BILLING CODE: 4410-30

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1003, 1208, and 1240

[Docket No. EOIR-26-AB37; Dir. Order No. 02-2026]

RIN 1125-AB37

Appellate Procedures for the Board of Immigration Appeals

AGENCY: Executive Office for Immigration Review ("EOIR"), Department of Justice.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule ("IFR") amends Department of Justice ("Department" or "DOJ") regulations to streamline administrative appellate review by the Board of Immigration Appeals ("Board" or "BIA") of decisions by Immigration Judges by making review of such decisions on the merits discretionary, by setting appropriate times for briefing in cases that are reviewed on the merits, and by streamlining other aspects of the appellate process to ensure timely adjudications and avoid adding to the already sizeable backlog at the Board. Additionally, the Department is making various technical and non-substantive changes to its regulations.

DATES: *Effective date:* This IFR is effective [**INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**].

Comments: Electronic comments must be submitted, and written comments must be postmarked or otherwise indicate a shipping date on or before [**INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER**]. The electronic Federal Docket Management System at https://www.regulations.gov will accept electronic comments until 11:59 p.m. Eastern Time on that date.

ADDRESSES: If you wish to provide comments regarding this rulemaking, you must submit your comments, identified by the agency name and reference RIN 1125-AB37 or EOIR Docket No. EOIR-26-AB37, by one of the two methods below.

- *Federal eRulemaking Portal:* https://www.regulations.gov. Follow the website instructions for submitting comments.
- *Mail:* Paper comments that duplicate an electronic submission are unnecessary. If you wish to submit a paper comment in lieu of electronic submission, please direct the mail/shipment to: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041. To ensure proper handling, please reference the agency name and RIN 1125-AB37 or EOIR Docket No. EOIR-26-AB37 on your correspondence. Mailed items must be postmarked or otherwise indicate a shipping date on or before the submission deadline.

A summary of this rule may be found in the docket for this rulemaking at https://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Jamee E. Comans, Acting Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2500, Falls Church, VA 22041; telephone (703) 305-0289.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this rule via one of the methods and by the deadline stated above. The Department also invites comments that relate to the economic, environmental, or federalism effects that might result from this rule. Comments that will provide the most assistance to the Department in developing these procedures will reference a specific portion of the rule; explain the reason for any

recommended change; and include data, information, or authority that supports each recommended change.

Please note that all comments received are considered part of the public record and made available for public inspection at https://www.regulations.gov. Such information includes personally identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personally identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase "PERSONALLY IDENTIFYING INFORMATION" in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online, you must include the phrase "CONFIDENTIAL BUSINESS INFORMATION" in the first paragraph of your comment. You also must prominently identify the confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on https://www.regulations.gov.

Personally identifying information located as set forth above will be placed in the agency's public docket file but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. The Department may withhold from public viewing information provided in comments that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of https://www.regulations.gov. To inspect the agency's public docket file in person, you must make an appointment with the agency. Please see the "For Further Information Contact" paragraph above for agency contact information.

II. Legal Authority

The Department issues this IFR pursuant to section 103(g) of the Immigration and Nationality Act ("INA" or "the Act"), 8 U.S.C. 1103(g), as amended by the Homeland Security Act of 2002 ("HSA"), Pub. L. 107–296, 116 Stat. 2135 (as amended). The HSA provides that EOIR exists within DOJ and that it shall be "subject to the direction and regulation of the Attorney General" under section 103(g) of the INA, 8 U.S.C. 1103(g). Further, under the HSA, the Attorney General retains authority to "establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out" the Attorney General's authorities under the INA. HSA 1102, 116 Stat. at 2273–74; INA 103(g)(2), 8 U.S.C. 1103(g)(2). Those authorities include conducting removal proceedings under section 240 of the INA, 8 U.S.C. 1229a ("section 240 removal proceedings").

III. Background

A. General Regulatory Authority of the Board

In 1940, the Immigration and Naturalization Service ("INS") and its functions were transferred to the Department, to be "administered under the direction and supervision of the Attorney General." *See* Reorganization Plan No. V, 5 FR 2223 (June 14, 1940). Shortly thereafter, the Attorney General delegated various powers and authorities to the Board, or, as it was then known, the Board of Review of the INS, including ordering deportation after proceedings and considering appeals of decisions in specific types of cases.[1] *See* Order No. 3888, Delegation of Powers and Definition of Duties, 5 FR 2454, 2454–55 (July 3, 1940). In January 1983, a reorganization

[1] "The Board has existed, in one form or another and by one name or another, since the early days of effective immigration law enforcement in this country." Maurice A. Roberts, *The Board of Immigration Appeals: A Critical Appraisal*, 15 San Diego L. Rev. 29, 30 (1977) (retired Board Chairman discussing the Board's origins and development).

consolidated Immigration Judges and the Board into the newly created EOIR in order to "streamlin[e] the Department's management of this important function and minimiz[e] mission disparities within the INS." Aliens and Nationality; Rules of Procedure for Proceedings Before Immigration Judges, 52 FR 2931, 2931 (Jan. 29, 1987) (explaining the 1983 reorganization).

Notably, since its inception as a component of the Department, the Board's appellate authorities have been delegated by the Attorney General and delineated by regulation, rather than by statute. *See, e.g.*, 8 CFR 1003.1(a)(1) ("The Board members shall be attorneys appointed by the Attorney General to act as the Attorney General's delegates in the cases that come before them."); 8 CFR 1003.1(d)(1) ("The Board shall function as an appellate body charged with the review of those administrative adjudications under the Act that the Attorney General may by regulation assign to it."); *Kucana v. Holder*, 558 U.S. 233, 239 (2010) ("As adjudicator in immigration cases, the Board exercises authority delegated by the Attorney General.").[2]

Through regulation, the Attorney General has provided for appellate review by the Board of multiple case types, including decisions of Immigration Judges in exclusion, deportation, removal, asylum-only, and withholding-only proceedings; carrier fines; certain immigrant visa petition decisions by the Department of Homeland Security ("DHS") under sections 204 and 205 of the INA, 8 U.S.C. 1154, 1155; applications for the exercise of discretion under section 212(d)(3) of the INA, 8 U.S.C. 1182(d)(3); decisions on applications for adjustment of status and rescission of adjustment of status; decisions relating to Temporary Protected Status; determinations related to bond, parole, or detention of an alien; and disciplinary proceedings involving practitioners or recognized organizations. *See* 8 CFR 1003.1(b).

---

[2] Indeed, the INA mentions the Board in one lone subparagraph where it provides that a removal order becomes final when it is affirmed by the Board or when the period for seeking Board review has expired. INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B).

To adjudicate such cases, the Attorney General has also, through regulation, provided the Board with multiple adjudicatory options, including summary dismissal, affirmance without opinion ("AWO"), or decision by a single Appellate Immigration Judge, a panel of three Appellate Immigration Judges, or en banc. *See, e.g.*, 8 CFR 1003.1(a)(5), (d)(2), (e)(2)–(6). Procedures like AWO and summary dismissal were introduced to address significant appeal backlogs and have been upheld by Federal circuit courts as being well within the Department's authority. *See, e.g.*, Executive Office for Immigration Review; Board of Immigration Appeals; Streamlining, 64 FR 56135, 56137–38 (Oct. 18, 1999) (AWO rule detailing the time-consuming appeals process and the need for more efficient adjudication measures); *Albathani v. INS*, 318 F.3d 365, 377 (1st Cir. 2003) (holding that "[p]romulgation of the AWO regulations is within the power of the [agency]" and the Board "can adopt, without further explication, the IJ's opinion"); *Singh v. Gonzales*, 416 F.3d 1006, 1015 (9th Cir. 2005) (holding that the petitioner "has not established that the BIA's regulations—authorizing summary dismissal for failure to either file a brief or specify the grounds for appeal—violated his due process rights").

In line with these long-standing procedures, the Department is issuing this IFR to amend its summary dismissal procedures to better address lengthy appeal backlogs at the Board, as detailed in Section IV.A of this preamble.

B. History of Measures to Increase Board Efficiency

Over time the Department has adopted measures to streamline Board review, especially when appeal receipts outpaced appeal adjudications leading to backlogs. In 1999, after a more than 9-fold increase in annual appeal and motion receipts over the course of 14 years, the Department adopted streamlining measures with four goals: (1) promoting uniformity in dispositions by Immigration Judges by providing authoritative guidance in high-quality appellate decisions; (2) deciding all incoming cases in a timely and fair manner; (3) assuring that individual cases are decided correctly; and (4)

eliminating its backlog of cases. 64 FR 56136 ("In 1984, the Board received fewer than 3,000 new appeals and motions. In 1994, it received more than 14,000 new appeals and motions. In 1998, in excess of 28,000 new appeals and motions were filed."). To do so, the Board limited the use of three-member panels to review appeals and allowed for AWO by a single Board member in specific circumstances. *Id.*

The streamlining process undertaken by the Board proved a success, leading to a 50 percent increase in overall Board productivity in fiscal year 2001. *Operations of the Executive Office for Immigration Review (EOIR): Hearing Before the Subcomm. on Immigr. and Claims of the H. Comm. On the Judiciary*, 107th Cong., 2d Sess. 48 (2002) (testimony of Kevin Rooney, Director, EOIR). The initiative was also assessed favorably by an external auditor. Arthur Andersen & Company, *Board of Immigration Appeals (BIA) Streamlining Pilot Project Assessment Report* (Dec. 13, 2001).

