



PRACTICE ADVISORY¹

January 21, 2014

SEEKING A JUDICIAL STAY OF REMOVAL IN THE COURT OF APPEALS

I. INTRODUCTION

Filing a petition for review of a removal order does not automatically stay the petitioner's removal from the United States. INA § 242(b)(3), 8 U.S.C. § 1252(b)(3). However, the courts of appeals may issue a judicial stay of removal to prevent U.S. Immigration and Customs Enforcement (ICE) officers from deporting a person while his/her petition for review is pending before the court. In *Nken v. Holder*, 556 U.S. 418, 434 (2009), the Supreme Court instructed courts to adjudicate stay motions by applying the "traditional" standard for a stay.

This advisory begins with background information regarding stay requests, including when an immigration agency order becomes final and how to file a stay motion. Next, it discusses the legal standard for stay motions as set forth in *Nken*. Lastly, it addresses the implications on stay motions of ICE's return policy and of the Office of the Solicitor General's (OSG) misrepresentations to the Supreme Court regarding the government's ability to return successful litigants.

Attached to this advisory is an appendix detailing local rules and procedures of circuit courts that are relevant to stay motions.

Accompanying this advisory as separate, downloadable documents, available in Word format, are a sample stay motion, a sample declaration in support of a stay motion, and sample

¹ Copyright (c) 2014, National Immigration Project of the National Lawyers Guild, Boston College Post Deportation Human Rights Project and Immigrant Rights Clinic, Washington Square Legal Services, New York University School of Law, and the American Immigration Council. The authors of this practice advisory are Trina Realmuto, Jessica Chicco, Nancy Morawetz, and Beth Werlin.

This practice advisory is intended for lawyers and is *not* a substitute for independent legal advice supplied by a lawyer familiar with a client's case.

guidelines to assist families, friends and community members in writing letters in support of stay requests.

This practice advisory does not address stay requests submitted to the immigration agencies or to a district court, nor does it address requests under the All Writs Act.

Please contact us: The authors of this advisory would like to hear about how the courts are deciding stay motions and the government's position on the return policy. Please email trina@nipnlg.org and jessica.chicco@bc.edu with information about your cases.

II. BACKGROUND INFORMATION

A. When to File a Stay Motion with a Court of Appeals

Once an order of removal becomes administratively final, the Department of Homeland Security (DHS), acting through its component agency ICE, immediately may remove the individual. Significantly, there is no automatic stay of removal during the 30-day period for filing a petition for review. Moreover, the mere filing of a stay motion does not temporarily stay removal until the court adjudicates the motion except in the *Ninth and Second Circuits*. In these circuits, the filing of a stay motion temporarily stays removal until the motion is adjudicated.² (Similarly, filing a petition for review or stay motion does not toll the period for a motion to reopen or reconsider with the Board of Immigration Appeals (BIA).³)

In deciding when to file the stay motion, it is important to consult the statutory and regulatory provisions that specify when a removal order becomes final. Even though a person may be removed immediately after the order becomes final, it may not always be advisable to file a stay motion right away. For example, if the individual is not detained, filing a stay motion may prompt ICE to arrest and detain him or her. Of course, ICE could arrest and detain a noncitizen with a final order at any time, even if a stay motion is not filed. Counsel must consider this risk as well as local ICE practices when deciding whether and when to file a stay motion.

To determine when an order becomes final, the first question to ask is which entity issued the order. Both DHS and the Executive Office for Immigration Review (EOIR) – which includes immigration judges and the BIA – have authority to issue orders of removal, depending on the

² In the Ninth Circuit, the filing of a stay motion automatically confers a temporary stay by operation of law. *Deleon v. INS*, 115 F.3d 643, 644 (9th Cir. 1997); General Order 6.4(c)(1) (General Orders of the Ninth Circuit Court of Appeals).

The Second Circuit has entered into an *informal* agreement with DHS: upon notification by the court that a stay motion has been filed, DHS will not remove the noncitizen until the court adjudicates the stay motion. The Court acknowledged this policy in its decision *In the Matter of Immigration Petitions for Review Pending in the United States Court of Appeals for the Second Circuit*, Docket No. 12-4096 (Oct. 16, 2012). See additional information in Appendix.

