a motion to

reopen based on an application for relief will not be granted where the respondent's opportunity to apply for such relief was fully explained and previously available, unless the relief is sought based on circumstances arising subsequent to that stage of proceedings. *Id.*

IV. ARGUMENT

Respondent's motion to remand is based on material, intervening developments in controlling law that arose after the conclusion of proceedings and directly undermine the legal basis of the IJ's asylum denial. Respondent satisfies 8 C.F.R. § 1003.23(b)(3) because the vacatur of the CLP rule constitutes a material development that was not available and could not have been presented during the prior proceedings. The CLP rule was the sole basis for the IJ's denial of asylum. That rule has since been vacated by an Article III court in *East Bay Sanctuary Covenant v. Trump*, 4:18-cv-06810-JST (N.D. Cal. June 3, 2026), and is no longer valid law.

Respondent's asylum application and all supporting evidence were previously submitted and fully litigated before the IJ and remain part of the administrative record. Exh. [##]. The IJ's denial of asylum rested solely on application of the CLP rule, not on any adverse credibility finding, failure to establish a protected claim, or other independent basis for denying protection. Indeed, the IJ granted withholding of removal, confirming that Respondent established eligibility for protection based on the facts presented. Because the legal framework underlying the denial of asylum has been invalidated, the appropriate remedy is to apply the correct legal standard to the existing record and the IJ's prior factual findings, rather than require additional factfinding or revisit settled factual issues. *See Francois v. Garland*, 120 F.4th 459 (5th Cir. 2024) (holding that the agency improperly sought additional factfinding where the IJ had already made the factual findings necessary to resolve the claim and that "[n]o further factfinding was needed"). [Option 1 – Request for BIA to grant asylum: Accordingly, Respondent respectfully requests that the Board

grant Respondent's asylum application. In the alternative, if any required background or security checks remain outstanding, Respondent requests that the Board grant asylum and remand the matter solely for the limited purpose of completing those checks before issuance of the final grant of relief. *See* 8 C.F.R. § 1003.1(d)(6)(ii); *Matter of L-S-C-R-*, 29 I&N Dec. 451 (BIA 2026).] [Option 2 – Request for BIA to remand to IJ for grant of asylum: Accordingly, Respondent respectfully requests that the Board remand the matter to the Immigration Court for consideration of Respondent's asylum application under the correct legal framework, with instructions that the IJ rely on the existing record and the factual findings already, and grant asylum if Respondent is otherwise eligible and any remaining requirements for relief, including any required background or security checks, are complete.]

V. CONCLUSION

[Option 1 – Request for BIA to grant asylum: For the foregoing reasons, Respondent respectfully requests that the Board grant this Motion to Remand, apply the correct legal framework in light of the vacatur of the CLP rule in *East Bay Sanctuary Covenant v. Trump*, No. 4:18-cv-06810-JST (N.D. Cal. June 3, 2026), and grant Respondent's asylum application based on the existing factual record and the Immigration Judge's prior factual findings. In the alternative, if any required background or security checks remain outstanding, Respondent requests that the Board grant asylum and remand the matter solely for the limited purpose of completing those checks before issuance of the final grant of relief.]

[Option 2 – Request for BIA to remand to IJ for grant of asylum: For the foregoing reasons, Respondent respectfully requests that the Board grant this Motion to Remand and return the matter to the Immigration Court for consideration of Respondent's asylum application under the correct legal framework in light of the vacatur of the CLP rule in *East Bay Sanctuary*

Covenant v. Trump, No. 4:18-cv-06810-JST (N.D. Cal. June 3, 2026). Respondent further requests that the Board remand with instructions that the Immigration Judge rely on the existing record and the factual findings already made, and grant asylum if Respondent is otherwise eligible on that basis, subject only to completion of any required background or security checks.]

Dated: [Month ##], 2026

Respectfully submitted,

[Signed]

[Attorney Name, EOIR ID #]
[Firm/Organization]
[Address, Phone, Email]

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS

In the Matter of:	)		
[Respondent's Name]	)	**File No.**	**A[###-###-###]**
In removal proceedings	)		

INDEX OF EXHIBITS

Tab	**Description**	**Pages**
A	Copy of Immigration Judge Order dated [date]	
B	*East Bay Sanctuary Covenant v. Trump,* 4:18-cv-06810-JST (N.D. Cal. June 3, 2026) (establishing the intervening change in law and vacatur of the CLP rule)	

[Respondent’s Name]
[A###-###-###]

PROOF OF SERVICE

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