CIVIL PENALTIES AND FINES

Part II: Defenses Against Civil Penalties and Fees

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I. Overview

This advisory gives advocates statutory and Constitutional arguments to defend their clients against the imposition of civil penalties and fees. For an overview of the Civil Penalties and the process and procedure for issuing and contesting a civil penalty, please see **Part I**. On November 20, 2025, a class action lawsuit was filed against the Interim Final Rule imposing civil penalties in *Maria L. et al. v. Mullin et al.*, No. 1:25-cv-13471 (D. Mass).[1] Thereafter, on August 31, 2026, a class action lawsuit was filed against the H.R. 1 fees implemented in 8 U.S.C. § 1815 in *E.R., et al. v. Mullin, et al*. No. 8:26-cv-03450 (D. MD).[2] On September 30, 2026, the District Court in *Maria L*. issued an order staying the fines under INA § 240B(d) (failure to voluntarily depart the U.S. after a grant of voluntary departure) and INA § 274D (willfully failing to depart the U.S. after being ordered removed) that were issued between June 27, 2025, and October 14, 2026.[3] On October 14, 2026, DHS and DOJ issued their final rule implementing the civil penalties under INA § 240B(d), § 274D, and § 275(b).[4] On November 6, 2026, the plaintiffs in *Maria L*. filed an amended complaint to include a cause of action against the final rule.[5] Links to the litigation are in the footnotes. Advocates should check the current status of these cases before taking action to contest a civil penalty or fee.

WHICH RULES ARE IN EFFECT?

Civil Penalties Issued Before June 27, 2025	Civil Penalties Issued Between June 27, 2025, through October 13, 2026	Civil Penalties Issued on or after October 14, 2026
These penalties are governed by 8 CFR § 280.	These penalties are governed by the Interim Final Rule found at ICE and EOIR, Imposition of Civil Penalties for Certain Immigration-Related Violations, 90 Fed. Reg. 27439 (June 27, 2025).[6]	These penalties are governed by the final rule found at DHS and DOJ, Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 91 Fed. Reg. 65390 (Oct. 14, 2026).
These penalties can be appealed to the BIA.	The penalties under INA § 240B(d) and INA § 274D are stayed under *Maria L. et al v. Mullin*, No. 25-13471-GAO (D. Mass, Sept. 30, 2026). But advocates should oppose ratification by Nov. 16, 2026 see urgent Practice Tip Below.	New! 8 CFR § 281.1(e)(2). A person who files an appeal after the 15-business day period who can prove that the untimely filing resulted from delayed or untimely mail delivery of the immigration officer's decision can file the appeal after the 15-day period. The person must submit a written explanation of the delay and any available documentary evidence demonstrating the mail delay. As of November 2026, these penalties are in effect.

[1] https://storage.courtlistener.com/recap/gov.uscourts.mad.292041/gov.uscourts.mad.292041.1.0.pdf.
[2] https://www.pacermonitor.com/public/case/66548070/R_et_al_v_Mullin_et_al. This case is pending.
[3] *Maria L.*, No. 25-13471-GAO (Sept. 30, 2026), https://www.publicjustice.net/wp-content/uploads/2025/11/113-decision-and-order-granting-stay.pdf.
[4] Imposition and Collection of Civil Penalties for Certain Immigration Violations, 91 Fed. Reg. 65390 (Oct. 14, 2026) to be codified at 8 CFR § 281, 8 CFR § 1003, and 8 CFR § 1280, https://www.federalregister.gov/documents/2026/10/14/2026-21024/imposition-and-collection-of-civil-penalties-for-certain-immigration-related-violations.
[5] https://www.courtlistener.com/docket/71938107/maria-l-v-noem/?page=2.
[6] https://www.federalregister.gov/documents/2025/06/27/2025-11965/imposition-and-collection-of-civil-penalties-for-certain-immigration-related-violations.

URGENT PRACTICE TIP: On October 26, 2026, DHS published a notice in the Federal Register ratifying all the civil penalties issued under the IFR between June 27, 2025, and October 13, 2026.[7] Under the ratification notice, all individuals who were issued a civil penalty between June 27, 2025, and October 13, 2026, must raise a claim that they were prejudiced by the civil penalties issued under the interim rules. On November 6, 2026, the plaintiffs in *Maria L. et al v. Mullin*, filed a First Amended and Supplemental Class Action Complaint for Vacatur, Declaratory Relief, and Injunctive Relief challenging the ratification notice. Nonetheless, best practice is to challenge the penalty issued between June 27, 2025, and October 16, 2026, under the ratification notice even though the penalty has been stayed.

Pursuant to the ratification notice, an affected individual must do the following to challenge the penalty:

- **File a claim by email** at IFRCivilFinesReview@ice.dhs.gov.
- **The Subject Line** must include the individual's full name, date of birth, and alien registration number.
- **The Body of the Email** must include the individual's current address, current phone number, the penalty tracking number for the civil penalty, and the invoice number.
- ICE *will not* review claims that fail to include all required information.
- **November 16, 2026, Filing Deadline.** The individual must file this claim on or before November 16, 2026.

PRACTICE TIP: The stay against the civil penalties assessed under the IFR does not extend to the civil penalties issued after the publication of the final rule. The stay is *only* for those civil penalties assessed between June 27, 2025, and October 13, 2026. The stay is limited to civil penalties assessed under INA § 240B(d) (failure to depart the United States voluntarily after getting a voluntary departure order) and under INA § 274d (willfully failing to depart the United States after being ordered removed). However, with DHS's ratification of the IFR, best practice is to oppose the ratification as outlined in the Urgent Practice Tip above. The stay also does not apply to the H.R. 1 fees under 8 U.S.C. § 1814 (failure to leave the United States after being ordered removed in absentia) and 8 U.S.C. § 1815 (being apprehended in the United States between the ports of entry after entering the United States without inspection).

DHS reports that as of July 23, 2026, it had issued more than 103,000 fines totaling over $84 billion.[8] DHS and DOJ further report in the final rule that from June 27, 2025, through September 14, 2026, ICE has issued approximately 110,000 civil penalties for failure to depart and CBP has issued an additional 66,000 civil penalties for unlawful entry. DHS is issuing nearly 2,800 civil penalties per week.[9]

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[7] DHS, Ratification of Civil Penalties, 91 Fed. Reg. 67325 (Oct. 26, 2026), https://www.federalregister.gov/documents/2026/10/26/2026-21751/ratification-of-civil-penalties.
[8] DHS, *DHS Announces More Than $84 Billion in Civil Fines Issued to Illegal Aliens* (July 23, 2026), https://www.dhs.gov/news/2026/07/23/dhs-announces-more-84-billion-civil-fines-issued-illegal-aliens.
[9] 91 Fed. Reg. at 65395.

