Interlocutory Appeals to the Board of Immigration Appeals
Practice Advisory[1]
June 2026

In the last year, the Board of Immigration Appeals (BIA) has issued an unusually high number of precedent decisions from interlocutory appeals by the Department of Homeland Security (DHS). Advocates may be wondering if they, too, should file an interlocutory appeal in a certain case, especially in light of the rise of Immigration Judge (IJ) orders pretermitting asylum cases without a full hearing, and the rise of denials of termination, administrative closure, and continuances for noncitizens with pending USCIS applications.

This advisory answers questions advocates may have about interlocutory appeals as they are being handled by the BIA in 2026. Please do independent research before filing an appeal or response, as case law may change rapidly.

1. What is an interlocutory appeal? Do I have a right to one?

An appeal is interlocutory when it is filed before the IJ has completed the case. *See* Board Practice Manual, Ch. 3.14(a), Interlocutory Appeals.[2] Completing the case generally means the IJ has ordered removal, granted relief, or terminated or dismissed the proceedings. Respondents in removal proceedings can file an appeal of any oral or written "decision" of an IJ within 30 days of the decision, without a requirement that it be the decision that concluded the case. 8 C.F.R. §§ 1003.3(a); 1003.38(a)-(b). However, just because you *can* file an interlocutory appeal does not mean the BIA will review it on the merits, and thus, you should carefully consider whether it is a good use of time and resources (including the filing fee).

2. What is the BIA's standard for accepting an interlocutory appeal for merits review?

Interlocutory appeals are disfavored, as the BIA has historically found it more efficient to consider all issues together at the end of the case. *See* Board Practice Manual, Ch. 3.14 ("The Board does not normally entertain interlocutory appeals."). The BIA has held that to avoid "piecemeal review," it will only consider interlocutory appeals that present "important jurisdictional questions regarding the administration of immigration laws or recurring problems in the handling of cases by Immigration Judges." *See Matter of K-*, 20 I&N Dec. 418, 419 (BIA 1991) (accepting interlocutory appeal on the interpretation of the "particularly serious crime" bar to withholding of deportation under former INA § 243(h), which was a joint appeal by both parties); *Matter of M-D-*, 24 I&N Dec. 138, 139 (BIA 2007) (accepting interlocutory appeal to clarify IJ's jurisdiction to consider new relief on remand from the BIA to update background

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[2] Available as part of the EOIR Policy Manual at https://www.justice.gov/eoir/policy-manual-eoir/part-III/bia (last visited May 26, 2026).

checks). If you file an interlocutory appeal that the BIA declines to review on the merits, you will usually receive a 1-page order reciting this language and dismissing the appeal.

3. Do I need to file an interlocutory appeal to preserve an issue for later appeals?

No. Noncitizens do not need to file an interlocutory appeal to preserve an issue for a later merits appeal from a removal order. The issue only needs to be presented to the IJ at some point. *See, e.g., Matter of W-Y-C- & H-O-B-*, 27 I&N Dec. 189, 190 (BIA 2018) ("We have long held that we generally will not consider an argument or claim that could have been, but was not, advanced before the Immigration Judge.").

4. What issues are most appropriate for an interlocutory appeal?

There isn't a clear answer to this. The BIA has typically dismissed most interlocutory appeals under the *Matter of K-* standard cited above. It has sometimes considered appeals from grants or denials of motions to change venue or withdraw as counsel, perhaps on the logic that these have a significant effect on the processing of the case. The BIA regularly dismisses interlocutory appeals on findings of removability, which can be raised along with the IJ's decision on relief in a merits appeal. *But see Matter of Guevara*, 20 I&N Dec. 238, 241 (BIA 1991) (accepting interlocutory appeal regarding whether the respondent's silence could be used as proof of alienage, which the respondent argued raised serious constitutional issues and was an important recurring issue). There is no substantive issue that you could predict the BIA will always review in an interlocutory posture.

