Can this removal order be reopened?

Errors on the existing record call for reconsideration, not reopening (INA § 240(c)(6); 30 days). **Imminent removal comes before everything** (stay request, 8 C.F.R. §§ 1003.2(f), 1003.23(b)(1)(v); *Nken v. Holder*, 556 U.S. 418 (2009)).

1 Threshold gates

Check time AND number separately.

GATE 1 Is there a final removal order?

An appeal from a *reopening* denial leaves the underlying order final; answer yes.

NO **Check posture.** Merits appeal pending, so request remand from the Board (8 C.F.R. § 1003.2(c)(4)); no reopening time or number limit → Gate 3. Appeal period running, and a motion does not extend it → Gate 3. Proceedings ongoing, so leave this tree.

YES

GATE 2 Within 90 days of the final administrative order?

INA § 240(c)(7)(C)(i), 8 U.S.C. § 1229a(c)(7)(C)(i); 8 C.F.R. §§ 1003.2(c)(2), 1003.23(b)(1).

NO **Exception or tolling?** Ground-specific exceptions (in absentia rescission, changed country conditions, VAWA, joint motion) have their own clocks (INA § 240(c)(7)(C)(ii)-(iv), § 240(b)(5)(C)). Time tolling follows circuit law; number tolling is barred absent contrary circuit law (*Matter of M-M-L-J-*, 29 I&N Dec. 843 (BIA 2026)). Either → Gate 3, then the matching step. Neither → Gate 3, then Steps 5-6 only.

YES

GATE 3 Which adjudicator has jurisdiction?

IJ: 8 C.F.R. § 1003.23(b)(1), no appeal taken. BIA: 8 C.F.R. § 1003.2(a), Board decided last. After a Board remand, jurisdiction follows the remand, not the earlier Board decision (*Matter of C-M-H-H-*, 30 I&N Dec. 124 (BIA 2026)). A wrong-forum filing may not preserve the date.

IJ OR BIA IDENTIFIED **Phase 2.** From Gate 1 (merits appeal pending) → remand request to the Board; substantive requirements still apply (*INS v. Abudu*, 485 U.S. 94 (1988)). Then Phase 3. On appeal of a reopening denial, reopening limits remain.

2 Grounds

Record every ground that fits; do not stop at the first.

STEPS 1–2 · THE MISSED HEARING AND PRIOR COUNSEL

STEP 1 Was the order issued *in absentia*?

INA § 240(b)(5), 8 U.S.C. § 1229a(b)(5). If yes, answer 1A, 1B and 1C in order.

YES **Rescission is the remedy** (INA § 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii)). Filing a rescission motion stays removal automatically (INA § 240(b)(5)(C)). One rescission motion per order.

YES → 1A · NO → SKIP TO STEP 2

1A Did the respondent or counsel of record receive the operative hearing notice?

Notice: INA § 239(a)(1), (a)(2); address duties INA § 239(a)(1)(F), 8 C.F.R. §§ 1003.15(d)(2), 265.1.

NO **Lack of notice.** No statutory deadline (INA § 240(b)(5)(C)(ii)). Check four points. Cure by later notice (*Campos-Chaves v. Garland*, 602 U.S. 447 (2024)). Presumption of delivery and rebuttal (*Matter of M-R-A-*, 24 I&N Dec. 665 (BIA 2008)). Address duties (*Matter of Diji*, 30 I&N Dec. 1 (BIA 2026)). Returned notice and follow-up (*Matter of Chamorro Castillo*, 30 I&N Dec. 170 (BIA 2026); *Meza Medina v. Blanche*, Nos. 20-70017 and 24-5144 (9th Cir. Sept. 18, 2026)). → 1B

1B Did exceptional circumstances cause the failure to appear?

INA § 240(e)(1) (serious illness, death or serious illness of spouse, child or parent, battery or extreme cruelty; not less compelling).

YES **Exceptional circumstances.** 180 days from the order (INA § 240(b)(5)(C)(i)); tolling depends on circuit law. Declarations are assessed for reliability under the INA credibility standards (*Matter of J-E-D-C-*, 30 I&N Dec. 162 (BIA 2026)). → 1C

1C Federal or state custody, and failure to appear through no fault of the respondent?

YES **Custody rescission.** No statutory deadline (INA § 240(b)(5)(C)(ii), second clause). → STEP 2

STEP 2 Ineffective assistance of counsel?