DHS has posted that if a noncitizen leaves the United States using the CBP Home App, DHS will forgive the civil penalties issued under INA § 240B(d) (voluntarily failing to depart the United States after being granted voluntary departure) and INA § 274D (willfully failing to leave the United States after being ordered removed). DHS has clarified that anyone who does not have a criminal record is eligible to use the CBP Home App.[10] However, the IFR cautions that if a person leaves the United States using the CBP Home App and then seeks to return to the United States, DHS may reimpose the civil penalty.[11]

ICE has issued guidance that instructs that individuals with approved (or, in some cases, tentatively approved) applications for VAWA, T visas, U visas, and people who are survivors of human trafficking should not be issued a civil penalty.[12]

There are several statutory and Constitutional arguments that we can make to defend our clients against the imposition of these civil penalties and fees. These arguments include: (1) the individual's conduct is not subject to civil penalties under the statute; (2) the civil penalty violates the Fifth, Eighth, and Seventh Amendments to the United States Constitution; (3) the civil penalty or fee is impermissibly retroactive; (4) the civil penalty is barred by the statute of limitations; and (5) the civil penalty violates the Administrative Procedure Act. This advisory will also address legal arguments that juveniles can make that civil penalties should not be assessed against them. Because DHS has extended the power to issue civil penalties to all immigration officers, including ICE officers, asylum officers, and aircraft pilots, we expect to see many penalties and fees issued by mistake. The first line of defense is to determine whether the penalties or fees apply and to determine how to contest the penalties and fees. See **Part I** of this advisory for the process.

PRACTICE TIP: U.S. Customs and Border Protection (CBP) has announced that they will be attempting to collect these civil penalties and fees from individuals who have left the United States. They have awarded contracts to four companies to collect immigration fines from people who have been deported from the United States. However, CBP has not figured out how to get individuals in foreign countries to pay the penalties and fees without a U.S. bank account.[13] As of November 2026, CBP is limiting this program to three countries: Mexico, Honduras, and Guatemala.[14] The contractors are instructed to go to the person's home and to prove that they delivered the notice of fine to the correct person by sending a selfie of the person with a number that identifies the debt.[15] It is not clear if people who have left the United States using the CBP Home App will be targeted. The IFR published on June 27, 2025, states

[10] DHS, *CBP Home: Assistance to Voluntarily Self-Deport*, https://www.dhs.gov/cbphome (last visited Oct. 23, 2026).
[11] 90 Fed. Reg. at 27451.
[12] 91 Fed. Reg. at 65399.
[13] Michael Writson, and Em Knepp, Project Salt Box, *CBP Formally Hires Contractors to Collect Fines from People it has Deported* (Aug. 17, 2026), https://www.projectsaltbox.com/p/cbp-formally-hires-contractors-to?utm_source=substack&utm_medium=email.
[14] Michael Writson, and Em Knepp, Project Salt Box, *CBP's $9 Million Plan to Collect Fines from Deported People has no Way for Them to Pay* (Aug. 11, 2026), https://www.projectsaltbox.com/p/cbps-9-million-plan-to-collect-fines.
[15] *Id.*

that all people who leave the United States using the CBP Home App will have the civil penalties rescinded.[16]

Being familiar with these defenses is critical even for those clients who have left the United States.

II. Statutory Arguments—The Individual's Conduct Does Not Trigger the Civil Penalties or Fees

When faced with a civil penalty or fee, step one is to review the statute to see if the statutory penalty or fee even applies and to contest it before DHS and, thereafter, in District Court, if it does not.

PRACTICE TIP: DHS has the burden of proof in penalty and fee proceedings. In all hearings, the agency that is the proponent of a rule or order has the burden of proof unless it is otherwise provided by statute.[17] As the statute does not shift the burden of proof to the noncitizen, DHS has the burden to establish that the civil penalty or fine applies to the individual. The Board of Immigration Appeals (BIA) has clarified that DHS has the burden of proof by a preponderance of the evidence.[18]

A. Violation of 240B(d) (*failure to voluntarily depart after being granted voluntary departure*)

Where a person is granted voluntary departure, there is a rebuttable presumption that the civil penalty for failure to depart after being granted voluntary departure is set at $3000.[19] The failure to depart must be "voluntary."[20] The voluntary exception is limited to situations where a person, through no fault of their own, is unaware of the voluntary departure order, or is physically unable to leave the United States. This exception *does not* include hardship to the person or close family members.[21]

> **Example #1**. Feng was granted an order of voluntary departure. The week before he was scheduled to leave, he was in a terrible car accident and was in the hospital and then in a rehabilitation facility for three months. Feng received a Notice of Fine in the mail informing him that he was being fined $3000. Feng can argue that his failure to leave was not voluntary and that the fine should be rescinded.
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> Note: Had Feng's wife been in a car accident and had Feng been responsible for their three-month-old child and been unable to leave the United States due to the exceptional circumstances of his family, this exception would not apply.

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[16] 90 Fed. Reg at 27442.
[17] 5 U.S.C. § 556(d).
[18] *Matter of R-P-L-*, 29 I&N Dec. 859 (BIA 2026) (dismissing the appeal of a civil penalty issued April 25, 2025, for a noncitizen who had been granted voluntary departure and was fined $3000 for failure to depart).
[19] 8 CFR § 1240.26(l).
[20] INA § 240B(d)(1).
[21] *Matter of Zmijewska*, 24 I&N Dec. 87, 93–94 (BIA 2007).

When an individual does not leave the United States after being granted voluntary departure, or if they file a motion to reopen, motion to reconsider, or a petition for review, their voluntary departure order automatically becomes a deportation order.[22] Practitioners have reported that DHS has been fining people who failed to leave the United States after a grant of voluntary departure, with the fine for being in the United States after being ordered removed. In other words, instead of a fine for $3000, the government is issuing a fine for over $1.8 million. Practitioners are reporting that they have been successfully challenging these fines, arguing that the noncitizen did not get notice of the fine associated with a removal order. See **Section III.A** for due process and notice arguments.

Other defenses are available to these individuals, including arguing that if they held another status, there was no failure to depart voluntarily. If the individual did, in fact, depart and later reentered the United States, this penalty should not apply. If the person filed a motion to reopen or reconsider, or if they filed a petition for review, there is no voluntary departure order. Finally, the federal statute of limitations is five years.[23] If the voluntary departure order—the date the person was supposed to leave the United States - is outside of that five-year period, the statute of limitations applies. See **Section V** for statute of limitations arguments.

NOTE: Exceptions to voluntarily failing to depart after getting a voluntary departure order (INA § 240B(d)(1)).