³ See *Keo Chan v. Gonzales*, 413 F.3d 161, 162 (1st Cir. 2005) (issuance of a stay of removal does not toll motion to reopen deadline); *Randhawa v. Gonzales*, 474 F.3d 918, 922 (6th Cir. 2007) (filing of petition for review does not toll motion to reopen deadline).

circumstances. Relevant here, an *EOIR-issued order of removal* becomes final upon the BIA's dismissal of the appeal or upon overstaying the voluntary departure period granted by the BIA.⁴

When a *DHS-issued order* becomes final depends on the type of order and whether the person has a fear of return to his or her country of origin. The following DHS removal orders generally are reviewable in the courts of appeals.⁵

Reinstatement Order. DHS may remove an individual following the entry of a *reinstatement order* pursuant to INA § 241(a)(5), 8 U.S.C. § 1231(a)(5), unless the person is referred for a reasonable fear interview, *see* 8 C.F.R. §§ 241.8(e), 208.31. If an asylum officer, or an immigration judge reviewing the asylum officer's decision at the noncitizen's request, determines that the person has a reasonable fear of persecution or torture, DHS may not remove the person until the conclusion of proceedings to determine whether removal must be withheld or deferred, including any appeal of the immigration judge's decision to the BIA. 8 C.F.R. §§ 208.31(e)-(g); 1208.31(e)-(g); 8 C.F.R. §§ 208.2(c)(2), 1208.2(c)(2). If the asylum officer, or an immigration judge reviewing the asylum officer's decision at the noncitizen's request, determines the person has not established a reasonable fear of persecution or torture, DHS may then remove the person. 8 C.F.R. §§ 208.31(f), (g)(1); 1208.31(f), (g)(1).

Removal Orders Against Non LPRs with Aggravated Felonies. DHS may issue a removal order against *non-lawful permanent residents with aggravated felony convictions* pursuant to INA § 238(b), 8 U.S.C. § 1228(b). In this situation, however, DHS is prevented from physically deporting the person "until 14 calendar days have passed from the date that such order was issued, unless waived by the alien, in order that the alien has an opportunity to apply for judicial review" INA § 238(b)(3), 8 U.S.C. § 1228(b)(3); 8 C.F.R. § 238.1(f)(1). Further, if the individual requests withholding of removal, DHS must refer the case for a reasonable fear interview. 8 C.F.R. §§

⁴ The regulations address final orders of removal and provide that an order of removal shall become final: (1) upon an immigration judge's order if the noncitizen waives his or her right to appeal to the BIA (including a stipulated order of removal by which the noncitizen automatically waives appeal pursuant to 8 C.F.R. § 1003.25(b)); (2) upon expiration of the 30-day period for filing a BIA appeal if the right to appeal is reserved but no appeal is timely filed; (3) upon the BIA's dismissal of the appeal; (4) if the case is certified to the BIA or the Attorney General, upon the subsequent order; (5) upon an immigration judge's order of removal in absentia; (6) where the immigration judge grants voluntary departure, upon overstay of the voluntary departure period or failure to timely post the required bond; or (7) where the immigration judge grants voluntary departure and the noncitizen appeals to the BIA, upon the BIA's order of removal or overstay of the voluntary departure period granted by the BIA. 8 C.F.R. §§ 241.1; 1241.1. Note that before filing a petition for review, a person must exhaust his or her administrative remedies, INA § 242(d)(1), 8 U.S.C. § 1252(d)(1), and thus not all final orders of removal are reviewable in the court of appeals.

⁵ DHS also may issue an *expedited removal order* pursuant to INA § 235(b), 8 U.S.C. § 1225(b). However, the statute precludes judicial review of these orders in the courts of appeal so a stay motion generally is not appropriate. INA § 242(e)(1), 8 U.S.C. § 1242(e)(1).

238.1(f)(3); 208.31. See paragraph above discussing when DHS may deport someone who has a reasonable fear interview.