In 2002, the Department published a final rule that, while maintaining the basic AWO process, mandated the use of AWO in any case that met the regulatory threshold criteria. *See* Board of Immigration Appeals: Procedural Reforms To Improve Case Management, 67 FR 54878 (Aug. 26, 2002). *Compare* 8 CFR 3.1(a)(7)(ii) (2000) (providing that a single Board member "may" affirm without opinion), *with* 8 CFR 1003.1(e)(4) (2003)[3] (providing that a single Board member "shall" affirm without opinion). Under the 2002 rule, an AWO was issued if the Board member concluded that "the result reached in the decision under review was correct," that any errors in the decision were "harmless or nonmaterial," and that either the issues on appeal are "squarely controlled" by precedent and do not present a novel factual scenario that

[3] In 2003, the Attorney General redesignated the previous regulations in 8 CFR part 3, relating to EOIR, as 8 CFR part 1003 in connection with the abolition of the former INS and the transfer of its responsibilities to DHS. *See* Aliens and Nationality; Homeland Security; Reorganization of Regulations, 68 FR 9824 (Feb. 28, 2003). Under the HSA, EOIR (including the Board and the Immigration Judges) remains under the authority of the Attorney General. *See* 6 U.S.C. 521; 8 U.S.C. 1103(g).

requires a decision to apply precedent or are not so substantial as to warrant issuance of a written opinion by the Board. 8 CFR 1003.1(e)(4)(i) (2003).

Although these changes initially helped the Board adjudicate more cases overall, their impact on how timely and efficiently the Board adjudicated individual cases is less clear. As the Department's Office of Inspector General ("DOJ OIG") found in 2012, EOIR did not track all Board appeals the same way and used different measures rather than simple case processing times to track timely adjudication. *See* DOJ OIG, *Management of Immigration Cases and Appeals by the Executive Office for Immigration Review* (Oct. 2012), https://oig.justice.gov/reports/2012/e1301.pdf [https://perma.cc/TPZ8-47JC]. For example, "[d]epending on the type of review—one or three board members—EOIR counts the appeal processing time from different starting points," and "[t]hese different starting points significantly skew the reported achievement of its completion goals for appeals and impede EOIR's effective management of the appeals process." *Id*. at 50. As a result, the case processing times reported by EOIR did not accurately reflect the complete case processing times for an appeal. *Id*. at 49 ("While EOIR's method of calculation showed an average of 54 days to process an appeal under the one-member goal and an average of 76 days under the three-member goal, the entire time to process the appeals averaged 372 and 361 days, respectively."). Moreover, EOIR declined to implement the DOJ OIG's recommendation to "improve its collecting, tracking, and reporting of BIA appeal statistics to accurately reflect actual appeal processing times." *Id*. at 50. Additionally, despite a regulatory command to do so, *see* 8 CFR 1003.1(e)(8)(v), the Chief Appellate Immigration Judge declined until 2019 to both provide notice "if a Board member consistently fails to meet the assigned deadlines for the disposition of appeals" and to "prepare a report assessing the timeliness of the disposition of cases by each Board member on an annual basis"—and then declined again to do so between 2021 and 2024. *See generally* EOIR, *Policy Memorandum 25-04,*

Cancellation of Policy Memorandum 21-16 2 & n.2 (Jan. 27, 2025), https://www.justice.gov/eoir/media/1386546/dl?inline [https://perma.cc/NWE9-V7EN].

Notwithstanding the reforms of the early 2000s, due to "gross mismanagement and poor leadership at the Board," by 2019, the Board's case management system had become "dysfunctional." *See id*. at 2.[4] As a result, on August 26, 2020, the Department published a notice of proposed rulemaking ("NPRM" or "proposed rule") that proposed to amend EOIR's regulations to address the Board's backlog. Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 52491, 52491 (Aug. 26, 2020) ("Appellate Procedures NPRM"). The Appellate Procedures NPRM explained that changes to various procedures were necessary due to significant increases in the Board's backlog such that the Department needed "to again review the BIA's regulations to reduce any unwarranted delays in the appeals process and to ensure the efficient use of BIA and EOIR resources." *Id.* at 52492.

Among other changes, the Appellate Procedures NPRM proposed: (1) simultaneous briefing schedules for both detained and non-detained appeals before the Board; (2) shortening the reply brief deadline; (3) limiting briefing extensions; (4) harmonizing the 90- and 180-day Board adjudication timelines to both start from when the record is complete; (5) limiting the Chief Appellate Immigration Judge's ability to hold a group of cases while awaiting certain outside actions; and (6) removing the process for Immigration Judge review of proceeding transcripts. *See* 85 FR 52491. The Department received 1,287 comments during the 30-day comment period.[5]

---

[4] Although these reforms were initially coupled with a reduction in the number of authorized positions on the Board from 23 to 11 Appellate Immigration Judges, between 2006 and 2024, the Department subsequently expanded the number of authorized positions to 28 Appellate Immigration Judges. *See generally* Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15526 (Apr. 14, 2025). As before, a larger Board did not translate into a more efficient Board, leading to a reduction in size to 15 authorized Appellate Immigration Judge positions in 2025. *Id*. at 15526–27. Additionally, also as before, that reduction is being coupled with procedural reforms to the Board's procedures as represented by the instant rulemaking.

[5] The Department posted 1,284 of the comments received for public review. The Department did not post three of the comments received because they were either non-substantive or duplicates of other comments that were posted.

On December 16, 2020, the Department published a final rule, responding to comments received during the notice-and-comment period and adopting the regulatory language proposed in the Appellate Procedures NPRM with minor changes. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 85 FR 81588 (Dec. 16, 2020) ("Appellate Procedures Final Rule"). The Appellate Procedures Final Rule's effective date was January 15, 2021, but the rule was preliminarily enjoined on March 10, 2021, before its measures were implemented fully. *See Centro Legal de la Raza v. EOIR*, 524 F. Supp. 3d 919 (N.D. Cal. 2021).

On September 8, 2023, after reconsidering the Appellate Procedures Final Rule, including the comments received during that rulemaking and the issues identified in the *Centro Legal de la Raza* litigation as well as litigation in *Catholic Legal Immigr. Network, Inc. v. EOIR*, No. 21-00094, 2021 WL 3609986 (D.D.C. Apr. 4, 2021), the Department published an NPRM proposing to remove the preliminarily enjoined regulatory language codified by the Appellate Procedures Final Rule, with certain exceptions, as well as proposing standards for Immigration Judges and Appellate Immigration Judges to consider when adjudicating requests for the administrative closure or termination of proceedings. *See* Appellate Procedures and Decisional Finality in Immigration Proceedings; Administrative Closure, 88 FR 62242 (Sept. 8, 2023).

The Department finalized that rule in May 2024. *See* Efficient Case and Docket Management in Immigration Proceedings, 89 FR 46742 (May 29, 2024) ("ECDM Final Rule"). As a result, the relevant regulatory provisions of the Appellate Procedures Final Rule that are further addressed in this IFR were rescinded, and the relevant regulatory text was generally returned to its pre-Appellate Procedures Final Rule baseline. *See id.* 46742. Notably, neither the NPRM nor the final rule addressed the efficiency reasons the Department provided for those measures in the Appellate Procedures Final Rule. Indeed,

despite the fact that the Board's backlog continued to grow, the 2024 rule enacted no procedures aimed at increasing case completions.

IV. Reforms to Improve Appeal Processing

As described in Section III.B of this preamble, until 2021, with various amounts of success, the Department has instituted measures to address increasing case receipts by the Board and the backlog that has accrued when the Board has been unable to keep up with them. However, since 2021, despite a rapidly growing backlog, the only regulatory measure taken to increase case completions was to further increase the number of authorized Board members to 28. *See* Expanding the Size of the Board of Immigration Appeals, 89 FR 22630 (Apr. 2, 2024).[6] As the Attorney General recently explained when decreasing the size of the Board to 15 authorized members,

> While the number of Board members authorized by regulation has increased by 13 since 2015, the number of cases completed annually by Board members has exceeded the total number completed in 2015 only three years since then, and the current projection for Fiscal Year 2025 is that completions will be less than in Fiscal Year 2015. . . . In short, the data available do not conclusively demonstrate that the increased Board size will lead to increased case adjudications.

Reducing the Size of the Board of Immigration Appeals, 90 FR 15525, 15526 (Apr. 14, 2025).[7]

---

[6] Indeed, instead of defending appeal processing reforms EOIR attempted to adopt in the Appellate Procedures Final Rule, as explained in Section III.B of this preamble, those reforms were removed from EOIR's regulations without addressing or mentioning the Board's pending caseload. Moreover, prior Board leadership mismanaged the existing Board processes, significantly contributing to inefficiencies and the growing backlog. *See* EOIR, *Policy Memorandum 25-04*, *Cancellation of Policy Memorandum 21-16* (Jan. 27, 2025), https://www.justice.gov/eoir/media/1386546/dl?inline [https://perma.cc/NWE9-V7EN].