Between January 2025 and June 2026, the BIA has issued precedent decisions in 10 cases that were interlocutory appeals – all filed by DHS, mostly about continuances or administrative closure. These cases are listed in Appendix A. It appears that the BIA took these cases as part of a recent trend of granting DHS appeals and issuing rules hostile to continuances and administrative closure, not because the BIA has generally become more open to interlocutory appeals from both parties.[3] It is concerning that many of these cases involved a *pro se* respondent. The Board failed to acknowledge or discuss appellate arguments from the respondent in the *pro se* cases, making it hard to know if the respondents knew about or had a chance to brief opposition to the appeals.[4] This is discussed further below in response to question #8 regarding responding to a DHS interlocutory appeal.

[3] For more comprehensive looks at the BIA's adjudication trends during 2025-26, including their favorable treatment of DHS appeals, *see* Jason Cade, Welcome to the Trump Administration's Board of Immigration Appeals. The Immigrant Always Loses, 136 Yale Law Journal Forum, forthcoming 2026 (available at https://ssrn.com/abstract=6506380); Jayashri Srikanthiah & Rajan Lukose, Stanford White Paper: The Board of Immigration Appeals Under the Second Trump Administrative: An Empirical Analysis of Grant Rates and DHS Appellate Behavior 2-3 (Mar. 23, 2026), *available at* https://law.stanford.edu/documents/research-on-bia-decision-making/.

5. How does the BIA process interlocutory appeals?

Some aspects of filing an interlocutory appeal are the same as any other appeal. The appeal must be filed within 30 days of the relevant IJ decision, using Form EOIR-26, Notice of Appeal, and be accompanied by the regular appeal filing fee or a fee waiver form and request. *See* Board Practice Manual, Ch. 3.14(d). The most recent revision of the EOIR-26 has a checkbox option on the first page that says "I am filing an interlocutory appeal from the Immigration Judge's decision dated:" with a box for the date.

Other aspects of interlocutory appeals are very different. **In particular, the BIA will not issue a transcript of proceedings up until that point and will not issue a briefing schedule to the parties.** *See* Board Practice Manual, Ch. 3.14(e). Thus, these appeals require more work up front than regular merits appeals and may move very quickly. You should either file any brief with the Notice of Appeal itself or within days. The Practice Manual is explicit about this. *See* Ch. 3.14(e) ("If an appealing party wishes to file a brief, the brief should accompany the Form EOIR-26 or be promptly submitted after the Form EOIR-26 is filed."). The BIA will begin to process the appeal for adjudication very soon after getting it, so do not count on filing briefing or supplements months later. *Id.* (noting that the BIA will not "suspend or delay adjudication of an interlocutory appeal in anticipation of, or in response to, the filing of a brief"). The BIA is currently issuing orders in interlocutory appeals in as little as 4-5 weeks after filing.[5]

6. Will an interlocutory appeal pause proceedings before the Immigration Judge?

No. An interlocutory appeal will not automatically stop the progress of removal proceedings at the trial level. In theory, the Immigration Judge can grant a continuance to await the outcome of the interlocutory appeal, or the BIA can grant a motion to stay proceedings during the appeal, but these are unlikely events given current BIA case law discouraging continuances. *Compare Matter of K-*, 20 I&N Dec. at 419 (noting the BIA granted a stay of IJ proceedings during the interlocutory appeal and heard oral argument in the case).

For example, if you file an interlocutory appeal from the IJ denying a continuance of the individual hearing, you may have to proceed with that hearing before the BIA has ruled on your appeal about the continuance. That is one reason it is often more efficient to file a single merits appeal from a removal order and include in that appeal the argument that the denial of the continuance prejudiced the respondent in a specific way.

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[5] The BIA also has incentives to process new appeals quickly because of provisions of the interim final rule implementing major changes to the BIA that were *not* vacated by recent litigation. *See Amica Ctr. for Immigrant Rts. v. Exec. Off. for Immigr. Rev.*, No. 26-cv-696 (RDM), 2026 WL 662494, at *28 (D.D.C. Mar. 8, 2026). The *Amica* decision left intact new regulations that impose consequences for appeals filed after March 9, 2026, if the BIA does not meet its regulatory deadlines. These require deciding appeals handled by a single AIJ within 90 days after the record is complete, and those involving a three-AIJ panel within 180 days. If those deadlines are not met, the case must be transferred to the BIA chair, vice chair, or the Attorney General for completion. *Id.* at *28. Since none of these officials has the time to adjudicate hundreds of past-due cases on top of their normal duties, the BIA is attempting to expedite cases filed after March 9 that are ready for adjudication, which includes interlocutory appeals, where the "record" is complete because there is no transcript or briefing schedule to wait for.