Removal Order under the Visa Waiver Program. DHS also may issue and execute a removal order against an individual who entered on *the visa waiver program* unless the individual requests an asylum-only hearing before an immigration judge. INA § 217(b), 8 U.S.C. § 1187(b), 8 C.F.R. § 217.4(b). DHS may remove the person immediately upon entry of the order.

B. How to File a Stay Motion

A stay motion is filed with the court of appeals with jurisdiction over the petition for review of the removal order. INA § 242(b)(2); 8 U.S.C. § 1252(b)(2). Practitioners may file the motion concurrently with a petition for review or after a petition for review has been filed.⁶ There is no fee for filing a motion for stay of removal. (The fee for filing a petition for review is \$450 unless the court grants permission to appear in forma pauperis).

The procedural vehicle for a stay request is a motion. Motions are governed by Federal Rule of Appellate Procedure (FRAP) 27 and corresponding local rules and internal operating procedures.⁷ Unless otherwise set forth by local rules, the government has 10 days to file an opposition to the motion, and the movant has 7 days to file a reply. FRAP 27(a)(3), (4). Given the importance of obtaining a stay for an individual and his/her family, counsel generally should not forego reply briefing.

Some circuits' local rules require that the motion inform the court of the position of opposing counsel (see the Appendix for more information about local rules). Even where it is not required, attorneys should contact the Department of Justice, Office of Immigration Litigation (OIL) to obtain the Attorney General's position on the stay motion. Often the OIL attorney will not take a position on the motion. If an OIL attorney has not entered an appearance yet, counsel can contact the OIL appellate division at (202) 616-4900. A court of appeals is more likely to grant an unopposed stay motion.

In general, stay motions should be detailed and well documented and should brief all the relevant factors. (These factors are discussed in detail in Section III of this advisory.) If an attorney is preparing the stay motion in the absence of a complete administrative record, he or she may consider filing a skeletal stay motion and informing the court that he or she intends to supplement the motion with additional information and supporting documentation upon

⁶ See American Immigration Council, *How to File a Petition for Review* (February 2011), available at www.legalactioncenter.org/sites/default/files/lac_pa_041706.pdf.

⁷ Although FRAP 18 says "[a] petitioner must ordinarily move first before the agency for a stay pending review of its decision or order," some courts have held that doing so is not required in immigration cases, see, e.g., *Alimi v. Ashcroft*, 391 F.3d 888, 893 (7th Cir. 2004) (finding that there is no obligation to request a stay with the BIA); *Sofinet v. DHS*, 188 F.3d 703, 706-07 (7th Cir. 1999) (same), and typically, is not required. Moreover, requesting an agency stay often is not logistically possible and generally is impracticable.

obtaining the record. Check local rules for time limitations and procedure for submitting supplementary information. *Attorneys may wish to create template skeletal motions for use in an emergency before the need to file a stay request arises.*

C. Stay Grants, Denials and Violations

If the court of appeals grants a stay motion, the stay is valid until the mandate issues. *See, e.g., Mariscal-Sandoval v. Ashcroft*, 370 F.3d 851, 856 (9th Cir. 2004). Note that the filing of a petition for panel or en banc rehearing stays issuance of the mandate until the court decides the petition. FRAP 41(d)(1).

If the court of appeals denies the stay, and DHS deports the person, the court still has authority to adjudicate the petition for review. In other words, neither the stay denial nor the person's deportation cuts off the circuit court's jurisdiction to adjudicate the petition.⁸ If the court of appeals denies the stay, an individual could ask the Supreme Court for a stay.⁹ However, the Supreme Court rarely grants such requests.

If the court grants a stay and DHS nevertheless deports the person, ICE generally is more willing to facilitate and pay for return and, if not, counsel could pursue federal court remedies to compel return. Even if ICE returns the person, counsel also should consider seeking damages under the Federal Tort Claims Act, 28 U.S.C. § 1346(b)¹⁰ or *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971).