VAWA. A VAWA self-petitioner who failed to leave the United States after getting an order of voluntary departure is not subject to this civil penalty if extreme cruelty or battery was at least one central reason for their failure to depart after getting a voluntary departure order.[24] See section II. B. below for other times that DHS announced that they will not issue a civil penalty.

B. Violation of INA § 274D (N*oncitizens fined for willfully failing or refusing to leave the United States or a noncitizen conspiring to prevent another person's removal from the United States after being ordered removed*)

A noncitizen is only subject to a civil penalty for failure to leave the United States after being ordered removed if their failure to leave was "willful" or if they conspired or took any action to prevent a noncitizen from leaving the United States after being ordered removed.[25] To meet the "willfulness" requirement, the government has to prove that the person *knew* that their failure to leave the United States was unlawful.[26] There is no willful failure to depart the United States until the government identifies a country that is willing to receive the person.[27] Practitioners are reporting that the highest penalty being issued (prior to any costs assessed

[22] 8 CFR §§ 1240.26(c) and (d); *see also* NIJC, *Voluntary Departure Quick-Start Guide* (Oct. 20, 2025) https://immigrantjustice.org/wp-content/uploads/2025/10/NIJC-VD-Quick-Start-Guide_Oct2025.pdf.
[23] 28 U.S.C. § 2462.
[24] INA § 240B(d)(2).
[25] INA § 274D(a)(1).
[26] *See Bryan v. United States,* 524 U.S. 184, 191–92 (1998); *United States v. Xiang Wang*, No. 13-CR-20133-JAR, 2014 WL 6472857, at *2 (D. Kan. Nov. 18, 2014).
[27] *Heikkinen v. United States*, 355 U.S. 273, 276 (1958).

by the collector) is $1,820,362. The penalty being capped at $1,820,362 is likely due to the statute of limitations. See **Section V**.

> **Example #2**. Larissa was ordered removed. After being ordered removed, she was granted Temporary Protected Status as a Ukrainian citizen. If Larissa is issued a civil penalty, there is a strong argument that there was no willful failure to depart the United States, as Larissa was in lawful status.

There may be other reasons why the failure to depart was not willful. For example, the person may have been ill or incapacitated and unable to leave. Or, as in the above example, they may have been granted some form of status such as DACA, Deferred Action, or a nonimmigrant visa such as a U or a T visa. Or they may have been granted withholding of removal or protection under the Convention Against Torture. Perhaps they have an adjustment application pending, or they have filed a motion to reopen removal proceedings. It is important for advocates to examine the underlying reasons that the person failed to leave after being ordered deported and see if the failure to leave was, in fact, willful. The individual might also be able to argue that the penalty is outside of the statute of limitations. See **Section V**.

Noncitizens who conspire or take any action to prevent or hamper another noncitizen's departure after the other person has been removed can also be subject to civil penalties. As it is unclear how they would be notified about the potential for civil penalties under the current statutes, advocates can argue that the civil penalty should be struck for a lack of notice. Alternatively, the government might be unable to prove a civil conspiracy.[28]

Practice Tip: The final rule issued on October 14, 2026, clarified that the following groups of people will not be issued fines for voluntarily failing to depart after getting a voluntary departure order or for willfully failing to depart after getting a removal order:

- Deferred Action (including DACA and SIJS)
- Temporary Protected Status
- Approved U Visas and, in some cases, filed U visas
- Approved T visas and, in some cases, filed T visas
- Stay of Removal by EOIR, DHS, or a Federal Court
- CAT Protection
- Withholding of Removal
- Automatic Stay pending a Motion to Reopen
- Stay of Removal under Order of Supervision
- Proof of efforts by the individual to seek travel documents
- Cases where a Petition for Review is pending before the Circuit Court[29]

[28] *Mizokami Bros. of Arizona v. Mobay Chem. Corp.*, 660 F.2d 712, 718 (8th Cir. 1981) (A civil conspiracy is when two or more persons work together to commit an unlawful act, or to commit a lawful act by unlawful means. The principal elements of the offense are (1) an agreement between the parties to inflict a wrong against or injury upon another, and (2) an overt act that results in damage).
[29] 91 Fed. Reg. at 65394 - 65402.

C. Violation of INA § 275(B) (*An individual apprehended while entering or attempting to enter the United States without inspection*)

This penalty *only* applies to people who were apprehended while entering the United States outside of a port of entry or while attempting to enter the United States outside of a port of entry. It *does not* apply to people who entered the United States without inspection and were not caught at the time that they attempted to enter the United States.

> **Example #3**. Graciela is issued a Notice of Fine at the asylum office by the asylum officer. The notice states that she is being fined $500 for entering the United States without going through a port of entry. Her advocate will argue that the fine is invalid under INA § 275(b) because Graciela was not apprehended between the ports of entry while entering the United States.

Individuals can argue that they did not enter without inspection; perhaps they were waved through and made a *Quilantan* entry.[30] Perhaps they were apprehended *after* they entered the United States, not at the time of their entry. Perhaps they can argue they were fined in the interior of the country, not at the port of entry. And, finally, they can argue that it has been more than five years since their entry, so the statute of limitations applies.

D. 8 U.S.C. § 1814 (*Fee for individual ordered removed in absentia*)

An individual is subject to this fee if they were ordered removed in absentia and are subsequently arrested by ICE.[31] The fee does not apply to any person who was ordered removed in absentia if EOIR later rescinded the order under INA § 240(b)(5)(C).[32] By statute, the fee is $5000 to be adjusted annually for inflation, or any amount set by DHS by rule. Half of the fee collected shall be given to ICE and shall be deposited into the Detention and Removal Office Fee Account, and half shall go to the U.S. Department of the Treasury. ICE can keep and spend the fees collected without further appropriation.[33] Nothing in the statute says that this fee is retroactive. See **Section IV** for retroactivity arguments.

On May 20, 2026, DHS issued a notice of proposed rulemaking (NPRM) increasing this fee to $18,000.[34] DHS has stated that this fee is not retroactive and does not apply to individuals who

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[30] Any entry that is "procedurally regular" is a lawful entry and admission. *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010); *Matter of Arguellin*, 17 I&N Dec. 208 (BIA 1980). See ILRC, *How to Interview Clients About their Entries and Attempted Entries to the United States (And Understand Their Answers)* (Dec. 2018), https://www.ilrc.org/sites/default/files/resources/how_intvw_clnts_attmpted_entries-20181218.pdf.

[31] 8 U.S.C. § 1814 and § 1815 are fees set by Congress and are not penalties.

[32] 8 U.S.C. § 1814(c).

[33] 8 U.S.C. § 1814(d).