The BIA will not necessarily review records from the ongoing IJ-level case in an interlocutory appeal unless you include them with your filing. If your case is an older "paper file" as opposed to an electronic Record of Proceedings (eROP), the immigration court will *not* stop proceedings and ship the BIA the file. In an electronic case, the BIA has access to the electronic file before the IJ, but they do not have a duty to open that side of the file and look at documentation you have not submitted along with your filing. For this reason, you should attach copies of documents from the ROP if they are critical to the interlocutory appeal.

7. The IJ pretermitted my client's asylum case without a full hearing/The IJ denied my motion for termination, administrative closure, or a continuance with a pending USCIS application. Should I file an interlocutory appeal?

While the ultimate strategic choice depends on the facts and timeline of each case, this type of appeal is often not a good use of time and resources, as the BIA is very likely to dismiss it without reviewing it on the merits. As noted above, you will have to write a full brief when you file the appeal, instead of being able to wait what may be months or even years for a full transcript of the whole case and a briefing schedule. By that point in the future, the facts or case law affecting your case may be different.

If your client has alternate relief that can be heard before the IJ, you may file and litigate that relief, and then, if you still believe the IJ erred, you may file a merits appeal that includes challenges to the pretermission or motion denials. If your client does not have additional relief, it is usually not a long wait until the IJ issues an order of removal that incorporates their prior rulings. You may then decide to take a merits appeal from that order.

8. The IJ pretermitted my client's asylum case and ordered removal. I went to file a BIA appeal and the ECAS system gives me two options. Which one should I choose?

The ECAS online filing system may offer confusing options when you file an appeal in a case that had a prior IJ order in the file, like an order granting a DHS motion to pretermit a case or denying your motion to continue. It may ask you to choose which of those options you are appealing – the IJ's decision on a motion, or the IJ's decision in the general removal proceeding. This is intended to track the options on the EOIR-26 asking if you are filing an interlocutory appeal or if you are appealing the IJ's decision in merits proceedings.

Once the IJ has ordered removal, the most appropriate option is to appeal the merits/removal order, not just the decision on a single motion. You can then raise any issues that arose before the IJ, including the decision on any motion. If you choose the "motion" option, the system will treat it as an interlocutory appeal. You risk not receiving a transcript and briefing schedule and your arguments regarding other issues in the case will not be entertained. In addition, if you do not file an appeal from the removal order itself within 30 days, the appeal period will lapse. You will waive arguments against the removal order and the BIA may dismiss any pending interlocutory appeal as moot because the noncitizen now has a final removal order.

9. DHS filed an interlocutory appeal in my case. What will happen next?

Interlocutory appeals by DHS are on the rise, including where IJs deny motions to pretermit asylum, or grant administrative closure or continuances for pending USCIS petitions. **If you receive notice of one of these appeals, you must jump into action.**

File your Form EOIR-27, Notice of Appearance, at the BIA immediately so you can review DHS's appeal filing. You will not be able to review DHS's filing just because you had a Form EOIR-28 appearance filed before the immigration court. This will also present serious challenges for individuals who do not have appellate counsel, as they may be unable to review DHS's filing online easily. DHS will typically include a detailed addendum or brief with its Notice of Appeal.

Assume that: 1) the BIA will accept and review this case on the merits and 2) they will do so within a month or less, without issuing a briefing schedule or waiting a set amount of time for you to respond. Given the current speed with which the BIA is handling these cases, file an opposition brief as soon as you can, within a week or two.[6] Raise any arguments that the BIA should not exercise interlocutory review in the first place, such as arguing that the case does not meet the *Matter of K-*/*Matter of M-D-* standards for an interlocutory appeal and it will not prejudice DHS to raise these issues later. Then, raise any arguments you have on the merits to DHS's position. Make sure your IJ knows that an interlocutory appeal does not stay trial-level proceedings absent a specific order from the IJ or BIA if you want to move forward.