III. LEGAL STANDARD FOR STAY MOTIONS

The Supreme Court's decision in *Nken v. Holder* governs stay motions. 556 U.S. 418 (2009). As discussed below, the government's brief in *Nken* and the Supreme Court's opinion rely on the existence of a return policy for noncitizens who successfully litigate their petitions for review. Subsequent developments about the alleged return policy and DHS' new return policy, as well as their implications on stay motions, are discussed in this section and incorporated in the sample stay motion.

⁸ In 1996, Congress repealed the post-departure bar to petitions for review, formerly found at INA § 106(a), 8 U.S.C. § 1005a. Section 306(b) of Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Division C of Pub. L. No. 104-208, 110 Stat. 3009-546.

⁹ *See* Supreme Court Rule 23. In *Nken*, the Court treated Mr. Nken's stay request as a petition for a writ of certiorari, pursuant to 28 U.S.C. § 1254(1) and Supreme Court Rule 10. *Nken v. Mukasey*, 555 U.S. 1042 (2008) (granting certiorari). *See also* Supreme Court Rule 11 (allowing for petitions for writ of certiorari to review cases in which a court has not yet entered a final judgment).

¹⁰ For more information about the FTCA, *see* NIPNLG's advisory, available at: http://nationalimmigrationproject.org/legalresources/practice_advisories/pa_FTCA_FAQ.pdf.

A. The Supreme Court's Decision in *Nken* and the Standard for a Stay

The Supreme Court granted certiorari in *Nken v. Holder* to determine whether a court of appeals should adjudicate stay requests by weighing “traditional” stay standards or requiring “clear and convincing evidence” that the removal order “is prohibited as a matter of law” pursuant to INA § 242(f)(2), 8 U.S.C. § 1252(f)(2). At the time of the decision, eight circuits applied the “traditional” stay criteria and two circuits applied the more stringent “clear and convincing” standard.¹¹

The Court in *Nken* rejected the Office of the Solicitor General’s (OSG) argument that the “clear and convincing evidence” standard of 8 U.S.C. § 1252(f)(2) applies to stay motions. Rather, the Court instructed courts to apply the “traditional” standard for a stay. Under this standard, the court considers the following four factors:

- (1) whether the stay applicant has made a strong showing that he/she is likely to succeed on the merits;
- (2) whether the applicant will be irreparably injured absent a stay;
- (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and
- (4) where the public interest lies.

Nken, 556 U.S. at 434. Although arguably beyond the scope of the question presented by the certiorari petition, the Supreme Court went on to discuss the traditional stay factors in greater detail.

B. Arguing the *Nken* Factors

The person requesting the stay bears the burden of showing that individualized review of these factors weighs in his or her favor. *Nken*, 556 U.S. at 433-34. Thus, in order to meet this burden, stay motions should cite to the legal standard set forth in *Nken* and address each factor in detail. Without a detailed discussion of each factor, a circuit court is not likely to grant a stay.

Counsel is advised to create separate headings for each stay factor in the stay motion. Examples of headings are provided in the sample stay motion accompanying this advisory. This section provides suggestions for discussion points for each factor.

¹¹ Compare *Arevalo v. Ashcroft*, 344 F.3d 1, 9 (1st Cir. 2003); *Mohammad v. Reno*, 309 F.3d 95, 100 (2d Cir. 2002); *Douglas v. Ashcroft*, 374 F.3d 230, 234 (3d Cir. 2004); *Tesfamichael v. Gonzales*, 411 F.3d 169, 172-76 (5th Cir. 2005); *Bejjani v. INS*, 271 F.3d 670, 688-89 (6th Cir. 2001); *Hor v. Gonzales*, 400 F.3d 482, 485 (7th Cir. 2005); *Lim v. Ashcroft*, 375 F.3d 1011, 1012 (10th Cir. 2004); *Andrieu v. Ashcroft*, 253 F.3d 477, 482 (9th Cir. 2001) (en banc) with *Weng v. U.S. Att’y General*, 287 F.3d 1335, 1337-38 (11th Cir. 2002); *Ngarurih v. Ashcroft*, 371 F.3d 182, 195 (4th Cir. 2004).

