RESPONDING TO DHS MOTIONS TO RECALENDAR

ADMINISTRATIVELY CLOSED PROCEEDINGS

By Kate Mahoney and Merle Kahn

I. Introduction: Why is DHS moving to recalendar all these cases?

Since May 12, 2025, the Department of Homeland Security, ICE Office of the Principal Legal Advisor (OPLA or DHS) has filed motions to recalendar thousands of administratively closed cases in immigration courts throughout the country.[1] Many of the cases that OPLA is targeting have been administratively closed for years or even decades. So, what is administrative closure, what is recalendaring, and how can you best protect yourself and your clients when DHS files a motion to recalendar?

Administrative closure is the temporary suspension of a case before the Immigration Judge (IJ) or the Board of Immigration Appeals (BIA).[2] While a case is administratively closed, it is removed from the court's active docket, no hearings take place, and the adjudicator does not make any substantive decisions on the merits unless and until one party files a motion to recalendar and the adjudicator grants it. Administrative closure has long been a part of EOIR's docket management system, and DHS has often agreed to administrative closure in particular cases as an exercise of prosecutorial discretion.

Both Trump administrations have been hostile to the practice of administrative closure.[3] Although administrative closure is now codified in the regulations at 8 CFR §§ 1003.18(c) (immigration court) and 1003.1(l) (BIA)[4], in April 2025, EOIR published a policy memorandum criticizing the Administrative Closure Final Rule and the practice generally.[5] The memorandum nevertheless acknowledges that the regulations are "binding on EOIR adjudicators" and

[1] AILA, *Practice Alert: OPLA to Begin Filing Motions to Reopen Administratively Closed Cases* (May 12, 2025), AILA Doc. No. 25051201.
[2] 8 CFR §§ 1003.18(c), 1003.1(l). *See also Matter of Avetisyan*, 25 I&N Dec. 688, 692 (BIA 2012).
[3] Under the first Trump administration, former Attorney General Sessions issued a precedent decision banning the practice in most cases. *See Matter of Castro-Tum*, 27 I&N Dec. 271 (A.G. 2018) (prohibiting adjudicators from administratively closing proceedings unless specifically allowed by regulation), *vacated, Matter of Cruz-Valdez*, 28 I&N Dec. 326 (A.G. 2021).
[4] *See* EOIR, *Efficient Case and Docket Management in Immigration Proceedings*, 89 Fed. Reg. 46742 (May 29, 2024) ("Administrative Closure Final Rule").
[5] EOIR OPPM 25-29, *Cancellation of Director's Memorandum 22-03* (Apr. 18, 2025), https://www.justice.gov/eoir/media/1397161/dl?inline.

instructs that "adjudicators should continue to adhere to [them] unless they have a legal basis for not doing so."[6]

DHS's recent practice of moving to recalendar cases is raising questions about how attorneys and accredited representatives can respond to these motions and protect their clients' interests, particularly in cases that have been closed for many years. This practice advisory explores those questions and offers strategy considerations when determining how to proceed in each case.

II. What is the law governing recalendaring proceedings?

The regulations at 8 CFR §§ 1003.18(c) and 1003.1(l) govern recalendaring. A case may only be recalendared on the motion of one or both of the parties. Neither the BIA nor the immigration court may recalendar a case on its own initiative.[7] The adjudicator *must* recalendar a case where the parties file a joint motion to recalendar or where the nonmoving party "affirmatively indicates" a nonopposition, unless they articulate "unusual, clearly identified, and supported reasons" for denying the motion.[8]

If one party opposes recalendaring or does not "affirmatively indicate" a nonopposition, the immigration court or the BIA must consider the following factors in determining whether to grant the motion to recalendar the case:

- The reason recalendaring is sought;
- The basis for any opposition to recalendaring;
- The length of time elapsed since the case was administratively closed;
- If the case was closed to allow the noncitizen to file a petition or application outside of the proceedings, then the adjudicator must consider:
    - Whether the petition or application was actually filed; and
    - The length of time the noncitizen waited to file the petition after administrative closure;
- The result of the adjudication (approval or denial) of the petition or application;
- If the petition or application is still pending, the likelihood of success;
- The anticipated outcome of removal proceedings if the case is recalendared; and
- The ICE detention status of the noncitizen.[9]

No single factor is dispositive and the Immigration Judge or the BIA should consider all relevant factors when deciding whether to recalendar. In other words, this analysis uses a totality of the circumstances test, which means traditional discretionary factors, including positive and negative equities, may also be relevant.[10] The regulation is clear that the

[6] *Id.* at 7-8.
[7] 8 CFR §§ 1003.1(l)(2), 1003.18(c)(2).
[8] *Id.*
[9] 8 CFR §§ 1003.1(l)(3)(ii), 1003.18(c)(3)(ii).
[10] 8 CFR §§ 1003.1(l)(3), 1003.18(c)(3); *Matter of B-N-K-*, 29 I&N Dec. 96, 98 (BIA 2025); *Matter of Avetisyan*, 25 I&N Dec. 688, 696 (2012).

adjudicator "shall" apply this factor-based analysis: agency-wide policy considerations may not override the case-by-case, factor-based analysis required by the regulation.

