

Overview

A motion to reopen removal proceedings may be submitted in the following circumstances:

- (1) New evidence previously unavailable (filed within 90 days of removal order);
- (2) Error of law/fact or change in law (Motion to Reconsider) (filed within 30 days of order);
- (3) Changed country conditions in asylum/withholding/CAT if arising in the country to which removal has been ordered, if such evidence is material and was not available and could not have been discovered or presented at the previous proceeding;
- (4) In Absentia Orders (ordered removed because respondent missed hearing)
 - a. Lack of notice of the hearing (unless respondent failed to comply with address requirements);
 - b. Exceptional circumstances such as battery, illness, family death (filed within 180 days of order);
 - c. Respondent did not appear because in federal or state custody;
- (5) Ineffective Assistance of Counsel;
- (6) Joint Motions with DHS;
- (7) Battered spouses, children, parents (INA § 240(c)(7)(C)(iv));
- (8) Sua Sponte (IJ's discretion). 8 C.F.R. §§ 1003.2(a) (BIA); 1003.23(b)(1) (IJ). Always add in the alternative.

Life of a Case in Detained Removal Proceedings

- Determine where the individual is and whether they are being staged for deportation.
- Screen for basis to reopen.
- Decide if pro se or full representation. Sign retainer and other case documents.
- Tell deportation officer that motion is in progress and request halt to any imminent removal.
- Gather any evidence of lack of notice, changed country conditions, extraordinary circumstances, new evidence, ineffective assistance of counsel, prima facie relief, etc.
- Reach out to OPLA to see if they would join a motion if compelling circumstances, but don't wait long.
- File motion to reopen + EOIR-33 + fee/waiver (if relevant) + stay + application for relief & prima facie eligibility. File a stay, if not automatic;
- DHS has 10 days to reply. Potentially supplement evidence if anything new emerges in those 10 days.
- IJ will usually decide on the papers.
- If granted, determine if representing and file motion to change venue, if relevant.

Special Notes

- **Fees:** Motions to reopen are generally free only if the underlying application does not require a fee, but double check if you need a fee or fee waiver [8 CFR 1103.7](#).
- **Venue:** Be aware that the motion must be filed with the court that issued the decision. This means you may prefer a pro se motion to reopen until a motion to change venue has been granted.
- **Time Bars:** The filing deadlines for motions can be a big obstacle, but don't give up. Equitable tolling or sua sponte reopening might be available. Pay close attention to which categories have time bars.
- **Numerical Bar:** Only 1 motion to reopen is allowed, but you may be able to make sua sponte arguments in the interest of justice in rare circumstances. This bar does not apply to changed country conditions.
- **Stays of removal:** Not all types of motions to reopen stay removal and you may need to separately file a stay with ICE and/or EOIR. For individuals with an *in absentia* removal order, the filing of a motion to reopen and rescind based on exceptional circumstances filed within 180 days of the order, lack of notice filed any time, or failure to appear due to federal/state custody automatically stays removal. Carefully review the criteria for an automatic stay. INA 240(b)(5)(C); 8 C.F.R. § 1003.23(b)(4)(ii).
- **Motion v. Appeal:** The deadlines to file motions and appeals run at the same time. Assessing which is the better strategy should be done on a case-by-case basis with a supervisor.
- **Notice:** Note that motions based on lack of notice have become an increasingly difficult.

Trainings and Resources

- [5.7 - Motions to Reopen Immigration Court Practice Manual](#)
- [FIRRP Pro Se Resources](#)
- [CLINIC MTR Guide](#)
- [EOIR's Pro Se In Absential MTR Template](#)

Client's Name:

MOTION TO REOPEN CHECKLIST

This is for reference. Documents listed may be optional, dependent on IJ preferences or not relevant to your case or a detained setting. Talk to your supervisor and colleagues about specifics for your case.

Forms and other Documents

- Retainer FOIA Requests – agencies: _____
- EOIR-28 or -61 Motion for Stay (if relevant) Motion for Fee Waiver with Affidavit (if relevant)

Supporting Evidence

	Have	Need	N/A
Client's Affidavit	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Prima Facie Evidence of Available Relief	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Country Conditions (for Changed Circumstances)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evidence to Rebut Presumption of Notice (Return to sender, affidavit, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evidence of Extraordinary Circumstances (Medical records, police report, affidavits, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evidence of Federal or State Custody at time of hearing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Evidence of Ineffective Assistance of Counsel (Retainer, Bar Complaint, Disciplinary Record, Affidavit from Cooperative Former Counsel, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Additional Compelling Evidence (family photos, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Other:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