- ***The First Factor: whether the stay applicant has made a strong showing that he/she is likely to succeed on the merits.***

The *Nken* Court explained that “[t]he first two factors are most critical.” *Id.* With respect to the first factor—likelihood of success on the merits—the chance of success must be “better than negligible,” and more than a “mere possibility of relief” is required. *Id.* (internal quotations and citations omitted).

Arguing this factor requires analyzing the agency’s decision and making arguments (supported by case law) explaining why the agency’s decision is erroneous. If counsel does not have the complete record, counsel may wish to inform the court that she/he will supplement the stay motion after receipt of additional parts of the record.

A circuit court decision that favorably decides the same or a similar issue provides a strong basis for this argument, even if other circuits have disagreed. The absence of a published decision on a novel issue of law, however, does not suggest that success on the merits of the petition is unlikely.

- ***The Second Factor: whether the applicant will be irreparably injured absent a stay.***

Arguments in this section of the motion will vary depending on the types of claims raised (*e.g.*, persecution/torture claims) and the types of potential harms the person will suffer if deported. Such harms include, but are not limited to, persecution/torture, medical conditions, family separation, loss of employment, and accompanying emotional harm the person would suffer. Counsel should document potential harms through declarations and letters from the person’s family, friends, and community. *See* the sample stay motion, the sample declaration in support of a stay motion and sample guidelines to assist families, friends and community members in writing letters in support of stay requests, which accompany this advisory.

Significantly, with respect to the second factor, the Supreme Court acknowledged that removal is a “serious burden” but concluded “it is not categorically irreparable.” *Nken*, 566 U.S. at 435. As the Court explained,

It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury. Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal. *See* Brief for Respondent 44.

Nken, 566 U.S. at 435. Importantly, in finding that deportation is not categorically irreparable harm, the Supreme Court relied on the Office of the Solicitor General (OSG)’s representation in its brief, which claimed:

By policy and practice, the government accords aliens who were removed pending judicial review but then prevailed before the courts effective relief by,

inter alia, facilitating the aliens' return to the United States by parole under 8 U.S.C. 1182(d)(5) if necessary, and according them the status they had at the time of removal.¹²

After immigrant rights groups filed a lawsuit¹³ seeking records of the alleged "policy and practice," the OSG admitted to the Supreme Court that it misrepresented the existence of a return policy. DHS' simultaneously tried to minimize the impact of this error by belatedly issuing a return directive. The OSG's letter and the return directive are available at: <http://nationalimmigrationproject.org/legalresources.htm#nipnlg>.

These post-*Nken* developments are significant to stay motions because the courts of appeals continually rely on the Supreme Court's finding that deportation is not "categorically irreparable" harm, which was largely based on the OSG's misrepresentation that the government can redress wrongful removal through return.

For reasons further detailed in another advisory and briefly summarized here, the government does not have a permanent, mandatory, or effective return policy.¹⁴ Thus, all litigants face the potential irreparable harm of not being able to return to the United States if the court denies the stay request and the person ultimately prevails on a petition for review. In general, a person is unable to return if either ICE refuses to facilitate return, or if the return process is inaccessible or logistically prohibitive (e.g., the person is unaware of the process, unable to secure the necessary documentation, or cannot afford associated return expenses).

Counsel and litigants are encouraged to raise the issue of the OSG's misrepresentation and the flaws in the current return policy in their stay motions. To date, attorneys who have raised this issue have reported stay grants, case reopening or agency willingness to grant an administrative stay (even in cases where the court denied the stay motion). The accompanying stay motion provides a framework for preserving this issue. **In addition, we ask that anyone raising, or considering raising, the impact of the OSG's misrepresentation in *Nken* and ICE's return**

¹² Brief for Respondent at 44, *Nken v. Holder*, 556 U.S. 418 (2009).

¹³ The case is *National Immigration Project v. DHS*, No. 11-CV-3235 (S.D.N.Y. filed May 12, 2011). The plaintiffs are: the National Immigration Project of the National Lawyers Guild, the American Civil Liberties Union, the Immigrant Defense Project, the Boston College Post-Deportation Human Rights Project, and Professor Rachel Rosenbloom. The New York University School of Law Immigrant Rights Clinic represents plaintiffs.