[34] Increasing the Fee for Certain Aliens Ordered Removed in Absentia as Established by the HR-1 Reconciliation Bill, 91 FR 29380 (May 20, 2026), (to be codified at 8 CFR § 103); https://www.federalregister.gov/documents/2026/05/20/2026-10082/increasing-the-fee-for-certain-aliens-ordered-removed-in-absentia-as-established-by-the-hr-1. *See also* ILRC, *Comment in Opposition to "Increasing the Fee for Certain [Individuals] Ordered Removed in Absentia as Established by the HR-1 Reconciliation Bill*)—ICEB-2026-

have been arrested or removed in absentia prior to the enactment of HR1.[35] But advocates should go further and argue that this fee does not apply to anyone who was ordered removed in absentia before July 4, 2025, as this fee did not exist before July 4, 2025, and it is impermissibly retroactive. As of November 2026, this fee increase is *not* in effect. For additional arguments against this fee, see ILRC, *Comments in Opposition*, cited at **Footnote 34**.

> **Example #4**. On August 17, 2023, Irma was ordered removed in absentia. On September 4, 2026, Irma is fined $5000 under 8 U.S.C. § 1814. Irma is also fined an additional $1,050,894 for willfully failing to leave the United States after being ordered removed (a fine of $998/day for 1053 days is $1,050,894). When her advocate reviewed Irma's immigration file that she got through a Freedom of Information Act (FOIA) Request, they discovered that the Notice of Hearing went to 1234 Main Ave. in Saratoga, California, rather than to 1234 Main Drive in Saratoga, California. Irma is still living at 1234 Main Drive in Saratoga and has never left that address. The Notice of Hearing was returned to the Immigration Court, and Irma was ordered removed in absentia. Irma can argue that the civil penalty should be rescinded because she never received notice of the hearing and DHS is unable to prove that her failure to leave the United States was willful. Irma can also argue that the $5000 fee should not apply because 18 U.S.C. § 1814 is not retroactive and this fee was not enacted until July 4, 2025—nearly 2 years after Irma was ordered removed in absentia. Irma should also file a motion to reopen the removal proceeding so that the in absentia fee may be rescinded under 8 U.S.C. § 1814(c) if the Immigration Judge reopens proceedings.

E. 8 U.S.C. § 1815 (*Inadmissible noncitizen apprehension fee*)

Any individual who is inadmissible at the time they are apprehended between the ports of entry shall be fined $5000 adjusted for inflation.[36] DHS can raise this fee by regulation. This fee is in addition to any other fees that may be imposed.[37] Like 8 U.S.C. § 1814, half of the fee collected goes to ICE and shall be deposited into the Detention and Removal Office Fee Account, and half shall go to the U.S. Department of the Treasury.[38] Nothing in the statute says that it is retroactive. See **Section IV** for retroactivity arguments.

To impose this fee, DHS must prove (1) the individual was apprehended between the ports of entry; (2) the penalty was imposed "at the time" the individual was apprehended between the ports of entry; and (3) the individual was inadmissible at the time of apprehension between the ports of entry.

Advocates should argue under the plain language of the statute that this fee only applies to individuals who are apprehended between the ports of entry *at the time* that they are apprehended.

0034; RIN 1653-AA09 (June 22, 2026), https://www.ilrc.org/sites/default/files/2026-06/Fee%20Increase%20for%20In%20Absentia%20Removals%20ILRC%20Comment%20FINAL.pdf.

[35] In Absentia Removal Fee 91 FR at 29384 n. 47.

[36] As of November 2026, the fee is $5130.

[37] 8 U.S.C. §§ 1815 (a) and (b).

[38] 8 U.S.C. §§ 1815(c) and (d).

Example #5. In 2006, Avi entered the United States without inspection. Avi has been living in Wisconsin since she entered the United States. In August 2026, DHS served Avi with a Notice of Fine $5130 for having been inadmissible and entering between the port of entry. Avi's advocate can argue that (1) the statute is not retroactive and should not apply to her; (2) the fine is only for people who were apprehended at the time of entry; and (3) Avi is not between the ports of entry—she is in Wisconsin, which does not share a border with any foreign countries.[39]

III. Constitutional Arguments

A. Fifth Amendment arguments

All people in the United States are protected by the Fifth Amendment to the U.S. Constitution, whether they are here lawfully, unlawfully, temporarily, or permanently.[40] At a minimum, due process requires the government to provide notice and an opportunity to be heard before imposing any kind of sanctions—including financial penalties.[41] Due process requires that a party receives fair notice before being deprived of their property.[42] The notice must be reasonably calculated under all circumstances to let the interested parties know about the action and give them an opportunity to be heard at a meaningful time and in a meaningful manner.[43] To figure out whether there is a due process violation, the courts have to consider: (1) the interest at stake for an individual; (2) the risk of an erroneous deprivation of that interest through procedures used and the probable value of additional procedural safeguards; and (3) the government's interest in avoiding potential burdens of the additional or substitute procedure.[44]

1. Interests at stake

The interest at stake for the individual is high in most of these cases, where the fines can range from a low of $500 to a high of over $1.8 million (plus costs). The higher the fines, the greater the interest at stake. Plus, DHS is trying to enforce these penalties and fees even where the individual has left the United States and is living in another country.

[39] For additional language and arguments about the plain meaning of the statute see *E.R. et al. v. Mullin et al.*, No. 8:26-cv-03450 (D. MD, Aug. 31, 2026) *https://www.publicjustice.net/wp-content/uploads/2026/09/ER_v_Mullin_Complaint.pdf*.
[40] *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 212 (1953) (All "who have once passed through our gates, even illegally," are afforded the full panoply of procedural due process protections, and "may be expelled only after proceedings conforming to traditional standards of fairness.").
[41] *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *SEC v. McCarthy*, 332 F.3d 650, 659 (9th Cir. 2003).
[42] *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).
[43] *Mathews*, 424 U.S. at 333.
[44] *Id.* at 335.

