Attorney Name, EOIR ID # \_\_\_\_ NON-DETAINED / DETAINED

Address, Phone, Email **REMOVAL IMMINENT**

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE OF IMMIGRATION REVIEW

BOARD OF IMMIGRATION APPEALS / IMMIGRATION COURT

FALLS CHURCH, VIRGINIA / CITY, STATE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

In the Matter of: )

)

) File No.: A

**RESPONDENT’S NAME**, )

)

)

In Removal Proceedings. )

*\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_*)

**EMERGENCY MOTION TO REOPEN**

**BASED ON DHS’S INTENT TO DEPORT RESPONDENT TO A NONDESIGNATED, THIRD COUNTRY WITHOUT AN OPPORTUNITY TO CONTEST REMOVAL BASED ON HIS/HER/THEIR FEAR OF PERSECUTION AND TORTURE**

**AND**

**EMERGENCY MOTION TO STAY REMOVAL PENDING**

**ADJUDICATION OF RESPONDENT’S FEAR-BASED CLAIMS**

**INTRODUCTION[[1]](#footnote-1)**

Respondent FULL NAME was granted withholding of removal and/or protection under the United Nations Convention Against Torture (CAT) on Date, which prevents Respondent’s deportation to Country. *See* **Exhibit \*** (Order). After the close of removal proceedings, the Department of Homeland Security (DHS) informed Respondent that it intends to remove Respondent to Nondesignated Country, a country that the immigration judge (IJ) did not designate as either the country of removal or an alternative country of removal. Respondent fears persecution and torture in Nondesignated Country. **Exhibit \*** (Declaration of Respondent); **Exhibit** **\*** (Declaration of Attorney). Respondent’s claim has never been adjudicated by this Court or this Board or an immigration judge. Deportation to Nondesignated Country without an opportunity to present a fear-based claim would violate Respondent’s statutory, regulatory, and due process rights, and the United States’ commitment to *non-refoulement* under international law. Reopening is required.

This Court / Board also must **immediately** order a stay of removal to afford Respondent an opportunity to seek protection from persecution and torture in Nondesignated Country. Removal is imminent; it could occur as early as today / tomorrow. If the Board / Court denies or fails to stay removal Respondent will face the persecution, torture, or death that he/she/they fears.

**RELEVANT STATEMENT OF FACTS**

Respondent is a native and citizen of Country or is stateless. In removal proceedings, the immigration judge (IJ) designated Country as the country of removal. If known, select one of the following sentences The IJ designated Alternate Country as an alternative country of removal. or The IJ declined to designate an alternative country of removal. Respondent applied for withholding of removal under § 241(b)(3) of the Immigration and Nationality Act (INA) and/or CAT protection, and his/her/their application was granted on Date. **Exhibit \*** (Order).

Time permitting and if known, add additional facts about Respondent’s detention status and/or post-detention activities since the grant of protection.

If applicable While in DHS custody, counsel advised DHS after the conclusion of removal proceedings that Respondent has a fear of removal to Nondesignated Country. *See* **Exhibit** \* (Letter to DHS Articulating Fear).

On Date, Respondent / undersigned counsel discovered that DHS intends to deport Respondent to Nondesignated Country. **Exhibit \*** (Declaration of Respondent); **Exhibit** **\*** (Declaration of Attorney). Respondent has a fear of persecution and torture in Nondesignated Country. **Exhibit \*** (Declaration of Respondent); **Exhibit** **\*** (Declaration of Attorney). This fear is based on briefly describe basis of the claim. **Exhibit \*** (Declaration of Respondent).

**STANDARD FOR REOPENING**

The standards governing a motion to reopen in INA § 240(c)(7)(B) and 8 C.F.R. § 1003.2(c)(1) / 8 C.F.R. § 1003.23(b)(3) do not apply to this motion, nor do time and numeric limitations set forth in INA § 240(c)(7)(A), (C)(i). When DHS intends to deport a noncitizen to a country where they have a fear of persecution or torture, the law requires that DHS bear the burden of providing Respondent with meaningful notice and an opportunity to seek protection by moving to reopen removal to designate that new country for removal. *See e.g.*,INA § 241(b)(3); U.S. Const. amend. XIV, § 2; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); *accord* 8 C.F.R. § 1240.10(f); 8 C.F.R. § 1240.11(c)(1)(i). DHS has abdicated its obligation to seek reopening to designate a new country of removal in this case. Thus, because the basis for reopening is new and previously unavailable evidence of DHS’s intention to deport Respondent to a nondesignated country, to wit Nondesignated Country, this motion is excused from the statutory and regulatory reopening standards and filing requirements.

