Pretermission

Meet Your Panel

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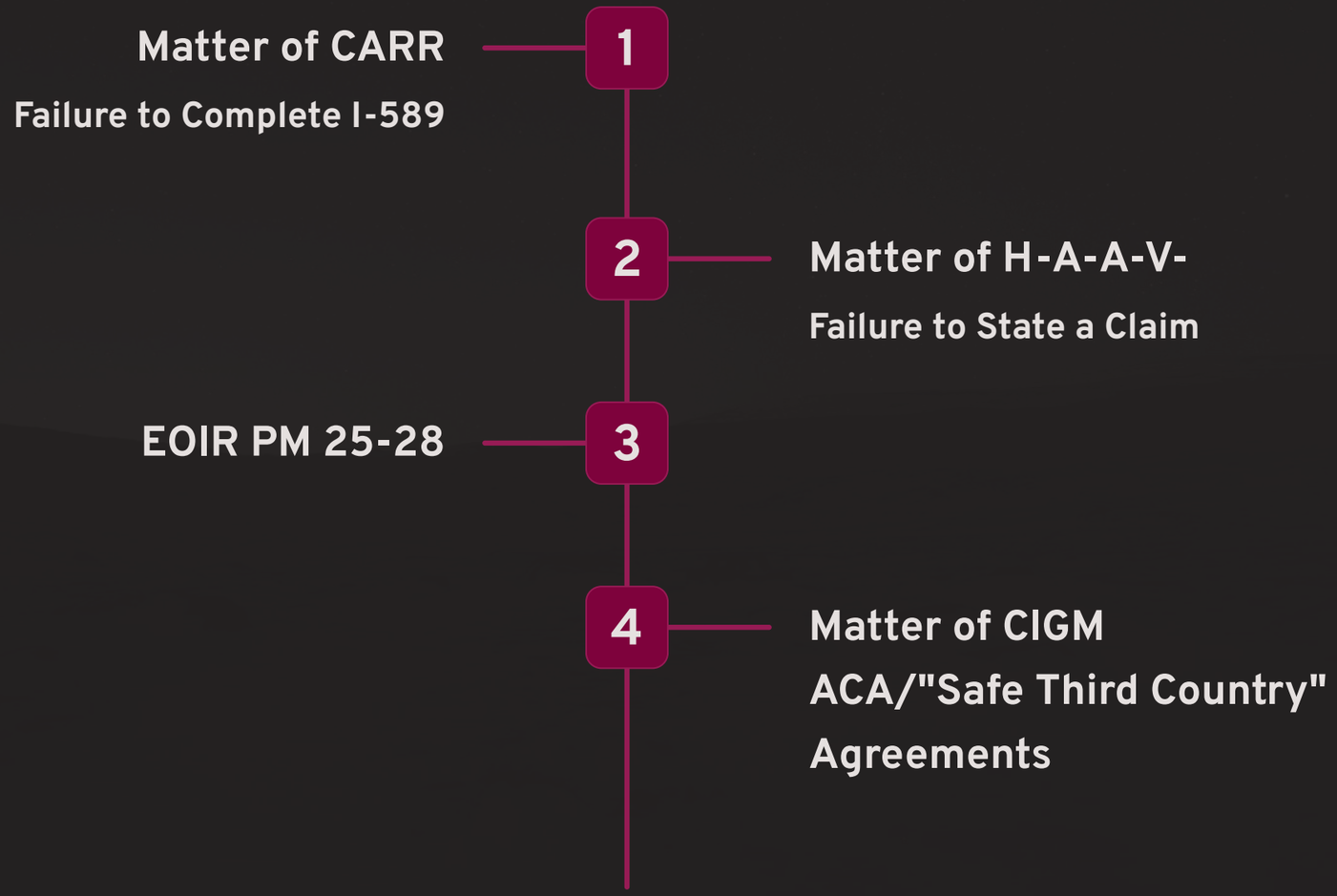
Legal Background to Pretermission: Critical Precedents



Matter of CARR, 29 I&N Dec. 13 (BIA 2025)

Establishes grounds for pretermission when asylum applications contain incomplete or deficient information, creating procedural barriers for applicants.