¹⁴ The advisory, entitled "Return to the United States After Prevailing on a Petition for Review or Motion to Reopen or Reconsider," is available at: [http://nationalimmigrationproject.org/legalresources/practice_advisories/cd_pa_Return_to_US_After_Successful_Petition_for_Review_or_%20Motion%20\(12-21-2012\).pdf](http://nationalimmigrationproject.org/legalresources/practice_advisories/cd_pa_Return_to_US_After_Successful_Petition_for_Review_or_%20Motion%20(12-21-2012).pdf).

Among the reasons the policy does not safeguard return are its non-binding nature, lack of uniform application, lack of enforceability against ICE, its facial inadequacies (e.g., its conference of unfettered discretion to ICE over the return of non-LPRs, ambiguous language and exceptions), and its practical obstacles and impediments to return (e.g., financial and documentation burdens, lack of agency coordination in facilitation return, and insufficient notice of return policy).

policy on the court's irreparable harm analysis please contact us for potential amici support by emailing: Trina Realmuto (trina@nipnl.org) and/or Jessica Chicco (jessica.chicco@bc.edu).

- ***The Third and Fourth Factors: whether issuance of the stay will substantially injure the other parties interested in the proceeding and where the public interest lies.***

The Court in *Nken* found that the last two stay factors, injury to other parties in the litigation and the public interest, merge in immigration cases because the government is both the opposing litigant and public interest representative. *Nken*, 556 U.S. at 435. The Court further noted that the interest of the government and the public in the “prompt execution of removal orders” is heightened where “the alien is particularly dangerous” or “has substantially prolonged his stay by abusing the process provided to him.” *Nken*, 566 U.S. at 436 (citations omitted).

Thus, in this section of the stay motion, counsel should explain why the petitioner is not a threat to the community and/or not particularly dangerous. Facts to consider discussing include, but are not limited to, the person's age, employment history, health, medical infirmities, prior adherence to conditions of release, nature of crime (if non-violent), tax payments, religious attendance, community service, and close relationships with family members. To the extent possible, counsel should attach and cite corroborating exhibits or exhibits that highlight petitioner's positive qualities. *See* the sample declaration in support of a stay motion and sample guidelines to assist families, friends and community members in writing letters in support of stay requests, which accompany this advisory.

With respect to the fourth factor, the *Nken* Court recognized the “public interest in preventing aliens from being wrongfully removed” must weigh heavily in the Court's consideration. *See Nken*, 566 U.S. at 436. In the vast majority of cases, the government will be unable to make any particularized showing that a stay grant will substantially injure its interests or conflict with the public interest in preventing a wrongful removal. Counsel may wish to highlight this point in this section.

APPENDIX

CIRCUIT SPECIFIC INFORMATION

Practitioners should become familiar with the Federal Rules of Appellate Procedure, corresponding local circuit court rules, and local internal operating procedures. In particular, practitioners should review Rules 27, 18, and 8, and corresponding local rules and practices. These are posted on each circuit court's website.

First Circuit Court of Appeals

Jurisdiction: Maine, New Hampshire, Massachusetts, Rhode Island, and Puerto Rico

Mailing Address: 1 Courthouse Way, Suite 2500
Boston, Massachusetts 02210
(617) 748-9057

Website: www.ca1.uscourts.gov

Relevant Local Rule: Local Rule 27.0(b) sets forth procedures for emergency stay motions.

Emergency Stay Information: Counsel should contact Clerk's office at earliest opportunity to make special arrangements, and would likely be referred to attorney who is reviewing cases for the day. Clerk can be reached Mondays through Fridays from 8:30am to 5:00pm at (617) 748-9057.

Second Circuit Court of Appeals

Jurisdiction: Connecticut, Vermont, and New York

Mailing Address: Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007
(212) 857-8500

Website: www.ca2.uscourts.gov

Relevant Local Rule: Motion must state party has notified opposing counsel, opposing counsel's position, and whether opposing counsel intends to file a response. (Local Rule 27.1(b)).