However, despite the emergency nature of this motion, Respondent has complied to the extent possible by providing evidence of the prior order, a declaration from Respondent, a declaration from undersigned counsel, and \_\_\_\_\_\_\_\_\_\_. *See* **Exhibits** \*-\*., Respondent will submit an application for protection and supporting documents upon reopening and/or will attempt to supplement the motion sooner if able. *See* 8 C.F.R. § 1003.2(c)(1) / 8 C.F.R. § 1003.23(b)(3).

Alternatively, the Board / Court has authority to reopen removal proceedings sua sponte at any time. *See* 8 C.F.R. § 1003.2(a) / 8 C.F.R. § 1003.23(b)(1).

The validity of Respondent’s prior removal order has/has not been the subject of any judicial proceeding. [If it has been the subject of a judicial proceeding] The proceeding took place DATE. The outcome is [DESCRIBE]. Respondent has/has not been the subject of any criminal proceeding. [If Respondent has been the subject of a criminal proceeding] The current status of this proceeding is [DESCRIBE]. *See* 8 C.F.R. § 1003.2(e) / 8 C.F.R. § 1003.23(b)(i).

**REOPENING IS REQUIRED BECAUSE Respondent IS ENTITLED TO CONTEST REMOVAL TO Nondesignated Country BASED ON HIS/HER/THEIR Fear OF Persecution and Torture**

Respondent warrants reopening because she/he/they seeks to apply for withholding of removal and/or CAT protection based on a fear of persecution and torture in Nondesignated Country. The fact that DHS intends to deport Respondent to Nondesignated Country was not raised in removal proceedings. DHS did not ask the IJ to designate Nondesignated Country as a country of removal or an alternative country of removal. Thus, Respondent was unaware of the possibility of deportation to Nondesignated Country and had no opportunity to pursue a protection claim in those proceedings. If applicable Moreover, counsel put DHS on notice that Respondent has a fear of removal to Nondesignated Country, yet DHS disregarded that notification. *See* **Exhibit** \* (Letter to DHS Articulating Fear). Thus, DHS’s intention to deport Respondent to Nondesignated Country constitutes new and previously unavailable evidence. INA § 240(c)(7)(C)(ii). Here, Respondent is prima facie eligible for withholding and/or CAT protection. *See* **Exhibit** **\*** (Declaration of Respondent).

Reopening is required by statute. Critically, Congress provided that all countries to which DHS seeks to deport a noncitizen are subject to the withholding statute. *See* INA § 241(b)(3) (referencing INA §§ 241(b)(1) and (b)(2)). The regulations support this interpretation. *See* 8 C.F.R. § 1240.11(c)(1)(i); 8 C.F.R. § 1240.10(f). The opportunity to present a fear-based claim prior to deportation to a country where a person fears persecution or torture is also a fundamental due process protection under the Due Process Clause of the Fifth Amendment and implements the United States’ obligations under international law.[[2]](#footnote-2)

In the alternative, the Board / Court reopen must reopen proceedings sua sponte. *See* 8 C.F.R. § 1003.2(a) / 8 C.F.R. § 1003.23(b)(1). Reopening sua sponte is warranted due to the exceptional circumstances presented by DHS’s intention of deporting Respondent to Nondesignated Country where he/she/they fears persecution and torture. *See Matter of G- D-*, 22 I&N. Dec. 1132, 1134 (BIA 1999); *Matter of J- J-*, 21 I&N Dec. 976, 984 (BIA 1997).

**RESPONDENT MERITS AN EMERGENCY STAY OF REMOVAL**

The Board has authority to issue an administrative stay based on Respondent’s motion to reopen. 8 C.F.R. §§ 1003.2(f), 1003.1(d)(1)(ii). The Court has authority to issue an administrative stay based on Respondent’s motion to reopen. 8 C.F.R. § 1003.23(b)(1)(v), (b)(4)(i). Respondent seeks a stay in conjunction with a motion to reopen based on a fear of persecution and torture to a nondesignated country. *See* **Exhibit** \* (Declaration of Respondent). 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 to face persecution, torture, or even death before an IJ can fully and with sufficient deliberation evaluate the merits of Respondent’s claim.

**CONCLUSION**

For these reasons, the Board / Court should grant Respondent’s motion to stay removal and reopen proceedings to allow Respondent to seek protection from Nondesignated Country.

