

**Immigration Cases in the 9th Circuit:
Court Process and Hot Topics**
November 14, 2024
Agenda

Moderator: Judah Lakin

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| b. Initial Reviews and Motions | |
| c. Inventory and Calendaring | |
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| II. Jurisdictional Developments | <i>Cheri Ho</i> |
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**Immigration Cases in the 9th Circuit:
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Resources and Citations

Court Process

Petitions for Review

- [Submitting a Petition](#)

Motions to Stay Removal

- [General Order 6.4\(c\)](#)
- [Filing Motions](#)

Equal Access to Justice Act (EAJA)

- [Application for Fees](#)
- [Statutory Maximum Rates](#)
- [Authority and Procedures](#)

Jurisdiction

Discretionary Relief Bar: 8 U.S.C. § 1252(a)(2)(B)(i)

Patel v. Garland, 596 U.S. 328 (2022). Courts lack jurisdiction to review all decisions relating to discretionary relief, including factual findings.

Figueroa Ochoa v. Garland, 91 F.4th 1289 (9th Cir. 2024), *cert. denied*, No. 23-1003, 2024 WL 4426538 (Oct. 7, 2024). The jurisdictional bar applies to factual judgments made when ruling on procedural motions where the underlying benefit is discretionary.

Wilkinson v. Garland, 601 U.S. 209 (2024). Application of the hardship standard to undisputed facts is a mixed question of law and fact that is reviewable under 8 U.S.C. § 1252(a)(2)(D).

Criminal Bar: 8 U.S.C. § 1252(a)(2)(C)

Tapia Coria v. Garland, 114 F.4th 994 (9th Cir. 2024). The jurisdictional bar applies even when the agency denies relief on the merits rather than based on the criminal offense. Caselaw to the contrary did not survive *Nasrallah v. Barr*, 590 U.S. 573 (2020).

Filing Deadline: 8 U.S.C. § 1252(b)(1)

Alonso-Jaurez v. Garland, 80 F.4th 1039 (9th Cir. 2023). The thirty-day deadline for filing a petition for review is a non-jurisdictional claim-processing rule.

Riley v. Garland, No. 22-1609, 2024 WL 1826979 (4th Cir. Apr. 26, 2024), *cert. granted*, 2024 WL 4654964 (U.S. Nov. 4, 2024) (No. 23-1270). The Supreme Court will consider whether the thirty-day deadline is jurisdictional.

Exhaustion Requirement: 8 U.S.C. § 1252(d)(1)

Santos-Zacaria v. Garland, 598 U.S. 411 (2023). The exhaustion requirement is a non-jurisdictional claim-processing rule.

See, e.g., Umana-Escobar v. Garland, 69 F.4th 544 (9th Cir. 2023) (as amended); *Suate-Orellana v. Garland*, 101 F.4th 624 (9th Cir. 2024); *Shen v. Garland*, 109 F.4th 1144 (9th Cir. 2024) (mandate not issued as of Nov. 6, 2024).

Notice to Appear: 8 U.S.C. § 1229(a); 8 C.F.R. § 1003.14(a)

United States v. Bastide-Hernandez, 39 F.4th 1187 (9th Cir. 2022) (en banc). The omission of hearing information from the Notice to Appear does not deprive the agency of jurisdiction; the regulatory requirements can be satisfied by a later notice that includes the hearing information.

Matter of Fernandes, 28 I. & N. Dec 605 (BIA 2022). A statutory claim-processing challenge will generally be considered timely if raised prior to the close of pleadings before the immigration judge.