[7] The number of completions in fiscal year 2025 ultimately did exceed the number in fiscal year 2015, by a little over 1000. *See* EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/88C5-MU4N]. Nevertheless, the larger point was reinforced by the quarterly numbers. In the first quarter of fiscal year 2025, the Board completed 8,405 cases with 28 Appellate Immigration Judges. In the fourth quarter of fiscal year 2025, the Board completed 11,473 cases with between 10 and 13 Appellate Immigration Judges (plus 6 temporary Appellate Immigration Judges). In other words, the Board adjudicated considerably more cases with fewer Appellate Immigration Judges.

Indeed, between fiscal year 2015 and the end of fiscal year 2025, the Board's pending case load increased more than five-fold—from 37,285 pending appeals to 202,946 pending appeals. EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/88C5-MU4N]. The Board is at a point where, even were it to have additional resources and better management, without significant reforms, it would not be able to keep up with incoming filings while tackling the backlog in any meaningful way.

Given the unprecedented Board caseload, and the insufficiency of the currently available tools to manage it, the Department has reconsidered the Board's role as an appellate tribunal. The Board cannot—and does not need to—adjudicate every case on the merits with the tools at its disposal, including the ability for single Board members to issue an AWO. Thus, rather than require such adjudications, the Department is changing its regulations to provide the Board more flexibility in reviewing appeals. Instead, for appeals taken from decisions issued after this IFR becomes effective, as explained in Section IV.A of this preamble, the default will be summary dismissal unless a majority of current Board members vote to consider the appeal on the merits. And such dismissals will occur quickly—within 15 days of filing the appeal—allowing aliens to seek Federal court review expeditiously, rather than potentially waiting for years for a Board decision that in the vast majority of cases would affirm the underlying Immigration Judge decision.[8] This change in procedure will allow the Board to focus its limited resources on adjudicating the more than 200,000 pending appeals and, going forward, on selecting decisions for review that present novel issues warranting the Board's attention.

[8] Although the Board may remand a case for many reasons (e.g. to update background checks or in response to an alien's request for a remand to seek a new form of relief), it rarely sustains a party's appeal on the merits. Between October 1, 2023, and September 15, 2025, the Board sustained only 123 out of 55,065 case appeals (excluding interlocutory appeals, bond appeals, and appeals of motion to reopen decisions) on the merits. Thus, regardless of which party appeals, the Board generally agrees with the outcome of the decision below.

The IFR will also change the deadline for filing an appeal with the Board from 30 to 10 days, except for cases involving certain asylum applications, as discussed in more detail in Section IV.B of this preamble. And, as explained in Sections IV.C and D of this preamble, the IFR adopts other measures previously adopted by the 2020 Appellate Procedures Final Rule, which were never fully operationalized, to streamline the processes for obtaining the parties' briefs and assembling the record on appeal.

These changes, individually and together, will streamline Board appellate review so that aliens receive timely final decisions and do not have to wait years to seek Federal court review.[9] They will also allow the Board to focus on addressing the backlog and, once it is clear, on providing meaningful review in cases requiring Board intervention.[10]

A. Appellate Review by the Board

The Department has determined that the immigration adjudicatory system would function more efficiently if the Board were given more control over its appellate docket by summarily dismissing all appeals—with two exceptions[11]—unless a majority of the

---

[9] The Department has considered the potential impacts of these amendments individually and in context with the other amendments made by this rule on aliens and attorneys appearing before EOIR. The Department recognizes that this rule changes the status quo with respect to appeal processing. The Department believes that the benefits of this rule's streamlining efforts for the Government and for those with meritorious claims outweigh the potential for costs to those with non-meritorious claims who would have benefitted from the delay and whose appeals may be subject to summary dismissal under this IFR.

[10] The Department recognizes that recent actions by Congress to increase the filing fees for Board appeals to $900 *may* decrease the number of incoming appeals to the Board. *See* One Big Beautiful Bill Act ("OBBBA"), Pub. L. 119–21, sec. 100013(d) & (e), 139 Stat. 72 (2025). However, the OBBBA does not prohibit fee waivers for appeals, so the impact of the fee increase may be minimal in practice. Moreover, even if the impact were greater, the Department nevertheless believes that these reforms are necessary to provide EOIR the flexibility necessary to issue timely decisions on new appeals. In any event, EOIR's preliminary experience since the enactment of OBBBA is that the fee increase has not appreciably affected the volume of appeals.

[11] The Board will continue to adjudicate all appeals under 8 CFR 1003.1(b)(7) and (14) on their merits unless subject to summary dismissal under the regulations in place prior to this IFR to provide an additional procedural safeguard for detained aliens. Such appeals are effectively the end of the process available to detained aliens given that there is no petition for review available from a Board's decision on a bond appeal. *See* INA 242(a)(1), 8 U.S.C. 1252(a)(1) (allowing for petitions for review of final orders of removal). The Board will also continue to adjudicate appeals of decisions under 8 CFR 1003.1(b)(5) on certain actions related to immigrant visa petitions under section 204 and 205 of the INA, 8 U.S.C. 1154 and 1155, and under 8 CFR 1003.1(b)(6) on applications for the exercise of the discretionary authority contained in section 212(d)(3) of the INA, 8 U.S.C. 1182(d)(3), under existing procedures. Those cases are not yet fully amenable to electronic filing procedures and are also subject to special filing procedures in which the appeal is filed first with DHS and then routed to the Board by DHS. *See* 8 CFR 1003.3.3(a)(2). For similar reasons, the Board's existing filing, briefing, and forwarding-the-record procedures will

permanent Board members vote en banc to accept an appeal. Currently, unless subject to the existing, enumerated reasons for summary dismissal, the Board reviews all appeals on the merits even though there is no statutory requirement for an appellate process or for all allowable appeals to receive a decision on the merits. *See Dia v. Ashcroft*, 353 F.3d 228, 237 (3d Cir. 2003) (en banc) (noting the "INA says nothing whatsoever regarding the procedures of an administrative appeal, or, for that matter, any other procedures employed by the BIA"). Although there is an explicit reference to the Board in section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), that reference merely establishes when an order of removal becomes final, namely when the order is affirmed by the Board or the time for filing an appeal has expired. Nothing in that provision, however, requires the Board to adjudicate every appeal on its merits; to the contrary, it is well established that the Board may summarily dismiss an appeal without reaching the merits.[12] *See* 8 CFR 1003.1(d)(2); *accord Dia*, 353 F.3d at 237 ("[8 U.S.C. 1101(a)(47)(B)] says absolutely nothing about procedures to be employed by the BIA, or the right to, or manner of, review generally; it only speaks to review by the BIA and its 'affirming' the 'order' of deportation . . . . Based on the fact that § 1101(a)(47)(B) contains the only mention of the BIA in the INA, it seems clear that Congress has left all procedural aspects of the BIA, especially how it hears cases, entirely to the Attorney General's discretion.").

Importantly, because a summary dismissal "shall constitute the final decision of the Board," 8 CFR 1003.1(d)(2)(iii) (as amended by this IFR), the Board's summary dismissal provisions—and this rule's expansion of them—do not cause any difficulty for

---

continue to apply to appeals from decisions of DHS officers. Such appeals make up only a small fraction of the Board's caseload, and any benefits from applying streamlined procedures to those appeals would be minimal.

[12] The Department also notes that at the time Congress enacted section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), the Board's regulatory scheme permitted summary dismissal of appeals. *See* 8 CFR 3.1(d)(1-a), 103.3(a)(1)(v) (1996); Executive Office for Immigration Review; Rules of Procedures, 57 FR 11568, 11570, 11573 (Apr. 6, 1992). There is no evidence that Congress intended section 101(a)(47)(B) of the INA, 8 U.S.C. 1101(a)(47)(B), to displace that process.

implementing the statute or other regulatory provisions, such as the statutory and regulatory provisions that govern when a removal order becomes final. *See* INA 101(a)(47)(B), 8 U.S.C. 1101(a)(47)(B); 8 CFR 1241.1 (setting forth when a removal order resulting from section 240 removal proceedings becomes final). When an appeal is summarily dismissed under the provisions added by this rule, the Department intends that the Immigration Judge's decision become the final agency decision for purposes of Federal court review unless the Attorney General exercises discretion to review under 8 CFR 1003.1(h). In any petition for review of a final removal order under section 242(a)(1) of the INA, 8 U.S.C. 1252(a)(1), the Department expects that the court of appeals would review the substance of the Immigration Judge's decision as the basis for the final order. This view would not change any existing understandings regarding when a removal order becomes final or when a petition for review must be filed.

