**Template Opposition to Motion to Recalendar**

* This template was prepared by attorneys at the Catholic Legal Immigration Network (CLINIC) and the American Immigration Lawyers Association (AILA). It is not legal advice or a substitute for independent legal advice supplied by an attorney or legal representative familiar with a client’s case. It is not a substitute for independent research, analysis, and investigation into local practices and legal authority in a given jurisdiction.
* This document was last updated in May 2025.
* This template opposition is intended for practitioners who represent a client in administratively closed removal proceedings where DHS is moving to recalendar proceedings. Note that if the IJ already granted recalendaring without waiting for your response, this template could also be modified to serve as a motion to reconsider. If you are filing this as a motion to reconsider, please be sure to include a sample order for the immigration judge’s signature.
* Please be sure to modify the template according to the facts and circumstances of your client’s case. The yellow highlighted text indicates places where you should put client specific facts and information. Some information or arguments may not apply to your client.

NAME, Esq. **NOT DETAINED**

FIRM/ORGANIZATION NAME

STREET ADDRESS

CITY, STATE

Telephone:

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EOIR ID:

**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**OFFICE OF THE CHIEF IMMIGRATION JUDGE**

**COURT LOCATION**

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| **IN THE MATTER OF**    **CLIENT NAME**  **(Respondent)** | **IN REMOVAL PROCEEDINGS**    A# NUMBER |

Immigration Judge NAME.

**RESPONDENT’S OPPOSITION TO DHS’S UNILATERAL MOTION TO RECALENDAR PROCEEDINGS**

On May 29, 2024, the Department of Justice (DOJ) issued final regulations, effective July 29, 2024, codifying the authority of immigration judges (IJ) and the Board of Immigration Appeals (BIA) to administratively close and terminate removal proceedings. *See* 89 Fed. Reg. 46742.

Under 8 CFR 1003.18, IJs and the BIA may grant administrative closure or recalendar a case if they deem it warranted, even if a party opposes. However, IJs and the BIA must consider the “totality of the circumstances” including the non-exclusive list of factors listed at 8 CFR 1003.18 (c)(3)(ii):[[1]](#footnote-1)

(A) The reason recalendaring is sought;

(B) The basis for any opposition to recalendaring;

(C) The length of time elapsed since the case was administratively closed;

(D) If the case was administratively closed to allow the noncitizen to file a petition, application, or other action outside of proceedings before the immigration judge, whether the noncitizen filed the petition, application, or other action and, if so, the length of time that elapsed between when the case was administratively closed and when the noncitizen filed the petition, application, or other action;

(E) If a petition, application, or other action that was pending outside of proceedings before the immigration judge has been adjudicated, the result of that adjudication;

(F) If a petition, application, or other action remains pending outside of proceedings before the immigration judge, the likelihood the noncitizen will succeed on that petition, application, or other action;

(G) The ultimate anticipated outcome if the case is recalendared; and

(H) The ICE detention status of the noncitizen.

The immigration judge may also consider other factors where appropriate and no single factor is dispositive. 8 CFR 1003.18 (c)(3).

DHS states in its motion that it “seeks to recalendar this matter in order to resolve the respondent’s case on the merits and prevent unreasonable delay in the resolution of the respondent’s removal proceedings.” ***See*** **U.S Department of Homeland Security Motion to Recalendar Administratively Closed Proceedings.**

However, DHS fails to apply any of the factors listed at 8 CFR § 1003.18 (c)(3)(ii) to Respondent’s case. For the following reasons, CLIENT asks this court to deny the government’s motion to recalendar removal proceedings.