In a recent decision, the BIA held that the most important factor is "whether there are persuasive reasons for a case to proceed and be resolved on the merits," noting the "important public interest in the finality of immigration proceedings …."[11] The BIA explained that "although administrative closure may be appropriate to await an action or event that is relevant to immigration proceedings but is outside the control of the parties or the court, … the basis for granting administrative closure must be related to achieving some foreseeable resolution to the ongoing proceedings within a reasonably short period of time."[12] In *Matter of B-N-K-*, the respondent opposed recalendaring her case where she had an application for TPS pending. The BIA stated that it considered the totality of the circumstances and found that administrative closure was not warranted because the removal proceedings could continue without any adverse effect on the pending application for TPS, and vice versa. Additionally, because the respondent was detained, the BIA found it even more important to recalendar the case.[13]

B-N-K- is inconsistent with the "totality of the circumstances" analysis required by the new regulation; in fact, the Administrative Closure Final Rule specifically rejected proposals to weigh any factor more heavily than the others.[14] Moreover, there is no basis for the BIA's proclamation that administrative closure is only appropriate for "reasonably short period[s] of time."[15] In fact, *Matter of Avetisyan* states that administrative closure is appropriate to await actions that "*may not occur for a significant or undetermined period of time*," and that continuances may be more appropriate for a delay of "reasonably certain and brief amount of time."[16] Arguments against the application of *B-N-K-* to the present motions to reconsider are discussed further in **Section V**.

III. What steps should practitioners take in anticipation of recalendaring?

A. Determine which cases you are responsible for

Whether you work in a nonprofit organization, a private law firm, or as a solo practitioner, chances are that you or your office has current or former clients whose EOIR cases are administratively closed. Particularly in cases where many years have passed, you can take steps now to prepare for a possible motion to recalendar, even if you have not yet been served with one.

- Identify all administratively closed cases in which you are the attorney of record. In addition to checking your own eRegistry case list, you can request a case list from the

[11] *B-N-K-*, 29 I&N Dec at 99-100, *citing with approval Matter of W-Y-U*, 27 I&N Dec. 17, 19 (BIA 2017).
[12] *B-N-K-*, 29 I&N Dec. at 99 (quoting *Avetisyan*, 25 I&N Dec. at 692).
[13] *B-N-K-* 29 I&N Dec. at 101-102.
[14] 89 Fed. Reg. at 46753 ("The Department ultimately believes that EOIR adjudicators are in the best position to determine when administrative closure is appropriate under the totality of the circumstances, and weighting certain factors differently would unnecessarily reduce adjudicators' discretion.").
[15] *Id.* at 99.
[16] *Avetisyan*, 25 I&N Dec. 691 (emphasis added).

EOIR court administrator. Confirm that all of these cases remain administratively closed. If the Form EOIR-28 lists the address of a former employer, contact the employer in writing to inform them of the need to file a motion to substitute if one has not already been filed.

- Also try to identify any administratively closed cases that other attorneys may have worked on while employed at your office, even if they no longer work there. Even though EOIR will still consider the prior attorney to be the attorney of record for court purposes, if the retainer agreement was signed on behalf of your office, then your office also may also have an obligation to the client. Contact any attorneys who may be on file in these cases, and ask that they promptly forward you any notices or motions they receive.
- Attempt to contact the client and ensure you have a reliable way to get in touch with them. Remember that all respondents have an obligation to notify the court of any change of address within five days.[17] The attorney of record has a duty to notify the court of any known change in their client's address.[18] If you cannot reach your client by phone or other electronic means, consider sending a written letter to their last known address asking them to contact you immediately.
- If you get in touch with the client, assess their current situation and screen for new relief. Begin gathering any documents that may support a response to a motion to recalendar if one is filed. A more thorough discussion of screening for new relief is at **Section IV** below.
- If your client pays for your legal representation, review your representation agreement with them and discuss any additional fees that may be necessary if a motion to recalendar is filed.

Taking these steps *before* you receive a motion to recalendar will help you file an effective and timely response if such a motion is filed in the future.

PRACTICE TIP: When reviewing administratively closed case files, the attorney should note the original basis for administrative closure and the status of that application or other circumstance. Practitioners report that DHS's motions to recalendar are often template motions that assume the basis for administrative closure was to await a collateral application at USCIS; if this ground was not the basis for administrative closure in a particular case, noting as much may help strengthen any opposition.

Example: Attorney Felipe reviews his EOIR account and successfully contacts all of his clients whose cases have been administratively closed. Felipe reviews the case file for one client, Ying, and determines that her case was administratively closed 10 years ago to allow USCIS to adjudicate her petition for U nonimmigrant status. Felipe confirms that Ying's U visa has been provisionally approved, and she has been granted deferred action while she awaits formal approval. Felipe updates his case notes to reflect the status of the U visa, and he re-screens Ying for additional relief.

[17] 8 CFR § 1003.15(d)(2).
[18] *See* Imm. Ct. Prac. Man. (ICPM) Ch. 2.1(b)(6)(B).

Example: Attorney Shoshana is still attorney of record on several cases that were opened while she worked at Firm A, even though she has since left that firm and now works for Nonprofit B. Because she is the attorney of record with EOIR, she has a duty of representation to the clients in these cases, unless and until another attorney at Nonprofit B substitutes in, or until EOIR grants a motion to withdraw by Shoshana. Shoshana should be in contact with both Firm A and her clients to put a plan in place.

NOTE: Deactivated EOIR account. An attorney who has registered with EOIR and has an EOIR identification number may contact customer support at ecas.techsupport@usdoj.gov or call 877-388-3842 for help to regain access to their account.