Notably, the courts of appeals that have reviewed challenges to the Board's prior streamlining process have uniformly concluded that aliens have no constitutional or statutory right to a particular form or manner of a Board decision. *See Zhang v. U.S. Dep't of Justice*, 362 F.3d 155, 157–58 (2d Cir. 2004); *Yuk v. Ashcroft*, 355 F.3d 1222, 1229–32 (10th Cir. 2004); *Dia*, 353 F.3d at 242; *Denko v. INS*, 351 F.3d 717, 729–30 (6th Cir. 2003); *Falcon Carriche v. Ashcroft*, 350 F.3d 845, 850–51 (9th Cir. 2003); *Khattak v. Ashcroft*, 332 F.3d 250, 252–53 (4th Cir. 2003); *Georgis v. Ashcroft*, 328 F.3d 962, 967 (7th Cir. 2003); *Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1288–89 (11th Cir. 2003); *Albathani v. INS*, 318 F.3d 365, 376–77 (1st Cir. 2003). Indeed, it has long been the Department's view that there is no statutory right or law requiring a particular form of decision or method of review before the Board. 67 FR 54883, 54888–90. Because the Board is established under the Attorney General's regulations, she "is free to tailor the scope and procedures of administrative review of immigration matters as a matter of discretion." 67 FR 54882 (citing, *e.g.*, *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435

U.S. 519, 524–25 (1978)); *see Vt. Yankee*, 435 U.S. at 524–25 ("administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties" (quoting *FCC v. Pottsville Broad. Co.*, 309 U.S. 134, 143 (1940))).

This change will allow the Board to focus on appeals with particularly novel or complex legal questions without becoming bogged down in mine-run or straightforward cases that may already be subject to being affirmed without an opinion or summarily affirmed. Indeed, due to years of mismanagement and the accretion of a sizeable backlog of cases, as discussed in Sections III.B and IV of this preamble,[13] the Board largely functions now as simply a vessel for further delay of the eventual resolution of an alien's case. Further, the change would also help offset a peculiar asymmetry in immigration proceedings—*i.e.*, aliens may seek Federal court review of Board decisions, but DHS cannot—by ensuring that aliens do not amplify any procedural advantages they have over the Government with additional opportunities to necessarily bring meritless appeals with attendant delays.

The Department recognizes that this IFR represents a notable procedural change to how the Board has operated; however, in recognition of that point, this change will apply only prospectively and not to appeals pending when the rule becomes effective. Instead, it will apply only to decisions otherwise subject to appeal that are issued by either an Immigration Judge or DHS on or after the rule's effective date. Because there is no right to a merits adjudication of any appeal in the first instance, and because the rule does not change the process for aliens who submitted an appeal with the expectation of receiving a different process, this change will not undermine any reliance interests of

[13] Between fiscal year 2015 and the end of fiscal year 2025, the Board's pending case load increased more than five-fold—from 37,285 pending appeals to 202,946 pending appeals. EOIR, *Adjudication Statistics: All Appeals Filed, Completed, and Pending* (Nov. 18, 2025), https://www.justice.gov/eoir/media/1344986/dl?inline [https://perma.cc/88C5-MU4N].

either an alien or DHS. Indeed, there is no evidence that DHS initiates a case in immigration proceedings or an alien brings a claim for relief or protection from removal based on the availability of an appeal to the Board if they lose, nor is there any logical reason that either party would do so. And, to be clear, the change applies equally to appeals filed by both DHS and aliens, so neither side will be procedurally advantaged or disadvantaged by the change.[14]

B. Time to File an Appeal with the Board

Prior to this IFR, individuals who wished to appeal a case to the Board typically had 30 days in which to do so. *See, e.g.*, 8 CFR 1003.38(b) (2025). However, that deadline is not set by statute, with one exception related to asylum applications at section 208(d)(5)(A)(iv) of the INA, 8 U.S.C. 1158(d)(5)(A)(iv). The Department has reconsidered the appeal timeline before the Board, and is now reducing the appeal period from 30 days to 10 days for all cases, except for those cases where the alien's asylum application was denied on grounds other than those specified in section 208(a)(2)(A), (B), or (C) of the INA, 8 U.S.C. 1158(a)(2)(A), (B), (C). Those three subparagraphs bar an alien from applying for asylum where: (1) the alien may be removed to a country other than their country of nationality pursuant to a bilateral or multilateral agreement commonly referred to as an Asylum Cooperative Agreement ("ACA"), INA 208(a)(2)(A), 8 U.S.C. 1158(a)(2)(A); (2) the alien cannot show by a preponderance of the evidence that his or her application has been filed within one year after the date of the

[14] The Department also does not expect this change to cause a significant increase in petitions for review filed with Federal Courts of Appeals, and there is no logical reason to expect this IFR to change parties' behavior in that regard. For instance, cases that would have otherwise been decided by the Board in the alien's favor cannot be reviewed by Federal courts anyway; so, the dismissal of such appeals under this IFR will have no impact on Federal court filings based on those cases. Similarly, aliens who would have previously petitioned for review of an adverse Board decision will still be expected to do so; so, again, the dismissal of such appeals under this IFR should have no impact on the net volume of appeals over time. Even if, as the Department believes, this change in the appeals process is unlikely to change the rate at which aliens petition courts of appeals for review of Board decisions, the Department acknowledges that the IFR's goal is to increase the number of appeal decisions issued per year, which will potentially lead to an increase in the number of petitions for review filed per year. This potential does not outweigh the Department's significant interest in timely adjudications.

alien's arrival in the United States, subject to narrow exceptions, INA 208(a)(2)(B), 8 U.S.C. 1158(a)(2)(B); or (3) the alien has previously applied for asylum and had such application denied, subject to narrow exceptions, INA 208(a)(2)(C), 8 U.S.C. 1158(a)(2)(C).[15] *See* 8 CFR 1003.38(b).

The Department is reducing the appeal period for a number of reasons. For example, with the Board's adoption of electronic filing in 2021, which allows parties to submit Notices of Appeal at any time of day from any location with internet access, removing concerns related to mail delays and the restrictions business hours create to meet filing deadlines, there is no operational need for it. Further, that deadline differs from other EOIR administrative appellate deadlines. *See*, *e.g.*, 28 CFR 68.54(a) (requiring an appeal to the Chief Administrative Hearing Officer be filed within 10 days of a decision of an Administrative Law Judge); *cf*. 8 CFR 1003.6(c)(1) (requiring DHS to file an appeal within 10 days of an Immigration Judge's order to maintain an automatic stay of a custody redetermination order pursuant to 8 CFR 1003.19(i)).

In short, there is no reason to maintain a 30-day appeal deadline (except for certain asylum appeals discussed in this section), and the Department, as a matter of policy, is electing to change the appeal filing deadline to 10 days in order to improve the efficient consideration of appeals and to harmonize appellate deadlines across the agency.

---

[15] In order to comply with the statute, the Department is retaining the 30-day appeal period for appeals involving the denial of an asylum application on grounds other than those specified in section 208(a)(2) of the INA, 8 U.S.C. 1158(a)(2). *See* INA 208(d)(5)(A)(iv), 8 U.S.C. 1158(d)(5)(A)(iv) (stating that "any administrative appeal [involving consideration of an asylum application] shall be filed within 30 days of a decision granting or denying asylum, or within 30 days of the completion of removal proceedings before an [I]mmigration [J]udge under section 240, whichever is later"). However, where an alien is ineligible to apply for asylum due to the application of an ACA, failure to apply within one year of entry, or because he or she has previously been denied asylum, the Department is applying the 10-day appeal period in this IFR. The statute is clear that the asylum procedures in section 208(d) of the INA, 8 U.S.C. 1158(d)—including the 30-day administrative appeal period language in section 208(d)(5)(A)(iv) of the INA, 8 U.S.C. 1158(d)(5)(A)(iv)—only applies to asylum applications "filed under paragraph (a)." *See* INA 208(d)(1), 8 U.S.C. 1158(d)(1). In turn, paragraph (a)(1)'s general authority for aliens to apply for asylum can be barred by application of any of the three bars in paragraph (a)(2), each of which specify that paragraph (1) "shall not apply" to aliens subject to those bars. INA 208(a)(2)(A)–(C), 8 U.S.C. 1158(a)(2)(A)–(C). Therefore, when an application for asylum is denied based on one of the three bars in paragraph (a)(2), the alien is then barred from applying for asylum under paragraph (a)(1) and, as a result, the asylum procedures in subsection (d)—including the 30-day administrative appeal period language specific to asylum applications—do not apply.