2. Risk of deprivation of property through the procedures the government is using and the probable value of additional safeguards

Advocates should be arguing that the risk of erroneous deprivation of rights through the procedures used is very high. These arguments could include but are not limited to the following:

- ***Officer Issuing the Fine Lacks Training to Issue a Penalty or Fee***. Under the IFR, any immigration officer can issue a fine if they have "reasonable suspicion" that the person is subject to a civil penalty. The definition of an "immigration officer" includes ICE agents, border patrol agents, and aircraft pilots.[45] By contrast, under the prior rules, a Notice of Intent to Fine (NIF) could only be issued by a high-ranking DHS official such as the District Director, the Associate Commissioner for Examinations, or the Director of the National Fines Office if they had a reasonable suspicion that a person violated the provisions of the INA.[46]
- ***Insufficient Service Where the Fine May be Served by Regular Mail***. The government must give people notice before imposing any sanctions.[47] Practitioners should argue that the notice of the penalty was inadequate. The fine can be served either through personal service or "routine service" (regular mail) using the person's last known address or using the last known address of their attorney.[48] People can be notified of a fine of up to $1.8 million by regular mail! Before June 27, 2025, the fine had to be served by personal service. The officer who issued the notice had to sign a proof of service indicating the date and place of service.[49] Carriers who are subject to civil penalties must be served the fine by personal service.[50]
- ***Insufficient Time to Respond to the Fine***. Once the person receives the fine, they must postmark their completed response within 15 days of the fine itself.[51] That is not enough time to retain an attorney and file a complete and thorough response to the allegations and to request relief.
- ***No Right to an In-person Hearing***. Once an individual files their response, there is no right to an in-person hearing where the government has the burden to prove that the fine applies or is being correctly assessed. Under the prior process, an individual could

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[45] Civil Penalties, 90 Fed. Reg. at 27442; 8 CFR §§ 1.2 and 2.1.
[46] 8 CFR § 280.1. The limitation of who may issue a fine still applies where the fine is issued against a carrier.
[47] *SEC v. McCarthy*, 332 F.3d 650, 659 (9th Cir. 2003).
[48] 8 CFR §§ 281.1(d), 103.8(a)(1)(i) ("Routine service consists of mailing the notice by ordinary mail addressed to the affected party and his or her attorney or representative of record at his or her last known address").
[49] 8 CFR § 280.11.
[50] 8 CFR § 280.11.
[51] 8 CFR § 281.1(c)(2)(i). When responding to a fine, practitioners should make sure that the post office postmarks the mailing at the time it is posted. Do not rely on the post office to postmark the filing on the date actually delivered to the post office.

request a personal interview. Carriers may still request a personal interview to contest the fines.[52]

- ***Failure to Use a Neutral Arbiter***. The Due Process Clause "ensure[s] that no person will be deprived of his interests in the absence of a proceeding in which he may present his case with assurance that the arbiter is not predisposed to find against him."[53] Once an individual responds to the Notice of Fine and objects to it, a supervisory officer (who did not issue the notice) reviews it and may request additional information.[54] The supervisory officer has 45 days to file a written response, review the request de novo, and file a written response.

  If the fine is for a violation of 8 U.S.C. § 1814 (fee for all individuals with an in absentia order) or 8 U.S.C. § 1815 (fee for all individuals who are inadmissible and are apprehended between the ports of entry), ICE receives 50% of the fee collected, and that money may be used without any further appropriation.[55] Thus, the DHS supervisor officer cannot be considered a neutral arbiter in the matter.

- ***No Right of Appeal to an Administrative Tribunal***. There is no right to appeal the decision to the BIA. Rather, a supervisory officer reviews the case de novo. Again, there is a concern that the supervisory officer reviewing the notice of fine lacks the legal background and training to adjudicate these decisions, and that this officer could not be a neutral arbiter.

- ***The Fine is Not in a Language the Noncitizen Understands***. Advocates can argue that when being fined large sums of money, due process requires proper notice—including notice in a language that the recipient understands. The BIA in *Matter of R-P-L-* rejected this argument in the context of a Notice to Appear, finding that "there is no requirement that a [noncitizen] in immigration proceedings be provided with a notice or any other document in their native language."[56] Advocates can argue *Matter of R-P-L-* was wrongly decided. The NTA statute at INA § 239 is different than the civil penalties and civil fees statutes at INA § 240B, § 274(d), § 275, and 8 U.S.C. § 1814 and § 1815, and the notice requirements are different.

3. Government's interest

Finally, in this analysis, we must consider the government's interest in avoiding potential burdens of additional or substitute proceedings. This consideration would seem to be of low weight in the adjudication. For years, the government has had the ability to assess the civil penalties with more robust due process protections for the people subject to the fines. Moreover, the government still affords these more robust protections to carriers (*e.g.* airlines, ships, and bus companies).[57] See **Part I** of this Practice Advisory for additional arguments.

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[52] 8 CFR § 280.12.
[53] *Marshall v. Jerrico*, 445 U.S. 238 (1980).
[54] 8 CFR § 281.1(e)(2). There is no definition in the immigration regulations of who is a "supervisory immigration officer."
[55] 8 U.S.C. §§ 1814(d), 1815(c).
[56] 29 I&N Dec. 859, 862 (BIA 2026).
[57] *Compare* 8 CFR § 280 *with* 8 CFR § 281.

4. Equal protection concerns

Advocates should argue that the IFR violates the Fifth Amendment Equal Protection Clause as it only applies to individuals and not to carriers. Carriers are still afforded the protections for civil penalties listed in 8 CFR § 280, including (1) receiving a Notice of Intent to Fine (NIF); (2) being allowed thirty days to contest a Notice of Intent to Fine (NIF); (3) being allowed an in-person interview at the carrier's request to contest the NIF; (4) being allowed to apply mitigation or remission; and (4) being allowed to appeal the decision to the BIA.

B. Eighth Amendment arguments

The Eighth Amendment provides that excessive fines shall not be imposed.[58] The Excessive Fines Clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'"[59] More specifically, "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes is punishment."[60] The Eighth Amendment applies to civil penalties if the penalty in any way serves a deterrent purpose or it is issued in retribution.[61] The specified intent of the IFR is to "help *deter* future unlawful entries…."[62] A fine violates the Excessive Fees Clause if it is "grossly disproportional to the gravity of a defendant's offense."[63]

To determine whether a penalty is excessive, courts must consider the following factors: (1) Congress's judgment about the appropriate punishment; (2) the gravity of the offense, including the extent of unlawful activity and related illegal activities; and (3) the harm caused to the other parties.[64] In the Ninth Circuit, courts have also considered whether other penalties may be imposed for the offense.[65] Courts review the fines using the *de novo* standard.[66] We will be reviewing each one of these requirements separately.