Including nonappearance caused by counsel and judicial-review malpractice.

YES **IAC.** *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988) (affidavit, notice to prior counsel, bar complaint or explanation) plus prejudice. Ordinary reopening: 90 days unless tolling or another exception applies; exceptionality for sua sponte is a separate showing (*Matter of K-K-U-J-*, 30 I&N Dec. 81 (BIA 2026)). → 3A

STEPS 3–6 · NEW EVIDENCE, STATUTE, DHS, DISCRETION

3A Material, previously unavailable evidence of changed country conditions?

Requires a protection claim (asylum, withholding, CAT).

YES **Changed conditions.** No time limit (INA § 240(c)(7)(C)(ii)); regulatory number exception, subject to circuit law (8 C.F.R. §§ 1003.2(c)(3)(ii), 1003.23(b)(4)(i); *Djie v. Garland*, 39 F.4th 280 (5th Cir. 2022)). Evidence must be material and previously unavailable; check circuit treatment of changed *personal* circumstances. → 3B

3B Other material, previously unavailable evidence?

YES **General new evidence.** 90 days and one motion (INA § 240(c)(7)(A)–(C)(i); 8 C.F.R. § 1003.2(c)(1)); prima facie eligibility for the relief sought (*INS v. Abudu*; *Matter of Coelho*, 20 I&N Dec. 464 (BIA 1992)). → STEP 4

STEP 4 Does the statutory VAWA reopening provision apply?

YES **VAWA.** One year from the order, waivable for extraordinary circumstances or extreme hardship to a child; physical presence required; one VAWA motion; a prior non-VAWA motion does not bar it (INA § 240(c)(7)(C)(iv)). → STEP 5

STEP 5 Joint motion with DHS, or an applicable settlement remedy? GATE 2 FALLBACK

YES **Joint motion.** DHS must agree and join; non-opposition is not enough. Time and number bars lifted; reopening remains discretionary (8 C.F.R. §§ 1003.2(c)(3)(iii), 1003.23(b)(4)(iv)). Settlement reopening follows the settlement's own conditions. → STEP 6

STEP 6 Does the case warrant *sua sponte* reopening?

YES **Sua sponte.** Exceptional situation; not a cure for a missed deadline (8 C.F.R. §§ 1003.2(a), 1003.23(b)(1); *Matter of J-J-*, 21 I&N Dec. 976 (BIA 1997); *Matter of G-D-*, 22 I&N Dec. 1132 (BIA 1999)). Screen the statutory grounds first; plead sua sponte alone or as an express alternative. → GROUND RECORDED?

Ground recorded?

Yes → Phase 3. No → stop. Assess reconsideration (INA § 240(c)(6)), appeal or review posture, and any urgent stay (8 C.F.R. §§ 1003.2(f), 1003.23(b)(1)(v)).

3 Pre-filing checklist

A procedural miss is a denial regardless of the merits.

- ☐ **Number and consolidation**
  Confirm numerical eligibility independently of timeliness (INA § 240(c)(7)(A)). Consolidate compatible grounds in one filing; a later filing with different claims may be a second, barred motion (*Matter of D-E-B-*, 29 I&N Dec. 83 (BIA 2025)).
- ☐ **Prima facie eligibility**
  Where the ground requires it, show a prima facie case for the underlying relief (*Coelho*; *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996)). Statutory rescission does not.
- ☐ **Voluntary departure and stays**
  Identify any VD grant and its expiry and the consequences of filing (INA § 240B(d)). Filing does not stop removal except where the statute provides an automatic stay (in absentia rescission; VAWA with qualified-alien status, INA § 240(c)(7)(C)(iv)); otherwise request a discretionary stay (*Nken*).
- ☐ **Service and filing mechanics**
  Correct channel (ECAS where required), service on DHS, certificate of service, local rules and standing orders.
- ☐ **Evidence and index**
  Materiality and prior unavailability; declarations consistent with the record (*J-E-D-C-*); application and supporting documents where relief is sought; indexed and paginated.
- ☐ **Filing fee**
  Fee or exemption confirmed (8 C.F.R. § 1003.24; in absentia lack-of-notice motions are exempt, INA § 240(b)(5)(C)(ii)); proof of payment or Form EOIR-26A with financial evidence. Amounts changed October 1, 2026; verify at justice.gov/eoir.

All phases complete → file in the forum with jurisdiction through the required channel; keep proof of filing; watch for rejection; calendar every deadline.