See 28 CFR 68.54(a) (establishing a 10-day deadline for seeking review of an Administrative Law Judge's final order in certain categories of cases adjudicated by EOIR's Office of the Chief Administrative Hearing Officer). Again, this change will apply only prospectively to appeals of Immigration Judge decisions issued on or after the effective date of this IFR. Because there is no right to a merits adjudication of any appeal in the first instance—and because there is no evidence that an alien or DHS would make any decisions relating to their litigation of the case before the Immigration Judge based on the amount of time available to appeal a potential future adverse decision—this change will not undermine any reliance interests of either an alien or DHS. As with other changes, this change also applies equally to both DHS and aliens, so neither side will be procedurally advantaged or disadvantaged by the change.[16]

C. Briefing

[16] The Department acknowledges that some aliens proceed pro se before the Immigration Judge and *may* seek counsel after an adverse decision and that in those circumstances changing the deadline from 30 to 10 days, except for asylum appeals by aliens not barred from applying, *may* impact their ability to obtain counsel to file a Notice of Appeal. The Department notes that aliens in such a position have already had time to obtain counsel for their proceedings before the Immigration Judge. Additionally, such aliens are advised of their appeal rights and the appeal deadline by the Immigration Judge and may file a Notice of Appeal without counsel. If the Board decides to consider the appeal, the alien will have had additional time to obtain counsel for that appeal. If instead their appeal is summarily dismissed, they may proceed to file a petition for review with a Federal court within 30 days of that dismissal, *see* INA 242(b)(1), 8 U.S.C. 1252(b)(1), providing them up to 55 days to obtain counsel. Nevertheless, the Department has considered the potential that the rule may impact some aliens' ability to obtain counsel for their appeal or petition for review. The Department believes that the interest in timely adjudications outweighs those potential concerns. Similarly, the Department recognizes that some aliens whose cases are subject to the 10-day appeal period in this IFR may seek counsel to assist with their appeals after they receive a removal order and that, for those aliens, decreasing the appeal period to 10 days may make it more difficult for them to find counsel. The Department also recognizes that if such aliens notice an appeal and obtain counsel after the 10-day period, they may not have an opportunity to submit briefing as their appeal may be summarily dismissed under this rule. The Department believes this population will be relatively small but has nevertheless considered the potential impact on such aliens' ability to obtain counsel for appeal. The Department believes that the benefits of the reforms in this rule outweigh that potential impact, especially given that such aliens would have had time prior to the removal order to seek the assistance of counsel. Additionally, the Department notes that the potential for dismissal before briefing is not new with this rule—even without it, the Board may summarily dismiss an appeal for multiple reasons, including if the Board is satisfied "that the appeal is filed for an improper purpose, such as to cause unnecessary delay" or because the Board believes "the appeal lacks an arguable basis in fact or in law." 8 CFR 1003.1(d)(2)(i)(D). Regardless, when considering whether to summarily dismiss an appeal, the Board will consider the entire record before it and come to an independent determination whether to consider the appeal on the merits or to summarily dismiss.

The IFR also standardizes the Board's briefing schedule for appeals filed directly with the Board to require simultaneous briefing within 20 days of the Board setting the schedule in all cases not summarily dismissed, with no reply briefs and limited extensions.

The Department acknowledges that requiring simultaneous briefing for both detained and non-detained cases is a departure from the current status quo, which was re-implemented by the ECDM Final Rule. *See* 89 FR 46743 (explaining that the ECDM Final Rule "recodifies longstanding [briefing] practices in place prior to the publication of [the Appellate Procedures] Final Rule and which have again been in use since the [Appellate Procedures] Final Rule was enjoined"). However, as has been borne out by the ever-expanding pending caseload, maintaining the status quo for briefing schedules does not promote the timely resolution of cases before the Board.[17] Rather, the Department now believes that for all cases not summarily dismissed—whether detained or non-detained—a "simultaneous briefing schedule provides both parties sufficient opportunity to address any issues needed to be resolved on appeal or to identify any reasons for opposing the appeal, while balancing the need to expeditiously resolve the case." *Id.*

In the ECDM Final Rule, the Department also noted that "simultaneous briefing is appropriate in detained cases given the need for expeditious resolution of such cases implicating liberty interests." *Id.* However, the Department no longer believes that expeditious resolution should be limited to detained cases but, rather, should be the default in all cases to promote finality in proceedings. *See Hernandez-Rodriguez v. Pasquarell*, 118 F.3d 1034, 1042 (5th Cir. 1997) (citing *Abudu v. INS*, 485 U.S. 94, 106–

[17] The Department also notes that the ECDM Final Rule did not persuasively address the basic question of why simultaneous briefing is appropriate for one set of cases but not another. Moreover, the Department notes that the Board continues to retain the discretion to request supplemental briefing in any case where it feels it would be appropriate. *See* 8 CFR 1003.3(c).

08 (1988)) ("Both the public and the Board have significant, cognizable interests in the finality of immigration proceedings."). This is consistent with Congress's repeated use of time limits in the INA to evince its clear intent for immigration proceedings to move expeditiously. *See, e.g.*, INA 208(d)(5)(A)(ii)–(iii), 8 U.S.C. 1158(d)(5)(A)(ii)–(iii) (time limits on asylum adjudications); INA 240(c)(6)–(7), 8 U.S.C. 1229a(c)(6)–(7) (time limits on motions to reopen and reconsider).

Currently, the Board operates a hodgepodge of briefing schedules with different time limits, depending on whether the case involves a detained alien and whether an extension is granted. The Board often accepts reply briefs, extending the time for briefing further, although in the Board's experience, such reply briefs rarely, if ever, positively contribute to the arguments at issue. One standard schedule is more consistent, easier to administer, and precludes gamesmanship or manipulation by the parties, particularly by aliens seeking delay of the resolution of their cases. *Cf. INS v. Doherty*, 502 U.S. 314, 323 (1992) ("as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States"). Moreover, the Board already has the authority to set swifter briefing schedules than its current 21-day schedule, *see* 8 CFR 1003.3(c) (2025) (noting the general setting of a 21-day briefing schedule "unless a shorter period is specified by the Board"), so the reduction by one day will not have a significant impact on the parties, particularly because the change is only applied prospectively.[18]

The IFR also limits extensions which, despite a putative policy disfavoring them, *see* EOIR Policy Manual, pt. III, ch. 4.7(c)(1) (last visited Jan. 30, 2026), https://www.justice.gov/eoir/reference-materials/bia/chapter-4/7 [https://perma.cc/66J6-RWQV], became an expectation based on Board routine in recent years. The Department

[18] This change will only be applied to appeals of Immigration Judge decisions issued on or after the effective date of the IFR.

recognizes that unexpected circumstances do arise, however. Consequently, the IFR authorizes extensions in cases of exceptional circumstances, as defined by section 240(e)(1) of the INA, 8 U.S.C. 1229a(e)(1) ("The term 'exceptional circumstances' refers to exceptional circumstances (such as battery or extreme cruelty to the alien or any child or parent of the alien, serious illness of the alien, or serious illness or death of the spouse, child, or parent of the alien, but not including less compelling circumstances) beyond the control of the alien."). In short, for exceptional circumstances beyond the control of a party, the Board retains authority to grant an extension.

The Department also recognizes that, because these briefing procedures will apply when the Board has not summarily dismissed the case, such cases may present important or novel issues for the Board to resolve on appeal. Thus, this rule does not preclude the Board from exercising its expertise to determine whether to request or accept additional briefing to resolve the appeal. *See* 8 CFR 1003.3(c) ("In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline."); EOIR Policy Manual, pt. III, ch. 4.6(i) (last visited Jan. 30, 2026), https://www.justice.gov/eoir/reference-materials/bia/chapter-4/6 [https://perma.cc/2QPY-HB5N] (discussing amicus curiae briefs); *see also* EOIR, *Agency Invitations to File Amicus Briefs* (Sept. 10, 2025), https://www.justice.gov/eoir/amicus-briefs [https://perma.cc/6R64-8GAM] (explaining that EOIR "occasionally invites members of the public to file *amicus curiae* briefs addressing issues of significance" and allowing members of the public to subscribe to receive such invitations).

D. Forwarding the Record on Appeal

The Department is also revising 8 CFR 1003.5 regarding the forwarding of the record of proceedings in an appeal to reflect changing procedures and to provide maximum flexibility in ensuring the record is forwarded as quickly as possible. The present process in 8 CFR 1003.5(a) is largely unnecessary and only creates unwarranted

delay. For instance, the current regulations allocate time for Immigration Judges to review and approve transcripts of their oral decisions. 8 CFR 1003.5(a). But this is not necessary because EOIR utilizes reliable digital audio recording technology that produces clear audio recordings and more accurate transcriptions, *see*, *e.g.*, Press Release, *EOIR Completes Digital Audio Recording Implementation* (Sept. 2, 2010), https://www.justice.gov/sites/default/files/pages/attachments/2015/08/20/eoircompletesdar09022010.pdf [https://perma.cc/EMK4-QSY9] ("This new system improves the quality of recordings and transcriptions through the use of more microphones throughout each courtroom."), and the additional 7- or 14-day review period creates an unnecessary delay in the adjudication of appeals. Moreover, because errors should not be corrected during the review, *see*, *e.g.*, *Mamedov v. Ashcroft*, 387 F.3d 918, 920 (7th Cir. 2004) ("[I]n general it is a bad practice for a judge to continue working on his opinion after the case has entered the appellate process . . . ."); because EOIR already has a procedure for the parties to address defective or inaccurate transcripts on appeal, EOIR Policy Manual, pt. III, ch. 4.2(f)(3) (last visited Jan. 30, 2026), https://www.justice.gov/eoir/reference-materials/bia/chapter-4/2 [https://perma.cc/U66Z-QP7P], and because the Board may remedy defects through a remand for clarification or correction if necessary, 8 CFR 1003.1(e)(2), there is no operational reason for Immigration Judges to continue to review transcripts of their decisions solely for minor typographical errors. *Accord Witjaksono v. Holder*, 573 F.3d 968, 976 (10th Cir. 2009) ("When an alien follows the[] procedures [for redressing an incomplete transcript], the BIA is able to evaluate whether the 'gaps [in the transcript] relate to matters material to [the] case and [whether] they materially affect [the alien's] ability to obtain meaningful review.' Moreover, if the BIA concludes that a defective transcript did not cause prejudice, these procedures create a record that facilitates the meaningful and effective judicial review to which a petitioner is entitled." ((first alteration added) (internal citation omitted)).