- Under 8 CFR § 1208.3(c)(3), a Form I-589 is considered incomplete if it (1) lacks a response to each question on the form, (2) is unsigned, or (3) is missing required materials
- Form I-589 “requires a specific substantive answer to every question on the form”
- Required materials” do *not* include a declaration
- A response to each of the questions” means that every question must be answered -avoid“pls. see attached”

Matter of H-A-A-V-, 29 I&N Dec. 233 (BIA 2025)

Allows pretermission when applications fail to articulate cognizable asylum claims, even before full merits hearing—a significant procedural hurdle.

- The factual allegations underlying a claim for asylum, withholding of removal, or protection under the CAT, viewed in the light most favorable to the respondent, must establish *prima facie* eligibility for relief or protection.
- *Prima facie* requires a reasonable likelihood of satisfying the requirements for relief
- Otherwise, an Immigration Judge may pretermit the applications without a full evidentiary hearing on the merits of the claim

EOIR PM 25-28

“EOIR’s interpretation of applicable law is that adjudicators may pretermit legally deficient asylum applications without a hearing. **Current regulations require a hearing on an asylum application only “to resolve factual issues in dispute.” 8 CFR § 1240.11(c)(3). However, no existing regulation requires a hearing when there are no factual issues in dispute, including when the facts underlying the legal claim for asylum are undisputed, but the claim itself is legally deficient.** In fact, current regulations expressly note that no further hearing is necessary once an immigration judge determines that an asylum application is subject to certain grounds for mandatory denial. Id.”

Matter of C-I-G-M & & L-V-S-G, 29 I&N Dec. 291 (BIA 2025)

ACA/"Safe Third Country" Agreements: The most expansive basis for pretermission, invoking Asylum Cooperative Agreements to bar claims from applicants who transited through third countries.

- This case purports to limit an IJs ability to determine whether a proposed country actually provides a “full and fair” adjudicatory process.
  - IJs can only determine:
    1. whether the relevant agreement applies to the respondent(look to text to the agreement);
    2. Whether the respondent qualifies for an exception to the relevant agreement; or
    3. Whether the respondent has demonstrated that it is more likely than not that they would be persecuted on account of a protected ground or tortured in the third country.

Matter of C-I-G-M & & L-V-S-G, 29 I&N Dec. 291 (BIA 2025)

- "Immigration Judges **do not** have authority to make the determination required under section 208(a)(2)(A) of the INA as to whether 'the alien would have access to a full and fair procedure' in the third country because the Attorney General has expressly reserved that statutory authority.'" (emphasis added)
- Interprets 8 C.F.R. § 1240.11(h), holding that where DHS asserts that there is an applicable ACA, the Immigration Judge should determine whether the ACA bars asylum before assessing asylum eligibility
  - Under 8 C.F.R. § 1240.11(h)(2)(iii), a person applying for asylum subject to an ACA must show **by a preponderance of the evidence,** that they will be persecuted on account of a protected ground or tortured in the ACA country
  - "[G]eneralized evidence of country conditions…is clearly insufficient to satisfy the burden of proof."
- "DHS *must* provide oral or written notice that it intends to remove the respondents to the relevant third country for consideration of his or her asylum claim." (emphasis added)

Regulatory Basis for ACA Pretermission
8 C.F.R. § 1240.11(h)

- “Immigration judge shall determine whether under the relevant agreement the alien should be removed to the third country.” (h)(1)
- Purports to render noncitizens in eligible for asylum, withholding of removal and CAT where ACA applies, unless Immigration Judge determines **by a preponderance of the evidence that**: 1) relevant agreement doesn’t apply to noncitizen; 2) noncitizen qualifies for an exemption; 3) noncitizen has demonstrated they are more likely than not to be persecuted on account of protected ground or tortured in third country; or 3) a public interest exception from DHS applies. (h)(2) and (3)

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Arguments Opposing Pretermission

Pretermission motions are not unassailable. Multiple legal and procedural arguments exist to challenge these motions and protect your client's right to a full hearing.