Respectfully submitted,

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attorney Name, EOIR ID# \_\_\_\_

Attorney’s Signature Block

RESPONDENT’S NAME

A\_\_\_\_\_\_\_\_

**PROOF OF SERVICE**

On DATE, I, Name, served a copy of:

* Respondent’s Emergency Motion to Reopen and Emergency Motion to Stay Removal;
* Index of Exhibits and Exhibits in Support; and
* Proposed Order

on the Office of Chief Counsel, Department of Homeland Security, at the following address: Office of Chief Counsel Address by first class mail.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Date

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE OFIMMIGRATION REVIEW

BOARD OF IMMIGRATION APPEALS / IMMIGRATION COURT

FALLS CHURCH, VIRGINIA / CITY, STATE

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

)

In the Matter of: )

) File No.: A

)

**RESPONDENT’S NAME**, )

)

)

In Removal Proceedings. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**Exhibits in Support of**

**Respondent’s EMERGENCY Motion to Reopen AND EMERGENCY MOTION TO STAY REMOVAL**

**Include, if possible**:

\*. Copy of Prior IJ /BIA Decision Granting Withholding of Removal / CAT Protection, dated DATE

\*. Declaration of Name of Respondent, dated DATE, attesting to discovery of DHS’s intent to deport to a Nondesignated Country and Respondent’s fear of persecution and torture if in Nondesignated Country

\*. Declaration of Name of Attorney/Paralegal, dated DATE, attesting to discovery of DHS’s intent to deport to a Nondesignated Country and Respondent’s fear of persecution and torture if in Nondesignated Country

\*. Letter to Name, Location District Director of the U.S. Department of Homeland Security from Name of Attorney/Paralegal, dated DATE, articulating Name of Respondent’s fear of persecution and torture in Nondesignated Country

**DECLARATION OF RESPONDENT’S NAME**

This template is intended for an emergency filing. A more detailed Template Declaration in Support of a Motion to Stay Removal (April 2022) is available at: https://immigrationlitigation.org/practice-advisories/

I, Respondent’s Name, hereby declare and state:

1. I make this declaration in support of my emergency request to reopen removal proceedings based on my fear of being deported to Nondesignated Country and my emergency request to stay deportation.

2. I won protection from deportation to Country in Month Year.

3. Address when, where, and how Respondent came to discover DHS’s intent to deport to the nondesignated country.

4. I am afraid of deportation to Nondesignated Country. Describe basis of fear.

5. Describe the irreparable harm (persecution, torture, death) Respondent will face from persecutors in the nondesignated country if deported. For example: If I am deported to Nondesignated Country, I will be hurt or killed by \_\_\_\_.

6. Describe any other additional irreparable harm.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this \_\_\_\_ day of Month Year at City, State.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Respondent

**DECLARATION OF NAME OF ATTORNEY**

If a staff member other than Respondent’s counsel interacted with DHS and/or Respondent, modify this template declaration accordingly

I, Attorney’s Name, hereby declare and state:

1. I represent Respondent’s Name. I make this declaration in support of his/her/their emergency motions to reopen removal proceedings and to stay removal.

2. Briefly recap when, from whom, and on what basis Respondent previously won withholding and/or CAT protection.

3. Explain when and how counsel discovered DHS’s intent to deport Respondent to nondesignated country.

4. Explain how counsel came to learn that Respondent fears deportation to Nondesignated Country. Indicate whether Respondent provided this information at an in person meeting, on the phone, etc.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this \_\_\_\_ day of Month Year at City, State.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Attorney

Include a proposed order only if motion is filed with the immigration court.

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE OF IMMIGRATION REVIEW

IMMIGRATION COURT

CITY, STATE

In the Matter of: **RESPONDENT’S NAME** File No.: A

**[PROPOSED] ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent’s Emergency Motion to Reopen and Emergency Moton to Stay Removal, it is HEREBY ORDERED that the motions are [ ] GRANTED [ ] DENIED because:

[ ] DHS does not oppose the motions.

[ ] Respondent does not oppose the motions.

[ ] A response to the motions has not been filed with the Court.

[ ] Good cause has been established for the motions.

[ ] The Court agrees with the reasons stated in the opposition to the motion.

[ ] Other:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name Date

Immigration Judge

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Certificate of Service**

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Noncitizen [ ] Noncitizen c/o Custodial Officer [ ] Noncitizen’s Attorney [ ] DHS

Date:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Court Staff\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

1. Because removal is imminent, this motion to reopen and motion to stay removal is hastily filed. Undersigned counsel will supplement the motion to reopen with additional evidence. [↑](#footnote-ref-1)
2. *See* *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019); United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at INA § 241(b)(3)); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. 105–277, div. G, tit. XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (codified at Note to INA § 241) (“It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”). [↑](#footnote-ref-2)