Further, such review also takes Immigration Judges away from their primary duty of adjudicating cases expeditiously and impartially, consistent with the law. *See* EOIR, *About the Office: EOIR Mission* (May 29, 2025), https://www.justice.gov/eoir/about-office [https://perma.cc/9XQ7-65DC] ("The primary mission of . . . EOIR[] is to adjudicate immigration cases by fairly, expeditiously, and uniformly interpreting and administering the Nation's immigration laws."); EOIR Policy Manual, pt. I, ch. 1.2(a) (last visited Jan. 30, 2026), https://www.justice.gov/eoir/reference-materials/ic/chapter-1/2 [https://perma.cc/X5WU-FV74] ("Immigration Judges are tasked with resolving cases in a manner that is timely, impartial, and consistent with the Immigration and Nationality Act, federal regulations, and precedent decisions of the Board of Immigration Appeals and federal appellate courts."). Finally, Federal courts have criticized the practice of Immigration Judges revising transcripts after an appeal has been filed. *See Mamedov*, 387 F.3d at 920. Accordingly, there is simply no reason to retain the requirement that Immigration Judges continue to review transcripts, and removing this requirement will also eliminate the possibility of the transcript being amended incorrectly, even inadvertently, after a decision has been rendered.

E. Other Changes

The Department is revising EOIR's regulations at 8 CFR 1003.1(e)(8)(ii) and removing and reserving 8 CFR 1003.1(e)(8)(iii), two provisions that authorize the Chief Appellate Immigration Judge to either extend adjudication deadlines in particular cases or to hold cases based on a pending, potentially impactful action, either a new binding case decision or a new regulatory action. The former provision has no clear underlying rationale consistent with principles of good government and effective adjudication and simply provides a method for the Chief Appellate Immigration Judge to delay cases at whim, either to avoid applying established regulatory adjudicatory timeframes or to effectuate policy goals of delaying cases. In short, there is no persuasive reason to

maintain the provision, and the Department is revising 8 CFR 1003.1(e)(8)(ii) accordingly. For similar reasons, the Department is removing and reserving 8 CFR 1003.1(e)(8)(iii). It is impractical because it requires predicting the outcomes of pending court cases; it has rarely, if ever, been used in practice; and it allows the Chief Appellate Immigration Judge to delay cases based on personal legal assessment with little oversight or concern for the importance of prompt case adjudications.

The Department is revising various other provisions in 8 CFR 1003.6 and 1003.38 to make conforming changes based on the changes described above. It is also making technical amendments to 8 CFR 1003.38 to correct outdated regulatory cross-references.

Finally, the Department is making changes to 8 CFR 1003.1, 1003.18, 1003.42, 1003.55, 1208.31, 1208.35, and 1240.26 to change the term "noncitizen" to "alien" and the term "unaccompanied child" or "unaccompanied children" to "unaccompanied alien child" or "unaccompanied alien children", as appropriate, in accordance with EOIR's efforts to conform to statutory terminology. *See* Designation of Temporary Immigration Judges, 90 FR 41886–87 (Aug. 28, 2025).

F. Severability

To the extent that any portion of this rule is stayed, enjoined, not implemented, or otherwise held invalid by a court, the Department intends for all other parts of the rule that are capable of operating in the absence of the specific portion that has been invalidated to remain in effect. Each change may operate independently of the others and would be unaffected if any other part of the rule were enjoined.

V. Regulatory Requirements

A. Administrative Procedure Act

Notice and comment pursuant to the Administrative Procedure Act ("APA") are unnecessary for at least two independent reasons.

First, this is a rule of agency organization, procedure, or practice. *See* 5 U.S.C. 553(b)(A). Rules are procedural "if they are 'primarily directed toward improving the efficient and effective operations of an agency.'" *AFL-CIO v. NLRB*, 57 F.4th 1023, 1034 (D.C. Cir. 2023) (quoting *Mendoza v. Perez*, 754 F.3d 1002, 1022 (D.C. Cir. 2014)); *see also James V. Hurson Assocs. Inc., Inc. v. Glickman*, 229 F.3d 277, 280 (D.C. Cir. 2000) (procedural rules "may alter the manner in which the parties present themselves or their viewpoints to the agency"). This rule affects only the practices and procedures of the Board, and they are undoubtedly directed toward improving the efficient and effective operations of the Board.

To be sure, although any rule that "alter[s] the rights or interests of parties" is not "procedural," *James V. Hurson*, 229 F.3d at 280, there is no right to an appeal to the Board based on any particular timeframe nor is there a right to a specific briefing schedule or manner of consideration. Indeed, there is no clear statutory right to an appeal to the Board at all, and even if there were, there is no statutory right to file a brief in such appeal. Because the rule applies only prospectively, it cannot alter any parties' interests either because there is no evidence that either DHS or an alien bases their choices in immigration proceedings on the future prospect of an appeal to the Board.

Rules that merely make "judgment[s] about what mechanics and processes are most efficient" are procedural even if they have "impacts on outcomes." *JEM Broad. Co., Inc.*, *v. FCC*, 22 F.3d 320, 328 (D.C. Cir. 1994). This IFR does no more than make such judgments. A rule streamlining Board procedures for adjudicating appeals, particularly when designed to effectuate the most efficient processes for such adjudications, is fairly seen as procedural in the sense of 5 U.S.C. 553(b)(A). Accordingly, as a rule of agency procedure—or practice—the IFR is exempt from the notice-and-comment procedures in 5 U.S.C. 553(b)(A).

Second, the requirements of 5 U.S.C. 553 do not apply to these regulatory changes because this rule involves a "foreign affairs function of the United States." 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question "clearly and directly involves a foreign affairs function." *E.B. v. U.S. Dep't of State*, 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up). In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in "definitely undesirable international consequences," some courts have required such a showing. *See Rajah v. Mukasey*, 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted). This rule satisfies both standards.

This IFR is intended to facilitate EOIR's ability to more effectively adjudicate the removability of millions of illegal aliens currently in the United States and to reach a final adjudication of removal more efficiently and quickly for those who have no valid claim to relief or protection in the United States. Improving the efficiency of EOIR proceedings will, in turn, create disincentives for aliens to enter the United States unlawfully in the future as they will no longer be able to rely on an expectation of significant delays in their proceedings, at least at the administrative appellate level.

Another recent IFR issued in part by EOIR spelled out clear reasons for invoking the foreign affairs exception to notice and comment under the APA, and nearly all of those reasons also apply to this IFR. *See* Imposition and Collection of Civil Penalties for Certain Immigration-Related Violations, 90 FR 27439, 27454–56 (June 27, 2025). Specifically, moving forward with actions like this IFR immediately will allow the United States Government to build on momentum with international partners to address shared challenges to border security and illegal immigration. The United States' border management strategy is predicated on the belief that migration is a shared responsibility among all countries in the region, and Executive Order 14150, *America First Policy Directive to the Secretary of State*, sets out the President's vision that "the foreign policy

of the United States shall champion core American interests and always put America and American citizens first." 90 FR 8337 (Jan. 20, 2025). In this regard, the Administration is actively engaged in negotiations including wide-ranging discussions with foreign partners on matters related to border security, such as to reduce illegal immigration and advance security in the United States and the region. *See, e.g.*, 90 FR 27454–55 & nn.48–55 (discussing the Administration's efforts).[19]

For its foreign policy efforts to succeed in this regard, the United States must demonstrate its own willingness to put in place appropriate measures like this IFR that will allow EOIR to more effectively use available tools to disincentivize, prepare for, and respond to ongoing migratory challenges and illegal immigration. This IFR is one part of this Administration's efforts to reduce illegal immigration to the United States, by using all available tools under the INA to deter aliens from making the dangerous journey to the United States and entering the country illegally. Such efforts will demonstrate to international partners the United States's commitment to addressing challenges related to deterring illegal migratory movements. Failing to address challenges related to illegal immigration and reduce delays in the removal process will likely have significant foreign affairs implications by creating incentives for large numbers of migrants to make the dangerous journey to the southern border of the United States through other countries, as occurred under the last Administration.[20] Therefore, delaying implementation of

---

[19] *See also* Agreement Between the Government of the United States of America and the Government of the Republic of Honduras for Cooperation in the Examination of Protection Requests, 90 FR 30076 (July 8, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Guatemala Relating to the Transfer of Nationals of Central American Countries to Guatemala, 90 FR 31670 (July 15, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Uganda for Cooperation in the Examination of Protection Requests, 90 FR 42597 (Sept. 3, 2025); Agreement Between the Government of the United States of America and the Government of the Republic of Ecuador Relating to the Transfer of Third-Country Nationals to Ecuador, 90 FR 51376 (Nov. 17, 2025); Agreement between the U.S. Department of Homeland Security and the U.S. Department of State and the Paraguayan National Commission for Stateless Persons and Refugees, 90 FR 60114 (Dec. 23, 2025).