From regulatory deficiencies to due process violations, understanding these counterarguments is essential for effective advocacy.

Four Strategic Defense Arguments

1

ACA Parameters

Asylum Cooperative Agreement motions have specific applicability requirements. Many cases fall outside these parameters—identify when ACA motions are legally inapplicable to your client's circumstances.

2

Regulatory Framework Arguments

Challenge pretermission on regulatory grounds. Existing immigration regulations contain procedural safeguards that pretermission motions may violate, particularly regarding notice and opportunity to be heard.

3

Due Process

Pretermission is fundamentally different from summary judgment in civil litigation. It operates without equivalent procedural protections, creating due process concerns that warrant judicial scrutiny.

4

Additional Legal Arguments

Leverage sample motions in opposition and develop creative legal theories. Strong precedent exists for challenging pretermission—compile persuasive arguments tailored to your case's unique facts.

ACA Parameter Arguments

ACA Parameters

- ACAs DO NOT apply to:
  - Unaccompanied minors
  - Those who entered the United States BEFORE Nov. 19, 2019 (84 Fed Reg. 63994).

- DHS claims that there are ACAs in place with Canada, Honduras, El Salvador, Guatemala, Ecuador, and Uganda.
  - Read the text of the relevant agreement(s) to determine if your client falls into an exception.
  - E.g. HONDURAS ACA:
    - Does not apply to those who entered the U.S. with a visa (Article 4), or to those who did not require a visa to enter the U.S.
    - Honduras does not have to accept anyone convicted of certain crimes (enumerated in Article 5)
    - Family units are noted as specifically requiring a different implementation agreement; none exists at this time (Section 2d, Implementation Plan)
  - Other ACAs extremely open-ended with few articulated limitations.

ACA Parameters

- Once DHS has provided notice that it intends to subject a respondent to an ACA, the respondent must have a "reasonable opportunity to satisfy his or her burden to show by a preponderance of the evidence that the safe third country bar does not apply because he or she will more likely than not be persecuted or tortured in the relevant third country." *Matter of C-I-G-M & & L-V-S-G;* see 8 C.F.R. §§ 1240.8(d), 1240.11(h)(2)(iii).
  - Seek more time to respond to a motion to pretermit
  - Argue that a motion to pretermit is untimely and a motion for late filing should not be granted

- Though *Matter of C-I-G-M & & L-V-S-G* purports to limit the scope of an IJ's inquiry, make all arguments for appeal.

Regulatory Framework Arguments

Regulatory Framework

- “Relevant agreement” does not apply to the noncitizen because of lack of implementation, 8 C.F.R. § 1240.11(h)(2)(i)
  - Make implementation arguments here (i.e. because there is no implementation agreement, the Immigration Judge cannot determine that it squarely applies to the noncitizen)
  - Respond to DHS arguments about limited Immigration Judge jurisdiction by arguing lack of implementation falls squarely into authority given to Immigration Judges by regulation and *Matter of C-I-G-M-*

- “Relevant agreement” does not apply as DHS has failed to demonstrate the feasibility of the noncitizen’s removal due to numerical limitations in the ACA
  - DHS should have to submit evidence that the ACA will have sufficient capacity to receive the noncitizen and therefore can’t show that they will be removed pursuant to the ACA agreement

Regulatory Framework

- Noncitizen can demonstrate more likely than not that they will be persecuted on account of protected ground or tortured in third country 8 C.F.R. 1240.11(h)(2)(iii)
  - Proof should be as specific to the individual as possible
  - If the noncitizen has been to the third country, highlight their experience

