

**U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS / IMMIGRATION COURT
FALLS CHURCH, VIRGINIA / CITY, STATE**

In the Matter of:)

)

#Your First and LAST NAME#

)

File No: **#Your A Number#**

)

In removal proceedings

)

EMERGENCY MOTION TO STAY REMOVAL

**UNITED STATES DEPARTMENT OF JUSTICE
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FALLS CHURCH, VIRGINIA / CITY, STATE**

In the Matter of

) **#Your A Number#**

)

)

#Your First and LAST NAME#

)

Respondent.

)

)

)

)

RESPONDENT'S EMERGENCY MOTION TO STAY REMOVAL

NOW COMES Respondent, #NAME#, hereby moves this Honorable Board/Court to stay the Respondent's imminent removal by U.S. Immigration and Customs Enforcement ("ICE"). Respondent in support of their motion states the following:

1. Respondent faces imminent removal to Iraq where they fear persecution, torture, and even death.
2. {If Applicable} On information and belief, Respondent's deportation is scheduled for #DATE# or Respondent is in custody and could be deported at any time.
3. They seek an emergency stay of removal to allow the Board of Immigration Appeals (Board or BIA) / Immigration Court to adjudicate Respondent's pending motion to reopen based on new and previously unavailable evidence of this same fear. That motion, filed

concurrently with this motion, seeks reopening #to pursue asylum / withholding of removal / protection under the Convention Against Torture (CAT)# and contains new evidence of changed conditions and a new claim of eligibility for such protection. If seeking asylum/withholding, cite: 8 U.S.C. §§ 1229a(c)(7)(B), (C)(ii); 8 C.F.R. §§ 1003.2(c)(1), (3)(ii); 8 C.F.R. §§ 1003.23(b)(3), (4)(i). If seeking CAT only, cite: 8 U.S.C. §§ 1229a(c)(7)(A), (B); 8 C.F.R. § 1003.2(c)(1); 8 C.F.R. § 1003.23(b)(3). That motion is pending.

4. {If non-detained} Although the Respondent is not detained, they have a final order of removal and may face imminent deportation upon entry into immigration custody. Therefore, the Board / Court should expeditiously rule on this stay motion.
5. {If detained} Respondent is detained at #name/location of facility# with a final order of removal and deportation is imminent. Therefore, the Board / Court should immediately rule on this stay motion. Emergency action is necessary, particularly because the Board's Emergency Stay Unit (ESU) hotline does not operate on weekends or holidays or on weekdays between 5:30 pm and 9 am Eastern Time, but ICE Enforcement and Removal Operations (ERO) does conduct removals during those times. See BIA Practice Manual, Ch. 6.3(c)(ii)(A). Emergency action is necessary because the Court will not consider stay requests on weekends or holidays or on weekdays after operating hours, but ICE Enforcement and Removal Operations (ERO) does conduct removals during those times. See Immigration Court Practice Manual, Ch. 8.3(c)(ii)(A).
6. The Board has authority to issue an administrative stay because Respondent's motion to reopen is currently pending. 8 C.F.R. §§ 1003.2(f), 1003.1(d)(1)(ii). The Court has authority to issue an administrative stay because Respondent's motion to reopen is currently pending. 8 C.F.R. §§ 1003.23(b)(1)(v), (b)(4)(i).

7. The Board / Court should automatically stay removal when a noncitizen, like Respondent, seeks a stay in conjunction with a non-frivolous motion to reopen based on new and previously unavailable evidence of a fear-based claim. First, premature removal may mean injury or even death before the Board / Court can adjudicate Respondent's fear-based claim. Second, a cursory review of the merits of such a motion to reopen, as would necessarily occur in an emergency stay evaluation, is dangerously inappropriate where no adjudicator has previously examined the evidence or claim presented in the motion. Third, the Board's refusal to grant a stay before deciding the merits of the motion would deprive Respondent of the opportunity to seek a judicial stay in conjunction with a petition for review prior to deportation to a country where they face injury or even death. See 8 U.S.C. § 1252(b)(3)(B). Third, the Court's refusal to grant a stay before deciding the merits of the motion would deprive Respondent of the opportunity to seek a stay in conjunction with an appeal to the Board of Immigration Appeals (BIA or Board). See 8 C.F.R. § 1003.6(b). Finally, absent an automatic stay in these circumstances, the Board / Court could deprive Respondent of their statutory right to seek reopening.

CONCLUSION

WHEREFORE, Respondent respectfully requests that this Honorable Board/Court grant a stay of removal, for the reasons stated herein. Because no administrative body or court yet has reviewed Respondent's claim, the Board / Court should automatically stay removal because, as discussed above, the law requires that Respondent have the opportunity to present this claim. Absent an automatic stay in these circumstances, DHS will wrongfully deport Respondent before the Board / Court can fully and with sufficient deliberation evaluate the merits of Respondent's claim.

Respectfully submitted,

Date: #date when you signed this#

#First name and last Name#

#Your A-number#

#Your Address#

#Your Phone Number#

#Your Email#