1. Congress's judgment about the appropriate punishment

Congress's fines are much lower than the fines imposed under the new regulations. The fine for being apprehended outside of a port of entry jumps from a maximum of $250 under the statute[67] to a maximum of $500 under the regulation.[68] The fine for failure to voluntarily leave after being issued an order for voluntary departure jumps from a maximum of $5000 under the statute[69] to a maximum of $9970 under the regulation.[70] Finally, the fine for willful failure to

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[58] U.S. Const. amend. VIII.
[59] *Austin v. United States,* 509 U.S. 602, 609–10 (1993).
[60] *Id.* at 610.
[61] *Id.*
[62] Civil Penalties, 90 Fed. Reg. at 27442.
[63] *United States v. Bajakajian*, 524 US. 321, 334 (1998).
[64] *Fabrizius v. Dep't of Agric.*, 129 F.4th 1226, 1248 (10th Cir. 2025) (*citing United States v. Bajakian*, 524 U.S. 321, 337-39 (1998)).
[65] *U.S. Sec. & Exch. Comm'n v. Murphy*, 50 F.4th 832, 849–50 (9th Cir. 2022).
[66] *United States v. Seher*, 562 F.3d 1344, 1370 (11th Cir. 2009).
[67] INA § 275(b)(1).
[68] 8 CFR § 280.53(b)(15).
[69] INA § 240B(d)(1)(A).
[70] 8 CFR § 280.53(b)(3).

leave the United States after receiving an order of removal jumps from $500 per day under the statute[71] to $998 per day under the regulations.[72] In each case, the fine under the regulation is nearly double the fine under the statute.

2. The gravity of the offense, including the extent of unlawful activity and related illegal activities

Aside from illegally entering the United States, none of the other penalties target criminal conduct. In representing people who are being issued civil fines, advocates should argue that the circumstances surrounding the person's decision to come to the United States or to remain in the United States after being ordered deported, or after requesting voluntary departure, may mitigate the extent of the unlawful conduct. Many people who entered without inspection were fleeing persecution in their home countries or were simply seeking a better life for themselves or their children. Many people who overstayed a voluntary deportation order may not have understood the impact of that order. They may have been unable to leave due to illness or financial problems for themselves or a family member, or they may have sought a petition for review in a federal court of appeals. Finally, many people who were ordered deported and did not leave were ordered deported in absentia and were unaware of the order. Others simply could not leave their families.

3. Harm caused to other parties

There is no harm to other parties caused by people who either entered the United States without being inspected or admitted or who did not leave after receiving a removal order or an order of voluntary departure. In 2024, people born outside of the United States were 19.2% of the U.S. civilian workforce.[73] In Springfield, Ohio, which had a thriving Haitian community, Governor Mike DeWine said, ""Suddenly losing a large number" of workers, would have a "significant impact" on Springfield and the region, as businesses struggle to keep operating. And immigrant families who were once self-sufficient would require support."[74] It is important to demonstrate how your client's presence in the United States benefitted the country rather than harmed it.

4. Whether other penalties may be imposed for the offense

Every circumstance where a civil penalty may be imposed has other penalties. Where a person enters or attempts to enter the United States without inspection, they may be subject to expedited removal proceedings, and they may be subject to mandatory detention during these proceedings.[75] Where a person has been granted voluntary departure and voluntarily failed to depart, they are statutorily barred from getting cancellation of removal, adjustment of status, a

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[71] INA § 276D(a)(2).
[72] 8 CFR § 280.53(b)(14).
[73] U.S. Dept. of Labor, Bureau of Labor Statistics, *Foreign-Born Worker: Labor Force Characteristics—2025* (May 20, 2025), https://www.bls.gov/news.release/pdf/forbrn.pdf.
[74] The New York Times, *An Ohio City Faces a Future Without Haitian Workers: 'It's Not Going to Be Good'* (Aug. 21, 2025), https://www.nytimes.com/2025/08/18/us/springfield-ohio-haitian-immigrants-trump.html. (cleaned up).
[75] INA § 235.

change of nonimmigrant status, or registry for ten years.[76] Where a person fails to depart the United States after being ordered removed, they have an outstanding removal order. If they depart, their removal order can be immediately reinstated if they return unlawfully, and they must remain outside of the United States for ten years before applying for relief unless they can get a waiver of inadmissibility.[77]

5. The courts review the fine using de novo review

Courts review whether a fine is excessive using de novo review.[78] Whether a fine is excessive is determined in relation to the characteristics of the offense, not the characteristics of the offender.[79] To determine whether a fine is grossly disproportionate to the defendant's offense, courts consider (1) whether the defendant is in the class of persons at whom the criminal statute was primarily directed; (2) what other penalties were authorized for the offense by the legislature or the Sentencing Commission; and (3) the harm caused by the defendant.[80]

> **Example # 6**. Deepali has been living in the United States without status for the past thirty years after overstaying her tourist visa. Over the past thirty years, she has built a business that employs five workers and has bought a house. Deepali has never been arrested or convicted on any charge anywhere in the world. On January 9, 2023, Deepali was ordered removed in absentia. She was unaware of the removal order.

Deepali has strong arguments under the Eighth Amendment to contest this fine. When adjudicating this case, the fact-finder can consider what harm she caused by failing to leave. Given that Deepali had started a business and employed five workers and has never been arrested or convicted of any offense, she has not harmed anyone but rather has benefited this country. Moreover, Congress did provide and has provided for other penalties (rather than monetary penalties) for people like Deepali who are ordered removed—including the removal order itself.

PRACTICE TIP: In the final rule on civil penalties, DHS and DOJ argue that the Eighth Amendment does not apply to civil penalties.[81] Advocates should carefully review these arguments when crafting Eighth Amendment claims.

C. Seventh Amendment arguments

Advocates can argue that their client has a right to a jury trial under the Seventh Amendment. The Constitution provides that in suits at "common law" where the value in controversy exceeds $20, the person has a right to a jury trial.[82] The Seventh Amendment "applies in all proceedings, whatever their 'peculiar form,' in which 'legal rights' are to be 'settle[d].'"[83]

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[76] INA § 240B(d).
[77] INA § 212(a)(9)(ii).
[78] *United States v. Seher*, 562 F.3d 1344, 1370 (11th Cir. 2009).
[79] *United States v. Bajakajian,* 524 U.S. 321, 334 (1998).
[80] *Id.*; *United States v. Sperrazza*, 804 F.3d 1113, 1127 (11th Cir. 2015); *United States. v. Seher*, 562 F.3d 1344, 1371 (11th Cir. 2009).
[81] *See* 91 Fed. Reg. at 65423-25.
[82] U.S. Const. Amend VII.
[83] *Fed. Commc'ns Comm'n v. AT&T, Inc.*, 608 U.S. 532, 540 (2026).