[20] *See, e.g.*, Securing the Border, 89 FR 81156, 81186 (Oct. 7, 2024) (noting that when there is a strain on resources due to a large number of aliens crossing the southern border illegally this situation creates "incentives for migrants to make the dangerous journey to the southern border in the hope that the

measures like this IFR to combat and deter illegal migration could create migratory challenges for foreign partners and undermine the momentum that this Administration has built with foreign partners towards addressing their shared migratory and border security challenges.

Moreover, the Administration is actively engaged in negotiations with other countries intended to address the large number of illegal aliens in the United States. These efforts also include coordination with other countries to support the Administration's efforts to encourage aliens to depart the United States voluntarily and return to their home countries.[21] In sum, these actions indicate that the removal and voluntary return of aliens with no legal right to remain in the United States is a critical foreign policy objective of the United States.

Here too, for these foreign policy efforts to succeed, the United States must demonstrate that it is taking immediate action, including through measures like this IFR, to help achieve the purpose of these international efforts and negotiations: to streamline the removal process and encourage other countries to cooperate with the United States's efforts to remove illegal aliens and support the return of their citizens. By reducing potential delays in adjudications, this IFR supports the Administration's efforts to reduce backlogs in removal proceedings and incentivize aliens to depart the United States voluntarily and return to their home country or to not come to the United States in the first instance.

Delaying measures like those adopted by this IFR would have undesirable consequences on the United States's ongoing foreign policy goals. Quite simply, if the

---

overwhelmed and under-resourced immigration system will not be able to expeditiously process them for removal").

[21] For example, on May 19, 2025, DHS conducted a voluntary charter flight form the United States to Honduras and Colombia, in coordination with those Governments, for aliens who opted to self-deport. *See* DHS, *Project Homecoming Charter Flight Brings Self-Deporters to Honduras, Colombia* (May 19, 2025), https://www.dhs.gov/news/2025/05/19/project-homecoming-charter-flight-brings-self-deporters-honduras-colombia/ [https://perma.cc/VXP9-6DSF]. The participants were welcomed by representatives from their home governments, who also provided benefits and services to those aliens. *See id*.

United States is unable to demonstrate, through measures like this IFR, that it is committed to taking quick and robust action to remove aliens and encourage them to depart the United States, which depends on international cooperation, countries may be less inclined to engage with the United States on these ongoing efforts in the future. Executive Order 14150 of January 20, 2025, *America First Policy Directive to the Secretary of State*, clearly sets out the President's vision that "the foreign policy of the United States shall champion core American interests and always put America and American citizens first." E.O. 14150, 90 FR 8337 (Jan. 20, 2025). In addition, the Secretary of State recently determined "that all efforts, conducted by any agency of the federal government, to control the status, entry, and exit of people, and the transfer of goods, services, data, technology, and other items across the borders of the United States" constitute a foreign affairs function of the United States under the APA. *Determination: Foreign Affairs Functions of the United States*, 90 FR 12200 (Mar. 14, 2025). In making this determination, the Secretary of State explained that "[s]ecuring America's borders and protecting its citizens from external threats is the first priority foreign affairs function of the United States" and noted that an unsecured border presents a range of threats to U.S. citizens, which can be eliminated or mitigated through the execution of the foreign affairs functions. *See id.* This rule's efforts to reduce inefficiencies, the appeal backlog, and the related perverse incentives for aliens to seek to come to the United States illegally will enable the United States to better achieve the total and efficient enforcement of U.S. immigration law and, as such, champion a core American interest in accordance with American foreign policy. *See id.*; 90 FR 8337. The rule thus represents an effort to engage in foreign affairs functions and is therefore exempt from traditional notice-and-comment procedures.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act ("RFA"), a regulatory flexibility analysis is not required when a rule is exempt from notice-and-comment rulemaking under 5 U.S.C. 553(b) or other law. 5 U.S.C. 603(a), 604(a). Because this IFR relates to agency procedure and involves a foreign affairs function, it is exempt from notice-and-comment rulemaking, and no RFA analysis under 5 U.S.C. 603 or 604 is required for this rule.

C. Unfunded Mandates Reform Act of 1995

This rule would not result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1532(a).

D. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14192 (Unleashing Prosperity Through Deregulation)

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. The Office of Management and Budget has determined that this rule is significant under Executive Order 12866.

Overall, the Department believes that this IFR will provide significant benefits to adjudicators, the parties, the U.S. immigration system overall, and the broader public, which outweigh the potential costs. For example, the IFR's procedural changes to Board practices are intended to better promote the efficient completion of removal proceedings. Such changes benefit both aliens with meritorious claims, who will obtain relief or protection faster, and DHS, which will be able to remove aliens with meritless claims more quickly. Combined, such changes provide significant benefits to the functioning of the country's immigration system overall and to the public as a whole. In contrast, there are no apparent definitive costs of the IFR, particularly as it merely removes obstacles to

efficient consideration of case appeals that both parties should want.[22] Thus, on balance, the Department believes that the efficiency benefits gained by the changes outweigh the potential costs.

Regarding Executive Order 14192, this IFR is issued with respect to an immigration-related function of the United States and is therefore not a "regulation" or "rule" as that term is defined in section 5 of Executive Order 14192. Even considering Executive Order 14192, the Department determined that this rule will substantially improve Department procedure with the result of negligible new costs to the public. As such, no budget implications will result from this rule, and no balance is needed from the repeal of other regulations.

E. Executive Order 14294 (Overcriminalization of Federal Regulations)

Executive Order 14294 requires agencies promulgating regulations with criminal regulatory offenses potentially subject to criminal enforcement to explicitly describe the conduct subject to criminal enforcement, the authorizing statutes, and the mens rea standard applicable to each element of those offenses. This rule does not create a criminal regulatory offense and is thus exempt from Executive Order 14924 requirements.

F. Executive Order 13132 (Federalism)

This IFR would not have substantial direct effects on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this IFR does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

---

[22] As noted in footnote 16 above, there may be hypothetical or speculative situations in which the IFR will have some cost. Nevertheless, for the reasons given throughout this IFR, any such costs—if they even exist beyond the realm of the hypothetical—are far outweighed by the benefits of the IFR.

G. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act

This IFR does not propose new or revisions to existing "collection[s] of information" as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104-13, 109 Stat. 163, 44 U.S.C. chapter 35), and its implementing regulations, 5 CFR part 1320.

I. Congressional Review Act

This IFR is not a major rule as defined by section 804 of the Congressional Review Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

List of Subjects

8 CFR Part 1003

Administrative practice and procedure, Aliens, Immigration, Legal Services, Organization and functions (Government agencies).

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1240

Administrative practice and procedure, Aliens.

Accordingly, for the reasons set forth in the preamble, and by the authority vested in the Director, Executive Office for Immigration Review, by Attorney General Order

Number 6260-2025, the Department amends 8 CFR parts 1003, 1208, and 1240 as follows:

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949-1953 Comp., p. 1002; section 203 of Pub. L. 105-100, 111 Stat. 2196-200; sections 1506 and 1510 of Pub. L. 106-386, 114 Stat. 1527-29, 1531-32; section 1505 of Pub. L. 106-554, 114 Stat. 2763A-326 to -328.

2. Amend § 1003.1 by:

a. Redesignating paragraphs (d)(2)(ii) and (iii) as paragraphs (d)(2)(iii) and (iv);

b. Adding new paragraph (d)(2)(ii);

c. Revising newly redesignated paragraph (d)(2)(iii);

d. Revising paragraphs (d)(6)(ii), (e)(8) introductory text, and (e)(8)(i) and (ii);

e. Removing and reserving paragraph (e)(8)(iii); and

f. Revising paragraphs (m)(1)(ii)(A) and (m)(2)(iii).

The addition and revisions read as follows:

§ 1003.1 Organization, jurisdiction, and powers of the Board of Immigration Appeals.

* * * * *

(d) * * *

(2) * * *

(ii) *Consideration by the Board*. Except for appeals pursuant to paragraphs (b)(5), (6), (7), and (14) of this section, and notwithstanding any other provision of this part, for all appeals of any decision issued on or after [**INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER**], the Board shall summarily dismiss the appeal unless a majority of the permanent Board members vote en banc to accept the appeal for adjudication on the merits. Such dismissals shall be made by a

single Board member without further consideration, unless the single Board member refers an appeal for consideration by the Board en banc. If such a referral is made, the Board shall vote en banc on whether to accept the appeal no later than 10 days after the appeal is filed. If the Board fails to vote en banc within that time, the appeal shall be deemed to have been summarily dismissed under this paragraph (d)(2)(ii). All dismissals under paragraph (d)(2)(i) or (ii) of this section shall be effectuated through the issuance of a written order no later than 15 days after the appeal is filed. When an appeal is summarily dismissed under this paragraph (d)(2)(ii), the Immigration Judge's decision is adopted by the Board and articulates the rationale for removal that is subject to judicial review. Nothing in this paragraph (d)(2)(ii) shall restrict the application of the provisions of paragraph (d)(2)(i) of this section or the authorities in paragraph (h) of this section.