* 1. **DHS’s Motion to Recalendar Does Not Comply with the Immigration Court Practice Manual**

DHS did not seek Respondent’s position before filing its Motion to Recalendar, violating Immigration Court Practice Manual, Chapter 5.2(i). Agreement on a motion to recalendar saves the court valuable time and resources in adjudicating the motion.[[2]](#footnote-2) In addition, this step gives the opposing party important notice that such a motion *will* be filed, thus allowing them the chance to prepare an appropriate response. Such notice is especially critical when, as in the instant case, practitioners are dealing with matters that have been off the court’s active docket for *years*. DHS provided no explanation or reason why its motion was so urgent for a long-dormant case that it was required to violate the Immigration Court Practice Manual prior to submitting it. The failure to abide by the Immigration Court Practice Manual Chapter 5.2(i) without an articulated reason is sufficient reason to deny DHS’s motion.

* 1. **This Court Should Not Recalendar Based Solely on the DHS Unilateral Motion**

The Immigration Court Practice Manual states that “the party filing a motion should make a good faith effort to ascertain the opposing party’s position on the motion. The opposing party’s position should be stated in the motion. If the filing party was unable to ascertain the opposing party’s position, a description of the efforts made to contact the opposing party should be included.” Immigration Court Practice Manual, Chapter 5.2(i), Motions. DHS did not undertake a good faith effort to ascertain CLIENT’s counsel’s position on the motion, nor did it describe the efforts made to contact CLIENT’s counsel in its motion. Because DHS’s motion does not comply with the practice manual, it should be denied.

Note that the requirement to contact opposing counsel to ascertain their position on a motion is not merely a ministerial or arcane step; it goes to the very heart of what makes removal proceedings fair. It allows the parties to confer about matters where they may be able to reach an agreement and makes sure that the other party is on notice that the motion will be filed.

In addition, recalendaring is not automatic under the regulations once one of the parties files a motion. It becomes mandatory only when both parties file a joint motion to recalendar or the motion is affirmatively unopposed by the non-moving party. 8 CFR §§ 1003.1(l)(3), 1003.18(c)(3). Rather, when one party opposes the motion, like the Respondent here, the IJ and BIA must consider an enumerated list of factors and whether there is a persuasive reason to proceed on the merits when deciding whether to grant recalendaring. *See Matter of W-Y-U-,* I.&N. Dec. 17, 20 (BIA 2017).

* 1. **This Court should not Recalendar these Proceedings because the Department failed to address the Regulatory Factors in these Proceedings**

For the reasons discussed below, the balance of regulatory factors weighs against recalendaring in this case.

* **The reason recalendaring is sought;**

The IJ must consider the reason that recalendaring is sought in a specific case. However, DHS has articulated nothing *specific to the Respondent’s case* that warrants recalendaring. For example, DHS has not claimed that the Respondent is now ineligible for a form of relief sought outside of immigration court, has committed a crime that changes the respondent’s eligibility for relief or grounds for removal, or that there is some change in circumstances that makes it appropriate to recalendar removal proceedings against the Respondent. In *Matter of W-Y-U-*, the BIA held “the primary consideration for an Immigration Judge in determining whether to administratively close or recalendar proceedings is whether the party opposing administrative closure has provided *a persuasive reason* for the case to proceed and be resolved on the merits.” *Matter of W-Y-U-,* I.&N. Dec. 17, 20 (BIA 2017) (emphasis added). In the absence of a specific reason that pertains to the Respondent, supported by evidence, DHS’s motion should fail.

* **The basis for any opposition to recalendaring;**

As noted above, the respondent opposes recalendaring in this case. [[*Give stated reasons for opposition. If your client is actively pursuing collateral relief outside of immigration court, please mention that form of relief here and discuss how there has been no change in circumstances that would warrant recalendaring at this time. If your client received administrative closure as a form of prosecutorial discretion, discuss how their equities have only grown in the past few years and that moving to recalendar now is arbitrary and capricious.]*

* **The length of time elapsed since the case was administratively closed;**

*[If the case has been administratively closed for a short period of time to pursue collateral relief, can mention that DHS has not given adequate time for this relief to be adjudicated or for a visa number to become available. If the case has been administratively closed for many years, can discuss that it is arbitrary and capricious for DHS to pursue this policy now after so many years have passed. Can also discuss that respondent does not control USCIS adjudication times or visa availability and it would be fundamentally unfair to hold respondent responsible for the government’s delays.]*