10. Can I raise arguments against the BIA's handling of an interlocutory appeal in a petition for review?

You can only file a petition for review (PFR) to the circuit court of appeals if your case ends in a final order of removal. 8 U.S.C. § 1252(b)(1). For example, if DHS files an interlocutory appeal in your case and the BIA sustains that appeal and remands to the IJ for further proceedings, there is no final order of removal yet. If the BIA enters or affirms an order of removal at the conclusion of proceedings, that is a final order from which you can file a PFR.

In the PFR, you can raise a broad range of challenges to the agency's decision, including that the BIA erred in its handling of an interlocutory appeal in your case in a way that requires remand. If the IJ or BIA relied on one of the recent BIA precedents in Appendix A, you should raise challenges to the validity and reasoning of that decision.[7] The circuits no longer consider *Chevron* deference to the BIA's precedents under *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024).

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[6] You may feel that this is an unreasonable amount of time to respond to an appeal. You could instead file a motion for a briefing schedule or add to your opposition arguments that the BIA's policy of adjudicating interlocutory appeals without any formal response time for the opposing party violates due process and the BIA regulations that presume opposing parties will have an opportunity to file briefs in all types of cases. *See, e.g.,* 8 C.F.R. § 1001.3(c),(e)(3),(e)(8)(i). However, I would not recommend filing *only* procedural challenges, since the BIA is highly unlikely to slow its process.

[7] In addition, if you challenge a recent BIA decision involving a pro se litigant, you may want to raise that this is a further reason the BIA's decision was not well-reasoned or based on a properly developed record.

Appendix A: BIA Precedent Decisions in Interlocutory Appeals, June 2025-June 2026

1. *Matter of A-C-M-*, 29 I&N Dec. 703 (BIA 2026) – holding the Immigration Judge erred in denying DHS's motion to pretermit asylum and related relief and find the respondent could be removed to a third country under an Asylum Cooperative Agreement; IJ should not have set the case out for a merits hearing on the respondent's fear of persecution in the third country (pro se respondent).

2. *Matter of I-B-M-S-*, 29 I&N Dec. 628 (BIA 2026) – holding the Immigration Judge erred in granting a change of venue at the individual hearing and finding the IJ showed bias in favor of the respondent (pro se respondent)

3. *Matter of Pinzon Rozo*, 29 I&N Dec. 507 (BIA 2026) – holding the Immigration Judge erred in granting a 1-year continuance to a respondent with approved Special Immigrant Juvenile Status to await visa availability

4. *Matter of Ibarra Vega*, 29 I&N Dec. 476 (BIA 2026) – holding the Immigration Judge erred in denying DHS's motion to recalendar proceedings that were administratively closed in 2013, where the respondent had a U visa application pending but no visa available, and referring to administrative closure as an "amnesty"

5. *Matter of Laurent Castro,* 29 I&N Dec. 419 (BIA 2026) – holding the Immigration Judge erred in continuing proceedings where the respondent did not appear instead of proceeding in absentia (pro se respondent)

6. *Matter of Medina Madrid*, 29 I&N Dec. 514 (BIA 2026) – holding the Immigration Judge erred in denying DHS's motion to recalendar proceedings that were administratively closed in 2013, even where the respondent had an approved I-130 and was pursuing a provisional I-601 waiver, because the length of the closure was unreasonable and had operated as an "amnesty" (pro se respondent)

7. *Matter of C-I-G-M & L-V-S-G-*, 29 I&N Dec. 291 (BIA 2025) – holding the Immigration Judge erred in denying DHS's motion to pretermit asylum and related relief and find the respondent may be removed to a third country under an Asylum Cooperative Agreement (ACA).

8. *Matter of J-A-F-S-*, 29 I&N Dec. 195 (BIA 2025) – holding the Immigration Judge erred in granting the respondent's motion to continue the individual hearing to investigate new eligibility for VAWA relief

9. *Matter of Cahuec Tzalam*, 29 I&N Dec. 300 (BIA 2025) – holding that the Immigration Judge erred in administratively closing proceedings based on a pending petition for SIJS (pro se respondent)

10. *Matter of B-N-K-*, 29 I&N Dec. 96 (BIA 2025) – holding the Immigration Judge erred in administratively closing proceedings due to the respondent's pending application for Temporary Protected Status