B. What if I have changed employers?

EOIR considers the attorney of record to be the individual attorney who signed the Form EOIR-28 on file in that case. This is true even if the attorney-client retainer agreement was with a firm or nonprofit. Thus, if an attorney has changed jobs and they did not file a new Form EOIR-28 with their updated information, all correspondence should be sent to the attorney at the old address, although practitioners report that EOIR sometimes sends notices to their new addresses, even if they have not filed an updated EOIR-28. In this situation, if the attorney and client want the attorney to keep the case, the attorney must submit a new Form EOIR-28 with their current address. If the client decides to stay with the former firm or nonprofit, then the new attorney at that firm must file a motion to substitute counsel. Unless and until the court grants a motion to substitute counsel or withdraw from representation, the attorney named in the EOIR-28 is responsible for the case.

C. Who has to respond to a motion to recalendar?

The attorney of record (the person who signed the Form EOIR-28—unless they signed as the nonprimary attorney) has the duty to respond to the motion to recalendar—even if they left the firm or the agency or are no longer practicing law.[19] Only individual practitioners, not law firms or nonprofits, may enter an appearance before the immigration court. Even if the office sent the client a closing letter and closed the case, the attorney who filed the EOIR-28 is still the attorney of record unless and until the immigration judge grants withdrawal.

PRACTICE TIP: Limited appearances. Practitioners who file a Form EOIR-61 (limited appearance form) are *not* the attorney of record. They are not required to appear on behalf of the respondent in immigration court and are not required to file a motion to withdraw from representation or file a motion to substitute counsel once the scope of their assistance is completed.[20] If an attorney filed an EOIR-61 in a case in the past to provide limited-scope assistance, EOIR should not consider them the attorney of record and they should not be noticed on subsequent motions.

[19] "Once a practitioner has made an appearance, that practitioner has an obligation to continue representation until such time as a motion to withdraw or substitute counsel has been granted by the immigration court." ICPM 2.1(b)(2).
[20] 8 CFR § 1003.17(b)(2); ICPM 2.1(c).

1. When can an attorney withdraw from representing a client?

Attorneys may not withdraw from representation simply because they no longer want to represent the client or because it is inconvenient to do so. Rather, the rules of professional conduct detail circumstances in which an attorney *may* withdraw from representing a client and times when an attorney *must* withdraw from representing a client. An attorney *must* withdraw from representation when the client no longer wants to be represented by the attorney; where the attorney cannot competently represent the client due to a health issue; or where continued representation will result in criminal or ethical violations.[21]

Otherwise, an attorney *may* withdraw from representing a client when:[22]

- Withdrawal can be accomplished without a material adverse effect on the interests of the client;
- The client persists in a course of action involving the attorney's services that the attorney believes is criminal or fraudulent;
- The client has used the attorney's services to perpetrate a crime or fraud;
- The client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
- The client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled. (In other words if the client is not getting the attorney the necessary documentation, is not responding to phone calls or emails, or is not paying the attorney under the fee agreement);
- The representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or,
- Other good cause exists to withdraw.[23]

To withdraw from representation in a case before EOIR, an attorney or fully accredited representative must file a written or oral motion to withdraw.[24] The motion to withdraw must include the following information:

- Whether the motion to withdraw is for all proceedings, custody and bond proceedings only, or proceedings other than custody and bond proceedings;
- The reason(s) for withdrawal in conformance with applicable state bar or ethical rules;
- A statement that the attorney has notified the client of the request to withdraw as counsel, or if the client could not be notified, an explanation of the efforts made to notify the client of the request;

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[21] ABA Model Rule 1.16(a). Note that attorneys are ethically bound by the rules of professional conduct in place in the state(s) in which they are barred and/or practice. All jurisdictions have adopted parts or all of the ABA Model Rules, nonetheless there are difference between jurisdictions. *See,* ABA, *Alphabetical List of Jurisdictions Adopting Model Rules,* https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/alpha_list_state_adopting_model_rules/.
Attorneys must familiarize themselves with the applicable rules, which may differ from the ABA Model Rules.

[22] ABA Model Rule 1.16(b).

[23] ABA Model Rule 1.16(b).

[24] 8 CFR § 1003.17(a(3); ICPM 2.1(b)(3)(C).

- Evidence of the client's consent to withdraw or a statement of evidence of why evidence the attorney could not obtain the client's consent; and,
- Evidence that the attorney notified or attempted to notify the client of important information in the case, including any pending deadlines; the date, time, and place of the next hearing; the necessity of meeting deadlines and appearing in court; and the consequences of failing to meet deadlines or appear at scheduled hearings.

The Immigration Judge must also consider the time remaining before the next hearing and the reason or reasons given for the withdrawal. Until the motion to withdraw is granted, the attorney must attend all scheduled hearings.[25]

> **Example**. In 2015 Attorney Amanda worked at law firm and was assigned to represent Elizabeta in removal proceedings. Amanda filed a Form EOIR-28 for all representation in proceedings. In 2016, the immigration judge administratively closed proceedings to allow Elizabeta to apply for an I-601A application for waiver of unlawful presence. Elizabeta's I-601A was granted but Amanda has lost contact with Elizabeta. Her phone number no longer works, and all mail has been returned to the office. Amanda was recently served with a DHS motion to recalendar Elizabeta's case. If Amanda cannot get in touch with Elizabeta, she must file a motion to withdraw containing all necessary information and send a copy of the motion to Elizabeta's last known address. Until the motion to withdraw is granted, Amanda must continue to represent Elizabeta, including attending any hearings and taking steps to mitigate harm to Elizabeta.[26]

2. How can an attorney file for substitution of counsel?

Many attorneys move between firms and between nonprofits and may no longer be the appropriate person to handle a case, particularly if the client signed a representation contract with the firm or nonprofit organization, and not with the particular attorney. To substitute counsel, the *new practitioner* must file a written motion or make an oral motion before the immigration court for substitution of counsel and must file a Form EOIR-28. The prior attorney remains the attorney of record until the Immigration Judge grants the motion to withdraw or the motion to substitute counsel.[27] The motion for substitution of counsel must contain the following information:

- The scope of the substitution (i.e. all proceedings, custody and bond proceedings only, or merits only);
- The reasons for the substitution of counsel in conformance with applicable state bar and ethical rules;
- Evidence that the prior practitioner has been notified of the substitution; and
- Evidence of the respondent's consent to the substitution.