* **If the case was administratively closed to allow the noncitizen to file a petition or application outside of proceedings, whether the noncitizen actually filed the petition or application and the length of time elapsed between when the petition or application was filed and the motion to recalendar;**

*[[If this factor does not apply to your client because proceedings were not administratively closed for this reason, you can simply say that this factor is not applicable. If it does apply to your client, please include proof of the pending application or petition in the form of a receipt notice.]*

* **The result of adjudication (approval or denial) of the petition or application;**

*[[If this factor does not apply to your client because proceedings were not administratively closed for this reason, you can simply say that this factor is not applicable. If it does apply to your client, please include proof of the decision on the application/petition if one was reached.]*

* **If the petition or application is still pending, the likelihood of success;**

*[[If this factor does not apply to your client because proceedings were not administratively closed for this reason, you can simply say that this factor is not applicable. If this factor does apply to your client, may want to argue that the client is likely to be successful on this case and you can possibly consider including a copy of the filing showing that it is a meritorious filing.]*

* **The anticipated outcome if the case is recalendared;**

*[[If you are opposing recalendaring and your client is pursuing relief outside of immigration court, indicate how recalendaring the case will harm them—for example, making it impossible to pursue a provisional waiver or forcing them return to court for multiple hearings as they await visa availability or adjudication of a collateral application for relief.]*

* **The ICE detention status of the noncitizen.**

The DOJ [comments](https://www.govinfo.gov/content/pkg/FR-2024-05-29/pdf/2024-11121.pdf) on the final regulations make clear that a noncitizen’s detention is generally a factor weighing against administrative closure.[[3]](#footnote-3) (“Administrative closure in cases involving a detained noncitizen may prolong the noncitizen’s detention, imposing a greater burden on the noncitizen and additional costs to the Government during the pendency of a case.”). However, the respondent in this case is not detained. Therefore, this factor weighs in favor of maintaining the matter off the court’s active docket.

* 1. **Conclusion**

It defies due process (and logic) that a case that was not a priority for XX years suddenly is of the highest priority that DHS must recalendar to move it along, absent any supporting evidence or specified individual reason. DHS is allowed to change prosecution priorities, but doing at the expense of CLIENT seeking collateral relief infringes on CLIENT’s due process rights.

For all the reasons above, CLIENT asserts that recalendaring is not warranted in this case. Therefore, CLIENT, through counsel respectfully requests that this Court deny DHS’s motion to recalendar proceedings and that the case remain off the court’s active docket.

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Date NAME, Esq.

FIRM/ORGANIZATION NAME

**UNITED STATES DEPARTMENT OF JUSTICE**

**EXECUTIVE OFFICE FOR IMMIGRATION REVIEW**

**OFFICE OF THE CHIEF IMMIGRATION JUDGE**

**COURT LOCATION**

**CERTIFICATE OF SERVICE**

**Name:** **Client's Full Name**

**file No:**  **A# ###-###-###**

I, [Attorney’s Name] hereby certify that on this ## day of MONTH 2025, I caused to be served:

A true copy of the Respondent’s Opposition to the Department’s Motion to Recalendar Proceedings via electronic delivery, to the person at the address set forth below:

Department of Homeland Security

Office of the Principal Legal Advisor

[insert address of OPLA]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

[Attorney’s Name]

Attorney for Respondent

1. *See* 8 CFR §§ 1003.1(l)(3)(ii) (motions before the Board); 1003.18(c)(3)(ii) (motions before the IJ). [↑](#footnote-ref-1)
2. Agreement is especially relevant to decisions on motions to recalendar because 8 CFR §1003.18(c)(3) states an immigration judge *shall* grant a motion to administratively close or recalendar filed jointly or where the other party has affirmatively indicated its non-opposition unless there are unusual, clearly identified, and supported reasons for denying the motion. [↑](#footnote-ref-2)
3. https://www.govinfo.gov/content/pkg/FR-2024-05-29/pdf/2024-11121.pdf [↑](#footnote-ref-3)