- DHS must give oral or written notice that it intends to remove the noncitizen to the relevant third country, *Matter of C-I-G-M-*
  - Requires that DHS affirm they intend to remove this individual noncitizen to third country; not broad statements
  - DHS cannot argue in “good faith” that they will remove this particular individual to the third country and so they cannot give true notice

- Third country cannot provide access to a “full and fair procedure for determining a claim to asylum” INA § 208(a)(2)(A)

- Seek public interest exemption from both DHS and Immigration Judge

Due Process

Due Process

- Violates Fifth Amendment right to due process
  - Fifth Amendment requires that noncitizens in immigration proceedings have a "full and fair hearing" and a "reasonable opportunity to present evidence on their behalf." *See, e.g., Landon v. Plascencia*, 459 U.S. 21 (1982); *Colmenar v. I.N.S.*, 210 F.3d 967 (9th Cir. 2000)

- Violates INA rights to process
  - A respondent in removal proceedings "shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government." INA § 240(b)(4)(B)
  - Immigration Judge should evaluate the testimony of the respondent and any witnesses and "weigh the credible testimony along with other evidence of record" when evaluating whether the respondent has met the burden of proof on any applications for relief. INA § 240(c)(4)(B)

Due Process

- Violates regulatory rights to process
  - The Immigration Judge will decide applications for relief “after an evidentiary hearing to resolve factual issues in dispute” 8 C.F.R. § 1240.11(c)(3)
  - The respondent “shall be examined under oath on his or her application and may present evidence and witnesses in his or her own behalf” 8 C.F.R. § 1240.11(c)(3)(iii)

- ACAs cannot be applied retroactively
  - Rely on the date of the specific agreement, not the 2019 implementing regulations

Additional Arguments

Additional Arguments

- Immigration Judge cannot designate third country as a country of removal, pursuant to INA § 241(b)(2)
  - Immigration Judge must comply with the four-stage inquiry set forth in INA § 241(b)(2) before designating a country for removal
  - Allows DHS to remove a noncitizen to an alternative country, including a country "whose government will accept the [noncitizen] into that country."
  - Argue that the Immigration Judge cannot issue an order as to the third country without making findings about the propriety of the third country under 241(b)(2) and that they must consider whether the noncitizen can be removed there. *See* *Wangchuck v. DHS*, 448 F.3d 531 (2d Cir. 2006) (requiring that before ordering removal to China, the Immigration Judge must first "determin[e] that he was eligible to be removed there" under Section 241(b)(2)).
    - Reference DHS's policy on not making ACA motions for detained cases
    - Evidence of inability/refusal of third countries to accept noncitizens

Additional Arguments

- In light of *UT v. Bondi*, the court should defer adjudication of the ACA claims

- 8 C.F.R. § 1240.11(h) is *ultra vires* as it exceeds the scope of statute in that it bars relief as to withholding of removal as well as CAT. *Compare* INA § 208(a)(2)(A) with 8 C.F.R. § 124011(h).

- *Matter of C-A-R-R-* and *Matter of H-A-A-V-* arguments:
  - Ensure that Form I-589 sets forth "substantive answers" to necessary questions and that it sets forth *prima facie* eligibility for relief
  - Include enough facts to clearly set forth nexus, PSGs/political opinion and to survive unwilling/unable test where non-governmental actor
  - Ensure that bars to asylum (i.e. CLP, one year filing deadline) are also clearly addressed in Form I-589
  - If necessary, argue retroactivity as well