The court will only consider arguments of new counsel after a motion to substitute counsel has been filed and granted by the immigration judge. In the context of a motion for recalendaring, this means that the court will generally not consider an opposition or other response to the motion until the substitution is approved. In some jurisdictions, IJs and court staff will accept a

[25] ICPM 2.1(b)(3)(C).
[26] *See* ABA Model Rule 1.2(a).
[27] ICPM 2.1(b)(3)(D).

motion to substitute concurrently with a substantive filing, but elsewhere the court may not accept any other filing from the attorney until the IJ has ruled on the substitution. If the latter is the practice in your jurisdiction, your motion to substitute should request that the IJ grant the substitution in time for you to timely file a response to the pending motion to recalendar. Or your motion to substitute may request that the IJ hold the motion to recalendar in abeyance until your substitution is approved, and that the IJ extend the response time or accept any motion for late filing if you are not able to respond by the default deadline. See **Section V.A** for more information on motions to extend response time.

> **Example.** Now imagine that in 2019, Attorney Amanda left her law firm and, after consulting with her clients and the firm, did not take any clients with her. Attorney Kalpana was assigned Amanda's old cases, but she never filed EOIR-28s for these cases. If DHS moves to recalendar proceedings, Kalpana must file the Motion for Substitution of Counsel along with a new Form EOIR-28 and must serve the Motion for Substitution and the EOIR-28 on DHS counsel. Kalpana does not need to file the Motion to Substitute Counsel in writing and can make an oral motion at the hearing. But Amanda is still responsible for the case until the Immigration Judge rules on the motion.

IV. Re-screening for relief

Before responding to the motion to recalendar, it is important to reassess the noncitizen's case and screen for any new relief that may not have been on the table when the case was administratively closed. A full explainer on these forms of relief is beyond the scope of this advisory but below are brief descriptions of possible options. The footnotes contain links to additional resources with more information.

Eligible for humanitarian relief before USCIS [28]: If the noncitizen has been the victim of a crime or trafficking, they may now be eligible for U or T Nonimmigrant status. If you have not been in contact with the noncitizen, they may have already applied for such status with the assistance of another legal provider.

Eligible for VAWA protection[29]: If the noncitizen has experienced battery or extreme cruelty at the hands of certain U.S. citizen or LPR relatives, they may be eligible for VAWA relief as a self-petitioner before USCIS. If the noncitizen is not eligible for VAWA relief, for example because more than two years have passed since their marriage to their abuser ended, they may be eligible to seek VAWA cancellation of removal in immigration court.

Eligibility for Non-LPR Cancellation of Removal[30]: Certain non-LPRs may qualify for cancellation of removal if they have been present in the U.S. for at least 10 years, subject to the stop-time rule; have been a person of good moral character for the past 10 years; and have a U.S. citizen or LPR parent, spouse, or child who would suffer extreme and

[28] 3 USCIS-PM C (Victims of Crimes); 3 USCIS-PM B (Victims of Trafficking); *see also* CAST, *Advisory: Overview of the 2024 T Visa Final Rule* (May 2024), https://niwaplibrary.wcl.american.edu/wp-content/uploads/CAST-Overview-of-the-2024-T-Visa-Final-Rule-1.pdf.
[29] ILRC & NIP-NLG, *VAWA Cancellation of Removal* (Mar. 2023); ILRC, *VAWA Self-Petition Policy Updates* (Jun. 2022).
[30] See ILRC, *Non-LPR Cancellation of Removal* (Jun. 2018).

exceptionally unusual hardship upon their removal.[31] Many cases were administratively closed before the Supreme Court's decisions in *Pereira v. Sessions*, 585 U.S. 198 (2018) and *Niz-Chavez v. Garland*, 593 U.S. 155 (2021). These cases held that a Notice to Appear (NTA) that lacks the time, date, and place of removal proceedings does not trigger the "stop time" rule for purposes of cancellation of removal.[32] Some individuals who had not yet accrued the requisite 10 years when their removal proceedings started may now meet this requirement, if their NTA lacked the time, date, and place of hearing. In addition, a person may be newly eligible for non-LPR cancellation of removal if, since administrative closure, a qualifying family member (including a U.S. citizen or LPR new spouse or child, or pre-existing family members who recently gained LPR status or naturalized) has a new medical or other condition that would constitute exceptional and extremely unusual hardship.

LPR Cancellation of Removal[33]: Certain removable Lawful Permanent Residents may qualify for cancellation of removal under INA §240A(a) if they have not been convicted of an aggravated felony, have been an LPR for at least five years, and have accrued seven years of continuous residence in the United States.[34] Even if you determined that the noncitizen did not qualify for cancellation of removal before, they may be eligible now. For example, over the past 10 years, some circuit courts have held that certain convictions that previously qualified as "aggravated felonies" no longer meet that definition.[35] Thus, an LPR who previously stood convicted of an aggravated felony may now be eligible for relief if the law has changed in that circuit. Check to see if your client received or now qualifies for post-conviction relief. A proper grant of post-conviction relief can result in your client now qualifying for LPR cancellation of removal or can result in a termination of proceedings in their entirety.[36]

Other Family-Based Options[37]: Other than cancellation of removal, the noncitizen may now be eligible for family-based adjustment of status or consular processing if they have married a U.S. citizen or lawful permanent resident; if a U.S. citizen child has turned 21; or if a visa is now available for an old preference-category petition whose priority date was backlogged at the time of administrative closure. If the noncitizen has Deferred Action for Childhood Arrivals (DACA) or has ever been in Temporary Protected Status (TPS), confirm whether they ever traveled with advance parole or TPS travel authorization; if so, they may now qualify for adjustment of status with their newly obtained parole entry or admission.