Historically, the Supreme Court has recognized the right to a jury trial for civil penalties in immigration cases.[84] DHS may argue that these penalties fall under the "public rights" exception to a trial by jury. This exception allows Congress to assign certain matters to agencies for adjudication (such as immigration matters) even though under other circumstances it would deprive the litigant of the right to a jury trial.[85] DHS could argue that everything related to immigration falls within this exception.[86]

Advocates can make the counter-argument that these civil penalties are intended to punish or deter a violation of the immigration law and do not fall solely within the purview of the agency. Only courts of law, not administrative agencies, can issue monetary penalties.[87] Advocates can further argue that even where the case falls within the public rights doctrine, the presumption is still in favor of a trial by jury.[88] Because these are punitive proceedings, they are a type of remedy at common law that could only be enforced in a court of law; thus, the recipient of the fine would be entitled to a jury trial in these proceedings.[89]

IV. Retroactivity

Advocates have strong arguments that the civil fees imposed in 18 U.S.C. § 1814 (fee of $5180 for an in absentia order) and in 18 U.S.C. § 1815 (fee for person who is apprehended between the ports of entry who entered the United States without inspection) are not retroactive and do not apply to people who entered the United States before July 4, 2025, or to people who were ordered removed in absentia before July 4, 2025.

Unless Congress clearly states that a statute is retroactive, it is presumed not.[90] The Supreme Court has created a two-step test to determine if a statute is retroactive: (1) did Congress expressly say that the statute is retroactive; (2) if not, then the court must determine whether the statute would have a retroactive effect, and if it does, the court must apply the traditional presumption against retroactivity.[91] There are many arguments for why a statute should not be retroactive. First, it may be used "as a means of retribution against unpopular groups of individuals."[92] Second, as here, it may increase a person's liability for past actions and impose new rules for something that has already happened.[93] Simply put, "congressional enactments

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[84] *United States v. Regan*, 232 U.S. 37 (1914), *cited in Tull v. United States*, 481 U.S. 412, 419–20 (1987)).
[85] *Sec. & Exch. Comm'n v. Jarkesy*, 603 U.S. 109, 120–21 (2024).
[86] *See Jarkesy*, 603 U.S. at 138 citing *Atlas Roofing Co. v. Occupational Safety & Health Review Comm'n*, 430 U.S. 442 (1977), and explaining that the public rights exception applied to OSHA regulations where if a party violated the regulations, the agency could impose civil penalties. The OSH Act adjudications were unknown in the common law, while the fraud claims in *Jarkesy* were in the nature of a suit under common law.
[87] *Id.* at 123.
[88] *Northern Pipeline Constr. Co. v. Marathon Pipeline Co.,* 458 U.S. 50, 69 n. 23 (1982), *cited with approval in Jarkesy*, 603 U.S. at 132.
[89] *Jarkesy*, 603 U.S. at 124–25.
[90] *Vartelas v. Holder*, 566 U.S. 257, 266 (2012).
[91] *Landgraf v. USI Film Products*, 511 U.S. 244, 280 (1994).
[92] *Id.* at 266.
[93] *Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006); *Landgraf*, 511 U.S. at 280.

and administrative rules will not be construed to have retroactive effect unless their language requires this result."[94]

Neither 8 U.S.C. § 1814 nor § 1815 is expressly retroactive. Congress could have made these fees retroactive and chose not to do so. For any person who is being charged a fee under 18 U.S.C. § 1815 where they entered the United States before July 4, 2025, or any person who is being charged a fee under 18 U.S.C. § 1814 for an in absentia order entered before July 4, 2025, they should argue that the statute is not retroactive and the fee does not apply to them.

V. Statute of Limitations

The United States government has always recognized a statute of limitations for civil cases. The government may not start an enforcement action for any civil fine or penalty unless it is collected within five years from the date that the claim first accrued.[95] The Supreme Court has been very clear that the statute of limitations begins to run when the claim is first accrued and not when it is found by the government.[96]

The statute of limitations is a very powerful argument and can help any case where the conduct occurred more than five years ago, whether that is a charge of a civil penalty for illegal entry under INA § 275(b) or 8 U.S.C. § 1815, or failure to voluntarily depart the United States after being granted voluntary departure under INA § 240B. DOJ and DHS have recognized that the statute of limitations for INA § 275(b) and § 240B starts to run when the person either enters or attempts to enter the U.S. illegally between the port of entry or when the period of voluntary departure ends. In other words, a person should not be issued a civil penalty under INA § 275(b) or § 240B where five years have elapsed since the conduct occurred.[97]

Where a client is being charged a civil penalty for failure to leave after being ordered deported under INA § 274D or is charged a fee for an outstanding in absentia order under 8 U.S.C. § 1814, advocates can argue that the statute of limitations should be triggered when the action first accrues and that conduct outside of the five-year limitation period would not be actionable. DHS may argue that it is a "serial" violation, meaning that each act triggers its own limitation period. In other words, every day the noncitizen decides not to leave the United States after being ordered removed restarts the statute of limitations. Advocates can argue that it is a "continuous" violation and the statute of limitations date started on the date the person was ordered removed. But even where the conduct is "serial" rather than "continuous," the government is limited to five years before the complaint is filed; thus, the penalty is capped at just over $1.8 million. The five years ends on the date that DHS seeks to recover the civil penalties, rather than the date that the individual was ordered removed.[98] DOJ and DHS have

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[94] *Bowen v. Georgetown University Hospital*, 488 U.S. 204, 208 (1988).
[95] "Except as otherwise provided by Act of Congress, an action, suit or proceeding for the enforcement of any civil fine, penalty, or forfeiture, pecuniary or otherwise, shall not be entertained unless commenced within five years from the date when the claim first accrued if, within the same period, the offender or the property is found within the United States in order that proper service may be made thereon." 28 USC § 2462 (emphasis added).
[96] *Kokesh v. SEC*, 531 U.S. 455 (2017); *Gabelli v. SEC*, 568 U.S. 422 (2018).
[97] 91 Fed. Reg. at 65424.
[98] *Ye v. United States Department of Homeland Security*, No. 26-cv-06417-JST, 2026 WL 258411 (N.D. Cal., Sept. 1, 2026); *United States v. Marine Shale Processors*, 81 F.3d 1329, 1357 (5th Cir. 1996).

stated that the per diem penalty should only be assessed for the five-year period preceding the date that the penalty is issued.[99]

VI. Statutory Claims Under the Administrative Procedures Act (APA)

Individuals can bring a lawsuit under the APA where they have suffered a "legal wrong" or have been "adversely affected or aggrieved by agency action".[100] To bring an action, the plaintiff must show that the agency action is final.[101] Under the APA, a reviewing court shall set aside agency action under five circumstances where the action is:

- Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law;
- Contrary to constitutional rights;
- In excess of statutory authority;
- Without observance of procedure required by law;
- Unsupported by substantial evidence; or
- Unwarranted by the facts.[102]

To succeed on an APA claim, the individual must show that they exhausted their administrative remedies—in other words, they appealed the decision within DHS or, if applicable, appealed the penalty to the BIA. A court may excuse the exhaustion requirement if the person can show that exhaustion would be futile.[103] Administrative exhaustion is satisfied where there is no administrative remedy available.[104] Once a person follows the process outlined in Part I of this advisory, they may file a federal claim. Under the APA, a person has six years to bring a lawsuit.[105] To be clear, when challenging civil penalties and civil fees regardless of whether the challenge is under the APA, the statute, or the U.S. Constitution, the individual must show that they exhausted their administrative remedies.