(iii) *Action by the Board*. The Board's case management screening plan shall promptly identify cases that are subject to summary dismissal pursuant to this paragraph (d)(2)(iii). An order dismissing any appeal pursuant to this paragraph (d)(2) shall constitute the final decision of the Board, and "the final order of removal" for purposes of section 242(b)(1) of the Act.

* * * * *

(6) * * *

(ii) Except as provided in paragraph (d)(6)(iv) of this section, if identity, law enforcement, or security investigations or examinations are necessary in order to adjudicate the appeal or motion, the Board will provide notice to both parties that the case is being placed on hold until such time as all identity, law enforcement, or security investigations or examinations are completed or updated and the results have been reported to the Board. The Board's notice will notify the alien that DHS will contact the alien with instructions, consistent with § 1003.47(d), to take any additional steps necessary to complete or update the identity, law enforcement, or security investigations

or examinations only if DHS is unable to independently update the necessary identity, law enforcement, or security investigations or examinations. The Board's notice will also advise the alien of the consequences for failing to comply with the requirements of this section. DHS is responsible for obtaining biometrics and other biographical information to complete or update the identity, law enforcement, or security investigations or examinations with respect to any alien in detention.

* * * * *

(e) * * *

(8) *Timeliness.* As provided under the case management system, the Board shall promptly enter orders of summary dismissal, or other miscellaneous dispositions, in appropriate cases consistent with paragraphs (e)(1) and (2) of this section. In all other cases, after completion of the record on appeal, including any briefs, motions, or other submissions on appeal, the Board member or panel to which the case is assigned shall issue a decision on the merits as soon as practicable, with a priority for cases or custody appeals involving detained aliens.

(i) Except for summary dismissals under paragraph (d)(2)(ii) of this section, the Board shall dispose of all cases assigned to a single Board member within 90 days of completion of the record, or within 180 days of completion of the record for all cases assigned to a three-member panel. The record shall be complete upon the earlier of either filing of the last brief or pleading or the passage of the last deadline for filing a brief or pleading.

(ii) In those cases where the panel is unable to issue a decision within the established time limits, the Chairman shall either self-assign the case or assign the case to a Vice Chairman for final decision within 14 days or shall refer the case to the Attorney General for decision. If a dissenting or concurring panel member fails to complete the

member's opinion by the end of the extension period, the decision of the majority will be issued without the separate opinion.

(iii) [Removed and Reserved]

* * * * *

(m) * * *

(1) * * *

(ii) * * *

(A) The alien has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied alien children, as defined in 6 U.S.C. 279(g)(2).

* * * * *

(2) * * *

(iii) *Limitation on termination.* Nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case where prohibited by another regulatory provision. Further, nothing in paragraphs (m)(2)(i) and (ii) of this section authorizes the Board to terminate a case for the alien to pursue an asylum application before USCIS, unless the alien has filed an asylum application with USCIS pursuant to section 208(b)(3)(C) of the Act pertaining to unaccompanied alien children, as defined in 6 U.S.C. 279(g)(2).

§ 1003.2 [Amended]

3. Amend § 1003.2(g)(3) by removing the number "21" and adding in its place the number "20" wherever it appears.

4. Amend § 1003.3 by revising paragraph (c)(1) to read as follows:

§ 1003.3 Notice of appeal.

* * * * *

(c) *Briefs*—(1) *Appeal from decision of an immigration judge.* The Board shall set a briefing schedule for all appeals it has not summarily dismissed. For appeals of orders by an Immigration Judge in which no transcript is warranted, briefs shall be due simultaneously from both parties within 20 days of the Board order setting the schedule and in no case more than 35 days after the appeal was filed. For appeals of orders by an Immigration Judge in which a transcript is warranted, briefs shall be due simultaneously from both parties within 20 days of the Board order setting the schedule and making the transcript available. The Board shall not accept a reply brief in any case unless the Board has invited or ordered a party to submit a reply brief. The Board shall not grant an extension of the briefing schedule except, as a matter of discretion, in exceptional circumstances as defined by section 240(e)(1) of the Act. For purposes of this paragraph (c)(1), workload concerns, travel plans, or similar concerns within the control of either party, or their representatives, do not constitute exceptional circumstances. In its discretion, the Board may consider a brief that has been filed out of time. In its discretion, the Board may request supplemental briefing from the parties after the expiration of the briefing deadline. All briefs, filings, and motions filed in conjunction with an appeal shall include proof of service on the opposing party.

* * * * *

5. Amend § 1003.5 by revising paragraph (a) to read as follows:

§ 1003.5 Forwarding of record on appeal.

(a) *Appeal from decision of an immigration judge.* For all appeals not summarily dismissed, the record shall be forwarded to the Board as promptly as possible upon receipt of the appeal.

* * * * *

6. Amend § 1003.6 by revising paragraph (c)(4) to read as follows:

§ 1003.6 Stay of execution of decision.

* * * * *

(c) * * *

(4) If the Board has not acted on the custody appeal, the automatic stay shall lapse 90 days after the filing of the notice of appeal. However, if the Board grants a motion by the alien for an enlargement of the briefing schedule provided in § 1003.3(c), the Board's order shall also toll the 90-day period of the automatic stay for the same number of days.

* * * * *

§ 1003.18 [Amended]

7. Amend § 1003.18 by, as shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear:

the noncitizen	the alien
The noncitizen	The alien
a noncitizen's	an alien's
the noncitizen's	the alien's
unaccompanied children, as defined in 8 CFR 1001.1(hh)	unaccompanied alien children, as defined in 6 U.S.C. 279(g)(2)

8. Amend § 1003.38 by:

a. In paragraph (a), removing the text "3.1(b)" and adding in its place the text "1003.1(b)";

b. Revising paragraph (b); and

c. In paragraph (f), removing the text "3.3(c)" and adding in its place the text "1003.3(c)".

The revision reads as follows:

§ 1003.38 Appeals.

* * * * *

(b) This paragraph (b) addresses filing deadlines for appeals to the Board of Immigration Judge decisions.

(1) Except as provided in paragraph (b)(2) of this section, in all cases the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be filed directly with the Board within 10 calendar days of the Immigration Judge's decision.

(2) In cases where an Immigration Judge has adjudicated an asylum application and did not deny the application under 208(a)(2)(A), (B), or (C) of the Act, the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be filed directly with the Board within 30 calendar days of the Immigration Judge's decision.

(3) In all cases, the Board appeal filing deadline shall be calculated from the date of the stating of an Immigration Judge's oral decision or the mailing or electronic notification of an Immigration Judge's written decision. If the final date for filing falls on a Saturday, Sunday, or legal holiday, this appeal time shall be extended to the next business day. A Notice of Appeal (Form EOIR-26) may not be filed by any party who has waived appeal. Any issue not raised in the Notice of Appeal from a Decision of an Immigration Judge (Form EOIR-26) shall be deemed waived.

* * * * *

§ 1003.42 [Amended]

9. Amend § 1003.42 by, as shown in the following table, removing the words in the left column and adding in their place the words in the right column wherever they appear:

a noncitizen's	an alien's
Noncitizens	Aliens

§ 1003.55 [Amended]

10. Amend § 1003.55 by removing the word “noncitizen” and adding in its place the word “alien” wherever it appears.

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

11. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110-229; Pub. L. 115-218.

12. Amend § 1208.31 by revising the section heading to read as follows:

§ 1208.31 Reasonable fear of persecution or torture determinations involving aliens ordered removed under section 238(b) of the Act and aliens whose removal is reinstated under section 241(a)(5) of the Act.

* * * * *

§ 1208.35 [Amended]

13. Amend § 1208.35 by, in paragraph (d)(2)(i), removing the word “noncitizen” and adding in its place the word “alien”.

PART 1240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

14. The authority citation for part 1240 continues to read as follows:

Authority: 8 U.S.C. 1103, 1158, 1182, 1186a, 1186b, 1225, 1226, 1227, 1228, 1229a, 1229b, 1229c, 1252 note, 1361, 1362; secs. 202 and 203, Pub. L. 105-100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105-277 (112 Stat. 2681).

§ 1240.15 [Amended]

15. Amend § 1240.15 by removing the third sentence.

§ 1240.26 [Amended]

16. Amend § 1240.26 by, in paragraph (k)(4), removing the word “noncitizen” and adding in its place the word “alien” wherever it appears.

§ 1240.53 [Amended]

17. Amend § 1240.53 by removing the third sentence in paragraph (a).

Daren K. Margolin,
Director,
Executive Office for Immigration Review,
Department of Justice.
[FR Doc. 2026-02326 Filed: 2/5/2026 8:45 am; Publication Date: 2/6/2026]