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[31] *See* INA § 240A(b)(1).
[32] *See* INA § 240A(b)(1)(A).
[33] ILRC, *Eligibility for Relief: Cancellation of Removal for Lawful Permanent Residents, INA § 240A(a)* (Dec. 2020).
[34] *See* INA § 240A(a).
[35] *See, e.g.*, *Borden v. United States*, 593 U.S. 420, 427, 429 (2021) (holding that reckless conduct, defined as "a substantial and unjustifiable risk" in "gross deviation" from accepted standards, is not a crime of violence); *U.S. v. Gomez Gomez*, 23 F.4th 575 (5th Cir. 2022) (following *Borden*, finding that Tex. Pen. Code § 22.01(a)(1) (aggravated assault) is not an aggravated felony crime of violence); *Sessions v. Dimaya*, 584 U.S. 148 (2018) (striking down 18 USC § 16(b) definition of crime of violence and finding that a California conviction for first-degree burglary was not an aggravated felony crime of violence); *Genego v. Barr*, 922 F.3d 499 (2d Cir. 2019) (following *Dimaya*, finding that Conn. Gen. Stat. § 53a-103 (third-degree burglary) is not an aggravated felony crime of violence after the invalidation of 18 USC § 16(b)).
[36] ILRC, *Overview of Post-Conviction Relief for Immigrants* (July 2022).
[37] ILRC, *Family-Based Adjustment of Status Options* (Oct. 2024); ILRC, *Everything You Always Wanted to Know About 245(i) But Were Afraid to Ask* (Apr. 2023).

Even if the noncitizen has not been paroled or admitted to the U.S., they may be eligible for adjustment of status under INA § 245(i) if they are a beneficiary of a visa petition filed on or before April 30, 2001. Individuals who are eligible for 245(i) adjustment are exempt from § 245(a)'s requirement of an admission or parole, and they are also not subject to the bars to adjustment at INA § 245(c). Some people who were not eligible to adjust when their case was administratively closed 10+ years ago may now be eligible under 245(i) if their preference-category petition is now current.

Finally, even if the person is not eligible to adjust status, a new family relationship to a U.S. citizen or LPR may allow them to consular process to become an LPR. Depending on the noncitizen's immigration history, they may need a provisional waiver of unlawful presence (Form I-601A), which may create a new justification for administration closure or even termination of removal proceedings (see **Subsection V.C**).[38]

Asylum[39]: Whether or not the noncitizen previously filed for asylum, new circumstances in their country of origin or personal life may now offer a new basis for asylum eligibility. Major political changes, war, and increased violence in a person's home country may have raised new fears of return since the case was administratively closed. Likewise, major changes in one's personal life, such as religious conversion or publicly acknowledging one's LGBTQIA+ identity, may place the noncitizen at greater risk of harm than when they were first placed in removal proceedings.

If the noncitizen did not apply for asylum before the case was administratively closed but is eligible for asylum now, they will need to qualify for an exception to the one-year filing deadline.[40] Changed circumstances, whether personal or in the country of origin, may give rise to an exception to the filing deadline, although the noncitizen must generally show that they are now applying for asylum within a "reasonable period" following the change in circumstances.[41]

Temporary Protected Status: Under the Biden administration, DHS designated several new countries for TPS and re-designated several other countries, broadening eligibility for those countries.[42] In addition, the TPS regulations provide for "initial late registration," which may allow someone to register for TPS now even if they missed the initial registration period.

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[38] The provisional waiver of unlawful presence waives inadmissibility under INA § 212(a)(9)(B), which is triggered when a noncitizen accrues more than 180 days or more than one year and then departs the United States (inadmissibility for three or ten years, respectively). Note, however, that a noncitizen does not accrue unlawful presence while an asylum application is pending, as long as they do not work without authorization during that period. *See* INA § 212(a)(9)(B)(iii)(II); AFM 40.9.2(b)(2). Accordingly, some noncitizens who have been in administratively closed proceedings for many years with a pending asylum application may not be inadmissible due to unlawful presence if they now wish to consular process.

[39] ILRC, *Asylum Screening Tool* (June 2025).

[40] INA § 208(a)(2)(B); 8 CFR § 1208.4(a)(2). Note that DHS or the court may take the position that a new claim raised today constitutes a new application, even if an I-589 was previously filed, and therefore must satisfy an exception to the one-year filing deadline. *See Matter of M-A-F-*, 26 I&N Dec. 651 (BIA 2015).

[41] INA § 208(a)(2)(D); 8 CFR § 1208.4(a)(4).

[42] *See* USCIS, *Temporary Protected Status* (last updated May 21, 2025), https://www.uscis.gov/humanitarian/temporary-protected-status. For example, Yemen has been designated for TPS since 2015, but it was re-designated in 2024, meaning Yemeni citizens who have lived in the U.S. since at least July 2, 2024 may now be newly eligible for TPS.