Emergency Stay Information: Emergency motion must be preceded by as much advance notice as possible to the clerk and opposing counsel; be labeled "Emergency Motion"; state the nature of the emergency and the harm that will be suffered if the motion is not granted; and state the date by which the court must act. (Local Rule 27.1(d)).

Additional Information: The Second Circuit has entered into an informal and unwritten agreement with DHS, known as the Forbearance Policy, by which the government agrees that once it is informed by the court that a stay motion has been filed, the noncitizen will not be removed until the stay motion is adjudicated. The Court acknowledged this policy in its decision *In the Matter of Immigration Petitions for Review Pending in the United States Court of Appeals for the Second Circuit*, Docket No. 12-4096 (Oct. 16, 2012). See also Memorandum for Chambers and Staff, *Motions for Stay*

of INS Deportation Orders (revised Sept. 5, 1995). Counsel should contact the court to verify whether the agreement is still in place.

Third Circuit Court of Appeals

Jurisdiction: Pennsylvania, New Jersey, and Delaware

Mailing Address: 21400 U.S. Courthouse
601 Market Street
Philadelphia, PA 19106-1790
(215) 597-2995

Website: www.ca3.uscourts.gov

Relevant Local Rule: IJ opinion should be included, and failure to do so is ground for dismissal of the motion. (Local Rule 18.1). Uncontested motions must be certified as uncontested by counsel, and are not automatically granted. (Local Rule 27.3).

Emergency Stay Information: Where motion requires expedited consideration, a response will be due within 7 days, with 3 days for a reply. To the extent possible, clerk must be given advance notice by phone that an emergency motion will be filed. (Local Rule 27.2).

Fourth Circuit Court of Appeals

Jurisdiction: Maryland, North Carolina, South Carolina, Virginia, and West Virginia

Mailing Address: 1100 East Main Street
Richmond, VA 23219
(804) 916-2700

Website: www.ca4.uscourts.gov

Relevant Local Rule: Motion should include statement that counsel for other party has been informed of intended filing and indicate whether motion is opposed and whether other party intends to file a response. (Local Rule 27(a)).

Emergency Stay Information: Must file motion electronically after petition for review has been filed. If this is not possible, call the clerk's office at (804) 916-2767 for special arrangements.

Fifth Circuit Court of Appeals

Jurisdiction: Louisiana, Texas, and Mississippi

Mailing Address: 600 S. Maestri Place
New Orleans, LA 70130-3408
(504) 310-7700

Website: www.ca5.uscourts.gov

Relevant Local Rule: Must contact other party and state in the motion whether an opposition will be filed. (Local Rule 27.4).

Emergency Stay Information: Emergency motions must be preceded by a call to the clerk's office and to opposing counsel. Fax or electronic submission may be permitted by the clerk, but if so, a copy also must be filed either by hand delivery or by mail. Emergency motions should be labeled "Emergency Motion," state the nature of the emergency and irreparable harm, certify that the facts supporting emergency consideration are true and complete,

attach copies of all relevant documents, and provide the date by which action is believed to be necessary. (Local Rule 27.3). The court will consider an emergency stay motion only where there is a scheduled removal date and the noncitizen is in custody. (Local Rule 27.3.1).

Sixth Circuit Court of Appeals

Jurisdiction: Michigan, Ohio, Kentucky, and Tennessee

Mailing Address: 540 Potter Stewart U.S. Courthouse
100 East Fifth Street
Cincinnati, OH 45202
(513) 564-7000

Website: www.ca6.uscourts.gov

Relevant Local Rule: A motion for stay must be filed electronically as provided in Local Rule 25(b)(1). (Local Rule 18).

Emergency Stay Information: All motions, including emergency motions, must be filed with clerk. If regular filing procedures cannot be followed, counsel should contact clerk's office by phone to seek guidance. (Local Rule 27). Counsel should notify clerk at earliest possible time that an emergency motion may be filed. (Local Rule 27(c)). Emergency motions should be accompanied by the notice of appeal, the order appealed from, and any parts of the record necessary to decide the motion.