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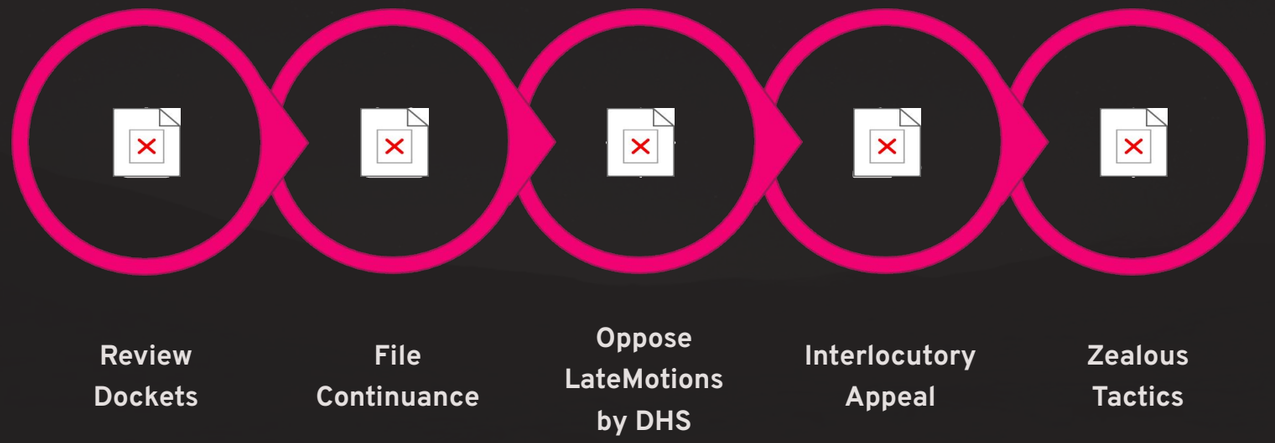
Litigation Strategies: Keeping Your Case Alive



Proactive Case Management

Don't wait for pretermission motions to arrive. Systematically review all docketed asylum cases to assess ACA motion vulnerability based on jurisdictional parameters.

Procedural Challenges

Aggressively oppose DHS's late filing of motions on both regulatory and due process grounds.

Strategic Considerations

Weigh the benefits and risks of zealous advocacy tactics—including bar complaints for DHS misrepresentations and recusal motions—against potential impact on your client's case.

Key Tactical Considerations

Motions to Continue

If applicable, identify legitimate grounds for continuances early. Additional time can allow you to develop stronger arguments, gather evidence, or address procedural deficiencies that might invite pretermission.

Interlocutory Appeals

Consider pursuing interlocutory appeals when pretermission orders contain clear legal errors. While challenging, successful appeals can establish protective precedent for future cases.

Case-by-Case Analysis

Every zealous advocacy tactic carries risk. Carefully evaluate whether aggressive procedural challenges will advance your client's claim or potentially create additional obstacles to relief.

FEDERAL LITIGATION

DON'T LOSE HOPE: FEDERAL COURT CHALLENGES

U.T. v. Bondi, U.S. District Court for the District of Columbia, No. 1:20-cv-00116

CGRS's federal litigation challenges the Asylum Cooperative Agreements that underpin the goverment's motions to pretermit pursuant to *Matter of CIGM* and seeks systemic relief, including class certification for individuals affected by the ACAs.

The Center for Gender & Refugee Studies' *U.T. v. Bondi* is challenging the legality of ACA agreements. First filed as *U.T. v. Barr* on January 15, 2020 to challenge the first Trump administration's asylum cooperative agreements and the procedural framework that supported those and the current agreements. The case had been held in abeyance since 2021 by joint agreement. However, the current administration has signed or pursued a series of new agreements published an intended ratification of the Rule on August 20, 2025. On September 8, 2025, CGRS and co-counsel filed a motion to lift the abeyance on the case., then requested leave to amend the complaint to challenge the new agreements.

On October 15, 2025, the U.S. District Court for the District of Columbia granted the motion to lift the stay and accepted CGRS' first amended complaint. On December 19, 2025, CGRS and co-counsel requested leave to file a second amended complaint, adding 18 additional individual plaintiffs, and filed a motion to certify the class. The government opposed both motions. CGRS and co-counsel filed replies in support of class certification and for leave to file the second amended complaint in late January 2026.

Questions & Discussion

THANK YOU