The TPS landscape is currently in flux as the Trump administration has announced TPS terminations for several countries in recent months and will likely continue to do so. Many of these terminations are the subject of litigation and the future of TPS remains uncertain. It is important to identify if a client may be newly eligible for TPS, and ensure you have the most current information on that designation before applying.

Who has jurisdiction? In addition to screening for new relief, the attorney must also determine which agency has or will have jurisdiction to adjudicate the application. Some forms of relief, such as cancellation of removal, may only be granted by EOIR, while others, such as U or T nonimmigrant status, may only be granted by USCIS. Still others, such as some applications for adjustment of status, may be granted by either agency depending on the applicant's status in removal proceedings. In these cases, you and your client must decide whether to pursue relief in recalendared court proceedings or try to terminate proceedings to apply with USCIS, if it is safe to do so.

Has your client already applied? Finally, it is also important to assess whether the client has applied for or received any immigration benefit without your office's help. USCIS can adjudicate many applications without ever interacting with the immigration court or removal defense counsel, such as I-130s, U and T visas, TPS, and VAWA. Particularly if many years have passed without regular communication with the client, it is important to ask whether they have worked with another lawyer or representative in the intervening years to help determine if they may have filed for or received an immigration benefit.

> **Example**: Recall that Attorney Felipe's client, Ying, had her case administratively closed 10 years ago based on a petition for U nonimmigrant status. She is now on the U visa waitlist and has deferred action. Ying also tells Felipe that her 10-year-old daughter has been diagnosed with cancer and is being treated at a local children's hospital. Felipe reviews Ying's case and sees that Ying's NTA lacks the date and time of the hearing, and therefore her time has not "stopped" for purposes of cancellation of removal. Upon further screening he determines that Ying is statutorily eligible for non-LPR cancellation of removal. Felipe should advise Ying of this new form of relief, as well as the status of her U visa petition, so that Ying can decide how to respond to the motion to recalendar.

V. How should I respond to a motion to recalendar?

As discussed above, whether to agree or oppose recalendaring is a question the client must answer, with the consultation and advice of counsel.[43] In some situations, however, it may be difficult or impossible to consult with a client before the deadline to respond to DHS's motion to recalendar. This section explores possible responses to a motion to recalendar and identifies special considerations for each.

A. File a motion to extend response time

The Immigration Court Practice Manual sets a default response time of 10 days after the motion is filed with the immigration court[44], but the regulations allow the immigration judge to

[43] ABA Model Rule 1.2(a).
[44] ICPM Ch. 3.1(b)(1).

"set and extend time limits for the making and replying to of motions and replies thereto."[45] Practitioners report that DHS is serving many of its motions to recalendar by paper mail, leaving attorneys just days to respond within the 10-day deadline.

In some cases, it may be advisable to file a "Motion to Extend Response Time," asking the court for additional time to respond given the gravity of the motion and the long passage of time since the case was last active.[46] Some potential arguments that might support an extension of time, depending on the case, include:

- The motion did not comply with filing requirements under the regulations and/or ICPM, such as attempting to "meet and confer" prior to filing the motion; properly serving the motion[47] and attaching adequate proof of service; and including a properly styled cover page.[48]
- DHS's decision to serve the motion by paper mail, coupled with any of the deficiencies above, left counsel with insufficient time to respond on the merits of the motion.
- Errors in the body of DHS's motion reflect an inaccurate procedural history of the case, requiring additional time for counsel to review the file to correct the record.
- Given the long period of administrative closure, an extension of time to respond will not prejudice DHS.

Practitioners also report that some immigration courts have rejected DHS motions to recalendar that violate these provisions of the ICPM. If you receive a deficient motion, you might first contact the immigration judge's legal assistant and ask whether the motion will be rejected before filing any response.

If you are seeking an extension of time to respond, it may be helpful to suggest an alternative timeline to the court. Unless DHS's motion has identified a specific urgency to recalendaring (beyond a generic interest in expeditious processing in all cases), you may argue that since the case has been administratively closed for many years, there is no prejudice to the government in allowing limited additional time to respond. Keep in mind, however, that the deadline to respond remains unless and until the immigration judge grants your motion to extend.

B. File a notice of non-opposition (or do nothing)

For some noncitizens, returning to active removal proceedings may be helpful. If your client is now eligible for relief from removal that is only available in immigration court, such as cancellation of removal, then recalendaring proceedings will allow them to pursue that relief. Or, if your client is eligible for relief that can be sought before either EOIR or USCIS, there may be strategic benefits to proceeding in court: the case might be assigned to a friendly immigration judge, and/or the immigration judge might be able to adjudicate relief more quickly than USCIS would.

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[45] 8 CFR § 1003.23(a).
[46] ICPM Ch. 3.1(c)(4).
[47] 8 CFR § 1003.32(c). For example, some practitioners have reported that the proof of service is dated several days earlier than the postmark date on the envelope.
[48] *See* ICPM Ch. 3.3.

EXAMPLE: After discussing options, Attorney Felipe and client Ying (see above examples) decide that Ying will pursue non-LPR cancellation in immigration court, while also waiting for USCIS to adjudicate her U visa petition. Attorney Felipe does not need to respond to DHS's motion to recalendar, although the court may grant the motion more quickly if he files a notice of nonopposition. In the meantime, Attorney Felipe and Ying should begin gathering evidence to file her application as soon as possible.