Seventh Circuit Court of Appeals

Jurisdiction: Illinois, Indiana, and Wisconsin

Mailing Address: U.S. Court of Appeals
Room 2722
219 S. Dearborn Street
Chicago, IL 60604
(312) 435-5850

Website: www.ca7.uscourts.gov

Emergency Stay Information: Counsel should notify clerk during business hours that an emergency motion may be filed. Electronic filings may not be read and acted on outside business hours unless arrangements have been made. (Circuit Rule 27).

Eighth Circuit Court of Appeals

Jurisdiction: Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota

Mailing Address: Thomas F. Eagleton Courthouse
Room 24.329
111 South 10th Street
St. Louis, MO 63102
(314) 244-2400

Website: www.ca8.uscourts.gov

Emergency Stay Information: Internal Operating Procedures state that counsel should call

the clerk's office in St. Louis for emergency motions, and that a conference call can sometimes be used to present an emergency stay request.

Ninth Circuit Court of Appeals

Jurisdiction: California, Oregon, Washington, Arizona, Montana, Idaho, Nevada, Alaska, Hawaii, Guam, and the Northern Mariana Islands

Mailing Address: P.O. Box 193939
San Francisco, CA 94119-3939
Overnight mailing: 95 Seventh Street
San Francisco, CA 94103
(415) 355-8000

Website: www.ca9.uscourts.gov

Relevant Local Rule: Counsel should inform the Court of opposing counsel's position. Circuit Rule 27-1(2), Circuit Advisory Committee Notes to Rule 27-1(5).

Emergency Stay Information: Practitioners may leave a message at the emergency 24-hour phone number (415) 355-8000 if the case requires action before the next business day. Calls are recorded and monitored by the motions attorney. (Circuit Advisory Committee Note to Rule 27-3(2)). If action on motion is needed within 21 days, notify clerk and opposing counsel of emergency motion and label motion "Emergency Motion Under Circuit Rule 27-3" (Circuit Rule 27-3. See rule for additional requirements.)

Additional Information: The filing of a stay motion temporarily stays removal until further order of the court. *Deleon v. INS*, 115 F.3d 643 (9th Cir. 1997); General Order 6.4(c)(1) (General Orders of the Ninth Circuit Court of Appeals). A stay motion may be supplemented within 14 days of filing the initial motion. (General Order 6.4(c)(2)).

Tenth Circuit Court of Appeals

Jurisdiction: Colorado, Kansas, New Mexico, Oklahoma, Utah, and Wyoming

Mailing Address: The Byron White U.S. Courthouse
1823 Stout Street
Denver, CO 80257
(303) 844-3157

Website: www.ca10.uscourts.gov

Relevant Local Rule: Stay motion also must include a copy of the transcript from the IJ's ruling and copies of IJ and BIA decisions. (Local Rule 8.2(A)(5)). Motion must state opposing party's position or explain why party was unable to obtain opposing party's position. (Local Rule 27.3(C)).

Emergency Stay Information: A motion requiring a ruling within 48 hours must be marked "EMERGENCY" and must state reason it was not filed earlier, date of underlying order with time and date it becomes effective, and phone numbers and emails for all counsel of record. (Local Rule 8.2(A)).

Eleventh Circuit Court of Appeals

Jurisdiction: Alabama, Florida, and Georgia

Mailing Address: 56 Forsyth St.
Atlanta, GA 30303
(404) 335-6100

Website: www.ca11.uscourts.gov

Relevant Local Rule: Motion should include copy of orders below (Circuit Rule 8-1, 18-1, 27-1(a)(3)), and must include proof of service on all parties, including those appearing below (Circuit Rule 27-1(a)(3), Internal Operating Procedures). A motion should contain information about prior actions of the court or whether a similar application for relief has been made (Circuit Rule 27-1(a)(4)).

Emergency Stay Information: Motion will be treated as emergency only if the motion will be moot unless ruled upon within 7 days. Motion must be labeled as “Emergency Motion” and state nature of emergency and date by which action is necessary. Counsel must notify opposing counsel by phone and may contact clerk by phone to discuss forthcoming motion. Counsel may file motion outside normal business hours only if motion will be moot unless ruled upon before noon of the next business day. (Circuit Rule 27-1(b)).