VII. Juveniles and Civil Penalties and Fees

While there is no single statutory provision that prohibits fines from being imposed on minors, minors are constitutionally different from adults and have more protections.[106] The Supreme Court has recognized that minors have diminished culpability because they have a "lack of maturity and an underdeveloped sense of responsibility."[107] They are more vulnerable to

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[99] 91 Fed. Reg. at 65424.
[100] 5 U.S.C. § 701 et seq.; *Dep't of Homeland Sec. v. Regents of the Univ. of California,* 591 U.S. 1 (2020).
[101] 5 U.S.C. § 704.
[102] 5 U.S.C. § 702(2).
[103] *Young v. Reno*, 114 F.3d 879, 881-82 (9th Cir. 1997); *Howell v. INS*, 72 F.3d 288, 291 (2d Cir. 1995).
[104] *Soto Cedeno v. Bondi*, No. 24-1018, 2025 WL 1894954, at *1 (9th Cir. July 9, 2025).
[105] 28 U.S.C. § 2401(a); *Corner Post, Inc. v. Bd. Of Governors of the Fed. Reserve*, 603 U.S. 799 (2024).
[106] *Miller v. Alabama,* 567 U.S. 460 (2012); *Graham v. Florida*, 560 U.S. 48 (2010) (a life sentence without the possibility of parole violates the Eighth Amendment when imposed on nonhomicidal juvenile offenders); *Roper v. Simmons*, 543 U.S. 551 (2005) (invalidating the death penalties for all juvenile offenders under the age of 18); *In re Gault*, 387 U.S. 1 (1967).
[107] *Roper*, 543 U.S. at 569.

negative influences and outside pressures from their family and from peers. And they have limited control over their own environment.[108]

In general, immigration law treats minors differently from adults in many circumstances. For example, unaccompanied children must be "placed in the least restrictive setting that is in the best interest of the child"[109] and must generally be released from immigration custody as quickly as possible to a parent, a family member, or another appropriate sponsor.[110] When children are imprisoned, they must be provided with safe conditions and basic necessities, including access to showers, clean clothing, water, and age-appropriate food. Procedures for unaccompanied minors are governed by the Department of Health and Human Services rather than by DHS. And juvenile adjudications are not convictions.[111]

Historically, there is a presumption that children under the age of seven lack criminal capacity, and there is a rebuttable presumption that a child between the ages of seven and fourteen cannot commit a crime.[112] Under contract law, a contract signed by a minor who is under the age of eighteen is voidable by the minor before they turn eighteen. Finally, a minor can argue that there are serious due process concerns where a minor is being held responsible for their parents' actions.

For those cases where minors are being charged civil penalties and fees, best practice is to do the following:

- Demand strict proof of statutory authority and *mens rea* required to violate the statute. Hold the government to their burden and require them to prove (1) the minor's knowledge that they violated the law; (2) the minor's willingness to violate the law; and (3) the minor's competence.
- Submit evidence of the age of the minor, dependency on responsible adults, parental control, their lack of understanding, and an inability to pay the civil penalty or the fee.
- Due Process Claim
    - The minor lacked capacity to understand or contest the basis for the fine.
    - Government failed to provide adequate safeguards, such as notice, counsel, and a guardian ad litem in the civil penalty proceedings or in the removal proceedings.
- Eighth Amendment Claim
    - Argue that the monetary amount is substantial and excessive relative to the minor's means and violates the Excessive Fee Clause of the Eighth Amendment. Even a $500 fine can be significant for a minor.

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[108] *Id.* at 570.
[109] William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), Pub. L. No. 110-457, § 235(c)(2), 122 Stat. 5044, 5075 (2008).
[110] 45 CFR §§ 410.1201(a), 410.1203(a).
[111] *Matter of Devison*, 22 I&N Dec. 1362 (BIA 2000).
[112] David Hamer, Thomas Crofts, *The Logic and Value of the Presumption of Doli Incapax (Failing that, an Incapacity Defense)* Oxf J Leg Stud. (June 2023), https://pmc.ncbi.nlm.nih.gov/articles/PMC10550278/. *See also* Cal. Penal Code § 26.

- Statutory Construction
  - Argue that the statute does not show clear Congressional intent to fine minors.
  - Argue that narrow construction of the statute is appropriate for monetary sanctions against a vulnerable class.

Example #7. In 2000, nine-year-old Beyonce was brought to the United States by her mother. Beyonce and her mother entered the United States without inspection. In 2003, Beyonce and her mother were arrested, taken to immigration court, and granted voluntary departure. Beyonce and her mother did not leave the United States; instead, they moved to another state. In 2012, Beyonce got DACA and has remained in valid DACA status. In 2026, Beyonce is charged a civil penalty under 8 U.S.C. § 1815 for $5130 for entering the United States between the ports of entry and $1.8 million for a willful failure to depart the United States.

Practitioners should make the following arguments:

- Beyonce is in deferred action status and is not subject to civil penalties.
- Beyonce lacked the *mens rea* to enter the United States unlawfully because she was nine years old.
- Beyonce lacked the capacity to agree to leave the United States voluntarily after being granted voluntary departure.
- Beyonce was under the control of her mother and could not leave the United States.
- There is no clear Congressional intent to fine a minor.

VIII. Conclusion

The civil penalties in INA § 240B, § 274D, and § 275, and the civil fees in 8 U.S.C. § 1814 and § 1815 may be challenged on both statutory and Constitutional grounds. Once completing the administrative process as outlined in Part I of this Advisory, advocates can file lawsuits in the applicable District Court challenging the imposition of these penalties and fees on individuals. Before even getting to the Constitutional arguments that the person did not receive proper notice of the penalties or fees or the ability to contest the imposition of the penalties or fees, or the Constitutional arguments that the penalties or fees are excessive under the Eighth Amendment, advocates should first argue that the imposition of the penalty or fee does not apply under the statute. Perhaps the fee is impermissibly retroactive because the person entered the United States before July 4, 2025, or was ordered removed in absentia before July 4, 2025. Perhaps the penalty or fee does not apply because the person did not “voluntarily” or “willfully” fail to leave the United States. Perhaps the statute of limitations has already run. These are several arguments that we can use to protect our clients from the imposition of these usurious penalties and fees.

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