



## **Raids Response Materials for Individuals with Final Removal Orders**

July 10, 2019

In anticipation of widespread raids in July 2019, the American Immigration Council has prepared template materials to assist attorneys representing individuals with final removal orders issued by the Executive Office for Immigration Review.<sup>1</sup> Materials include templates of: (1) a general skeletal motion to reopen a removal order and motion to stay removal for filing with the Board of Immigration Appeals (BIA) or immigration court (for pro se and represented cases); (2) a skeletal motion to rescind and reopen an in absentia removal order for filing with immigration court (for pro se and represented cases); and (3) a late notice of appeal for filing the BIA and accompanying notice of an automatic stay to U.S. Immigration and Customs Enforcement (ICE).

These materials are not a substitute for independent legal advice supplied by an attorney familiar with a client's case. It is not intended as, nor does it constitute, legal advice.

### **DO NOT TREAT THE THESE MATERIALS AS LEGAL ADVICE.**

Template motions are skeletal in nature. They are intended for quick filing in order to either ask for or trigger a stay of removal. Attorneys should supplement template motions with additional arguments and documentation *as soon as* it becomes available. If the movant seeks equitable tolling of the motion deadline, counsel should supplement the motion within the relevant statutory time period from the date tolling ended. For example, an individual with an equitable tolling claim who learns of the availability of a motion to reopen on July 1 and subsequently files a skeletal motion must then supplement the motion no later than 90 days after July 1.

#### **(1) General Emergency Motions to Reopen and Emergency Motions to Stay Removal**

##### **(a) Materials for Individuals Represented by an Attorney**

These template materials are for use by attorneys representing individuals seeking to reopen a final removal order. Filing a motion to reopen does not stay deportation. Counsel must file a separate motion to stay removal along with the motion to reopen.

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<sup>1</sup> Attorneys representing individuals with reinstatement orders under § 241(a)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(5) can consult the practice advisory, entitled [Reinstatement of Removal](#), issued by the American Immigration Council and National Immigration Project of the National Lawyers Guild.

Template materials provided for cases needing general motions to reopen are:

- [Pre-filing check list](#);
- [Template cover letter to immigration court or BIA](#);
- [Template motion for fee waiver to immigration court](#);
- [Template motion to reopen, template exhibit list, template respondent declaration, template counsel declaration, template proof of service, and template proposed order](#); and
- Template emergency motions for stay of removal, including:
  - [Template motion for stay of removal for cases involving fear-based claims](#);
  - [Template motion for stay of removal for cases NOT involving fear-based claims](#);
  - and
  - [Guidance for seeking letters in support of a stay motion](#).

**(b) Materials for Individuals Without an Attorney**

These template materials are intended for use by attorneys providing pro se assistance as outlined by the [NWIRP v. Sessions settlement agreement](#). They are for use in the cases of individuals seeking to file a general motion to reopen a final order.

Filing a general motion to reopen will not stay deportation. Individuals must file a separate motion to stay removal along with their motion to reopen.

Template materials provided for pro se individuals needing general motions to reopen are:

- [Pre-filing check list](#);
- [Template emergency motion to reopen, template emergency motion for stay of removal, template fee waiver motion, with template exhibit list, template respondent declaration, template proof of service, and template proposed order](#);
- [Blank fee waiver form](#);
- [List of immigration court addresses](#); and
- [List of office of chief counsel addresses](#).

**(2) Motions to Rescind and Reopen In Absentia Removal Orders**

**(a) Materials for Individuals Represented by an Attorney**

These template materials are for use in the cases of individuals who were ordered removed in absentia. Filing a motion to rescind and reopen an in absentia removal order automatically stays deportation until the immigration court rules on the motion.

Template materials provided for cases needing motions to rescind/reopen in absentia orders are:

- [Pre-filing check list](#);
- [Template cover letter to immigration court](#);
- [Template motion for fee waiver](#);
- [Template motion to rescind and reopen in absentia removal order, template exhibit list, template respondent declaration, template counsel declaration, template proof of service, and template proposed order](#); and

- [Template letter to U.S. Immigration and Customs Enforcement \(ICE\) providing notice of automatic stay of removal.](#)

**(b) Materials for Individuals Without an Attorney**

These template materials are intended for use by attorneys providing pro se assistance as outlined by the [NWIRP v. Sessions settlement agreement](#). These template materials are for use in the cases of individuals who were ordered removed in absentia.

Filing a motion to rescind and reopen an in absentia order automatically stays deportation until the immigration court rules on the motion.

Template materials provided for pro se individuals needing motions to rescind/reopen in absentia orders are:

- [Pre-filing check list](#);
- [Template motion to rescind and reopen in absentia removal order, template motion for fee waiver, template exhibit list, template respondent declaration, template proof of service, and template proposed order](#);
- [Blank fee waiver form](#);
- [List of immigration court addresses](#); and
- [List of office of chief counsel addresses](#).

**(3) Late-Filed Appeals of Removal Orders by Immigration Judges to the BIA**

By regulation, a Notice of Appeal of a removal order issued by an immigration judge must be filed with the BIA within 30 days of the decision and ICE cannot execute a removal order while the appeal is pending with the BIA. Arguably, the 30-day deadline is subject to a doctrine called “equitable tolling” that allows for extending certain filing deadlines where a litigant pursues a case diligently but is prevented from timely filing by an extraordinary circumstance. These template materials can be used to argue that the regulation that automatically stays deportation pending a BIA appeal applies unless and until the BIA decides whether to accept the late-filed appeal.

Template materials provided for late-filed appeals of orders of removal are:

- [Pre-filing check list](#);
- [Template cover letter to BIA](#);
- [Template supplement to Notice of Appeal \(Form EOIR-26\)](#); and
- [Template letter to ICE providing notice of automatic stay of removal](#).