C. Request termination of proceedings

In other cases, termination of removal proceedings may be possible under new regulations promulgated in 2024.[49] In order to terminate proceedings, however, the case must first be recalendared. Where termination of proceedings is the best outcome for the noncitizen, the attorney will not oppose recalendaring and will ask the court, either in response to the motion to recalendaring or in a subsequent motion, to terminate proceedings.[50]

WARNING: Before moving for termination of proceedings, it is always important to assess and discuss risk with your client, in particular the risk that your client could be exposed to more acute enforcement action if taken out of § 240 removal proceedings. Under the expanded framework for expedited removal announced by the Trump administration, ICE may now initiate expedited removal against any noncitizen apprehended anywhere in the United States who:

1. Is "arriving" in the United States at a port of entry *and* is determined to be inadmissible under INA § 212(a)(6)(C) (fraud or misrepresentation) or (a)(7) (lack of valid entry documents); or
2. Has not been admitted or paroled and cannot prove, to the satisfaction of an immigration officer, that they have been present in the United States for the two years prior to the inadmissibility determination (INA § 212(a)(6)(C) or (a)(7)).[51]

A full analysis of the administration's use of expanded expedited removal is beyond the scope of this advisory, but it is nevertheless important to review your client's case and determine if they may be at risk of expedited removal if taken out of § 240 removal proceedings. For more information on the expanded use of Expedited Removal, see NILA, *Everything Expedited Removal* (Feb. 7, 2025), https://immigrationlitigation.org/wp-content/uploads/2025/04/25.02.28-ER-FINALx.pdf.

The Administrative Closure Final Rule also enumerates the circumstances in which EOIR adjudicators may, and in some cases must, terminate removal proceedings.[52] Unlike administrative closure, termination ends removal proceedings completely, and the noncitizen cannot be called back into court unless they are issued a new NTA or other charging document. The regulation sets forth categories of *mandatory* termination, in which the court is required to terminate proceedings except in limited circumstances; and categories of

[49] *See* 8 CFR §§ 1003.18(d), 1003.1(m).
[50] If you plan to include a request to terminate removal proceedings in direct response to the motion to recalendar, be sure to style that request as an independent motion and include a proposed order, as required by ICPM Ch. 5.2(b).
[51] *See* INA §§ 235(b)(1)(A)(i), (iii)(II); DHS, *Designating Aliens for Expedited Removal*, 90 Fed. Reg. 8139 (Jan. 24, 2025).
[52] 8 CFR § 1003.18(d).

discretionary termination, in which the court is permitted to terminate proceedings in the exercise of discretion. A full discussion of the grounds for termination can be found in ILRC, *Seeking Administrative Closure and Termination* (March 2025), available at https://www.ilrc.org/resources/seeking-administrative-closure-and-termination-using-new-eoir-regulations-hostile.

Many cases that were previously administratively closed may now qualify for termination of proceedings, either because the noncitizen has been granted relief, because the basis for administrative closure has now been codified as a basis for termination, or because of other new circumstances that justify termination. For example, in the 2010s, many cases were administratively closed to allow unaccompanied children (UCs) to pursue asylum before USCIS under the Trafficking Victims Protection Reauthorization Act (TVPRA). Those cases may now be eligible for termination of proceedings, even if the asylum application remains pending at USCIS.[53] Similarly, the regulations now permit termination of proceedings to noncitizens who have been granted TPS or deferred action, including DACA recipients and recipients of deferred action based on U and T bona fide determination processes, Deferred Action for Labor Enforcement (DALE), and deferred action for Special Immigrant Juveniles. Even if your client's TPS or deferred action is unlikely to be renewed under the current administration, it may still be worth requesting termination as an alternative to recalendaring removal proceedings, since DHS cannot remove someone who is in one of these statuses.

If termination of proceedings is safe and strategically wise for the noncitizen, then the representative should file a motion to terminate proceedings, either in response to the motion to recalendar or later, after the adjudicator has already recalendared the case (a case cannot be terminated while it is still administratively closed). The motion should identify all mandatory and discretionary grounds for termination that may apply and should be supported by clear documentary evidence showing why the ground applies.

> **Example:** Imagine that instead of choosing to seek non-LPR cancellation of removal, Ying instead wishes to terminate proceedings and simply wait for her U visa, for which she is on the waitlist and has been granted deferred action. After thoroughly advising Ying that termination of proceedings will waive her right to seek non-LPR cancellation, Attorney Felipe should file a motion to terminate based on *both* applicable grounds: (1) her pending petition for U nonimmigrant status, and (2) her deferred action.
>
> **Example:** Martin's court case was administratively closed in 2016 because he was not a priority for removal. Since then, Martin was unfortunately the victim of labor trafficking, and last year he applied for T nonimmigrant status. Martin may now ask for termination of proceedings based on his pending petition for T nonimmigrant status.

[53] *See* 8 CFR § 1003.18(d)(2)(ii)(B). This may be true even if the applicant no longer meets the definition of an unaccompanied child because they are now over 18 or have reunited with a parent or legal guardian in the United States. For more information, see NIP-NLG, *Practice Alert: JOP v. DHS Settlement* (Nov. 25, 2024), https://nipnlg.org/sites/default/files/2024-11/JOP-DHS_Settlement-Agreement-Alert-Nov2024.pdf. *See also* ILRC, *Who Has Jurisdiction Over UC Asylum Claims? Matter of M-A-C-O- and JOP v. DHS* (Apr. 17, 2025), https://www.ilrc.org/resources/who-has-initial-jurisdiction-over-uc-asylum-claims-matter-m-c-o-and-jop-v-dhs.

D. Opposing the motion to recalendar

If it is not in the noncitizen's interest to return to active proceedings or terminate the case, then you must file an opposition to the motion to recalendar. An opposition to recalendaring should remind the immigration judge that recalendaring is subject to the factors set forth at 8 CFR § 1003.18(c)(3)(ii) (see **Section II**) and is up to the discretion of the immigration judge; the judge is not required to recalendar proceedings simply because DHS has requested it, nor is the judge permitted to recalendar proceedings without engaging with all relevant factors under the regulation. An effective opposition must address the recalendaring factors and demonstrate why each relevant factor supports leaving the case administratively closed. This analysis must be supported by as much documentary evidence as possible. Factual assertions in the motion are not themselves evidence, and an immigration judge may disregard these assertions if they are not supported by documentary evidence. A template opposition to recalendaring, created by CLINIC and AILA, is available on CLINIC's website and may be a good starting point for drafting an opposition.[54]

As discussed throughout this advisory, practitioners report that DHS's motions to recalendar may fail to comply with certain procedural and regulatory requirements. These violations include:

- Failing to make a good faith effort to ascertain the position of the nonmoving party before filing[55];
- Failing to properly serve opposing counsel and attach a proof of service that complies with the regulation, for example, the proof of service may be dated several days prior to the post-mark on the envelope[56];
- Failing to sign the motion or proof of service in an acceptable manner[57];
- Lacking a properly styled cover page[58]; and
- Filing motions that erroneously contain names, A numbers, and other case-specific information from other cases.

Practitioners should carefully review the DHS motion to identify any procedural or substantive defects and urge the court to either reject or deny the motion on that basis.

In *Matter of B-N-K-*, the BIA stated that the primary consideration for administrative closure is "whether there are persuasive reasons for a case to proceed and be resolved on the merits."[59] But practitioners should argue that the Administrative Closure Final Rule superseded this principal, instead noting that immigration judges are "in the best position" to determine the

[54] *See* CLINIC, *Template Opposition to Motion to Recalendar Proceedings* (May 21, 2025), https://www.cliniclegal.org/resources/template-opposition-motion-recalendar-proceedings.
[55] ICPM 5.2(i).
[56] 8 CFR § 1003.32(c); ICPM 3.2.
[57] ICPM 3.3(b).
[58] ICPM 3.3(c)(6).
[59] 29 I&N Dec. 86, 100 (BIA 2025).

relative weight of each factor in a given case, and "weighting certain factors differently would unnecessarily reduce adjudicators' discretion."[60]

Many IJs will still find that DHS's desire to resolve the case on the merits is the most important factor. Anecdotally, DHS's motions seem to be based on the same generic "government interest" in resolving the case expeditiously. While the current administration may have a generalized interest in resolving removal cases more quickly, practitioners may argue that this justification lacks the case-specific consideration required by the regulation and case law.[61]

In addition, DHS motions to recalendar are often based on the assertion that the respondent has not been accorded any new, lawful permanent status based on collateral relief filed with USCIS. The status of collateral relief is only relevant to the recalendaring analysis *if* that was the original purpose of administrative closure.[62] However, many cases were administratively closed for reasons other than pending collateral relief; thus, while the regulation does instruct immigration judges to consider whether the original basis for administrative closure has been resolved, the absence of collateral relief is often irrelevant. For example, many cases were administratively closed because of concerns that the respondent lacked competency, or because of a medical condition of the respondent or a family member that made it impractical to proceed. To the extent these conditions are still present, advocates should emphasize that the reason for administrative closure was unrelated to seeking collateral relief and remains a persuasive basis for leaving the case alone for now.

In addition, if there are new grounds for administrative closure that did not exist at the time the case was previously administratively closed, the opposition to recalendaring should raise those grounds and show how the administrative closure factors now justify keeping the case administratively closed. If the court has already recalendared proceedings before the respondent had a chance to argue for continued administrative closure, consider filing a new motion for administrative closure to get all that information and evidence into the record.

> **Example:** Attorney Sonia did not receive a motion to recalendar proceedings until three days before the deadline, and the immigration judge granted recalendaring before she had a chance to respond. Sonia's client, Nicolai, recently filed as a VAWA self-petitioner, though that was not the original basis for administrative closure. Sonia and Nicolai should consider filing a subsequent motion to administratively close proceedings to ensure the record reflects all arguments and evidence in favor of administrative closure.

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[60] 89 Fed. Reg. at 46753 ("Accordingly, to the extent that the Board's holding in [*Matter of W-Y-U-*, 27 I&N Dec. 17 (BIA 2017)] is inconsistent with the unweighted, 'totality-of-the-circumstances' standard implemented by this rule, [*W-Y-U-*] is superseded").

[61] *See* 8 CFR § 1003.18(c)(3) (requiring that the IJ "consider the totality of the circumstances, including as many of the factors … as are relevant to the particular case"); *Avetisyan*, 25 I&N Dec. at 696 ("[E]ach situation must be evaluated under the totality of the circumstances of the particular case.").

[62] 8 CFR § 1003.18(c)(3)(ii)(D) (instructing IJs to consider "If the case was administratively closed to allow the noncitizen to file a petition … outside of proceedings before the immigration judge, whether the noncitizen filed the petition … and, if so, the length of time that elapsed between when the case was administratively closed and when the noncitizen filed the petition ….").

VI. Conclusion

DHS's current campaign to recalendar thousands of cases in a short period of time, without notice to opposing counsel and without any case-specific justification, appears to be part of a calculated effort to overwhelm immigration advocates and instill fear and uncertainty for noncitizens seeking relief from removal. Noncitizens have the right to oppose recalendaring, and their advocates can and should use the regulations, ICPM, and other tools available to us to advocate for fair processing of all cases in immigration court.

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