

SAMPLE STAY MOTION

Attorneys are advised to research applicable circuit court case law and understand local ICE practices in order to modify this sample motion accordingly. In addition, for the court's convenience, attorneys may wish to attach the legal documents referenced in the stay motion as exhibits.

If the person is not detained, filing a stay motion may prompt ICE to detain and attempt to deport the person. Of course, ICE could detain and attempt to deport a non-detained person even if a stay motion is not filed. Counsel must consider these possibilities in light of local ICE practices.

If counsel knows that deportation may be imminent (i.e., when ICE has or will get the travel documents and the person is detained or is scheduled to report to ICE following a final order of removal), this motion should be framed as a motion for an "emergency" stay of removal.

This sample motion in 12-point font; however, several circuits only accept 14-point font documents. Attorneys are advised to check local circuit rules.

No. XX-XXXX

**IN THE UNITED STATES COURT OF APPEALS
FOR THE _____ CIRCUIT**

**[NAME]
[A-NUMBER]**

Petitioner,

v.

**[ERIC H. HOLDER, JR.]
U.S. Attorney General,**

Respondent.

PETITIONER'S MOTION FOR [EMERGENCY] STAY OF REMOVAL

CUSTODY STATUS: [DETAINED OR NOT DETAINED]

**[Attorney Name
Organization/Law Firm
Street Address
City, State Zip
Tel. (XXX) XXX-XXXX]**

Attorney for Petitioner

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I. INTRODUCTION AND POSITION OF RESPONDENT

Pursuant to Federal Rule of Appellate Procedure 27 and Local Rule [X], Petitioner, through undersigned counsel, moves the Court to stay [her/his] removal during the pendency of [her/his] petition for review. As described below, Petitioner, [insert applicable text, e.g.: a lawful permanent resident/an asylum applicant/an individual], merits a stay of removal from this Court.

The order of removal in Petitioner's case, dated [X], is administratively final, and [she/he] is subject to imminent removal to [country]. ICE is detaining Petitioner at [facility].

[Insert suggested text A or B as applicable.] [Suggested text A]: The exact date or time of [her/his] deportation is not known. [Suggested text B]: According to officials at U.S. Immigration and Customs Enforcement (ICE), unless this Court grants the instant motion, ICE will deport Petitioner to [country] on or about [date]. See [declaration or other evidence regarding when ICE will act]. Petitioner therefore seeks a[n emergency] stay to permit [her/him] to remain in the country while the Court considers [her/his] petition for review.

Undersigned counsel contacted the Office of Immigration Litigation, counsel for Respondent in immigration-related petitions for review. Counsel spoke with [attorney], who indicated that Respondent [insert applicable text, e.g.: takes no position on this motion/opposes this motion/does not oppose this motion].

II. STATEMENT OF FACTS AND OF THE CASE¹

The more evidence that supports or corroborates the relevant arguments in the stay motion, the greater the chance the court will grant the stay.

As the only information the Court has about the case is the agency's decision, we strongly advise counsel to **attach key exhibits** to support the facts and procedural history. These may include:

¹ Respondent has not yet filed the Administrative Record in this case. Fed. R. App. P. 16 & 17. Therefore, the citations in this section are to the record before [insert as applicable: the Immigration Court and the Board of Immigration Appeals and/or the Department of Homeland Security], the Petitioner's Declaration, and additional evidence, attached as Exhibits [XX].

relief application/s and any accompanying declarations, the immigration judge’s decision, the Board’s decision, the hearing transcript, and/or the Notice to Appear.

Where possible, we also strongly suggest **attaching a new client declaration** addressing the *Nken* factors (*see* Sample Declaration) and **letters in support of the stay request** from U.S. citizen or LPR family, friends, community members, etc. If counsel has information about an imminent deportation, counsel also should attach a declaration attesting to the source of information and the likely timing of removal.

First, summarize the facts that illustrate Petitioner’s ties to the U.S. and harms that might occur if the court denies the stay motion. For example:

Petitioner is a [X]-year-old [insert applicable text, e.g.: lawful permanent resident/asylum applicant/immigrant] facing removal to [country]. Petitioner arrived in the United States [in/on] [date], when [she/he] was [X] years old. *See* Exhibit [X] (Declaration of Petitioner). Petitioner’s [U.S. citizen/LPR] [insert applicable text, e.g.: parents, siblings, spouse, children, extended family] also reside in the United States. *See id.* [Note if her/his family members have any special needs to due to young age, old age, medical issues, etc.] [She/he] has [no family/limited family] remaining in [country]. *See id.* [Insert other individual facts or country facts if relevant to harm from deportation.]

Then summarize the procedural history of the case. For example:

The Department of Homeland Security placed Petitioner in removal proceedings [in/on] [date] by charging [her/him] with removability based on a [date] conviction in [State] for [offense]. *See* Exhibit [X] (IJ Decision). Petitioner appeared [with counsel/pro se] and [explain what happened, e.g.: moved to terminate proceedings/filed an application for [X] relief from removal]. [If person has a persecution/torture claim: Petitioner fears persecution and torture in [her/his] native [country] due to [her/his] [insert applicable text, e.g.: race/religion/political affiliation/sexual orientation/gender].

At an individual hearing on [date], [explain what happened, e.g.: Petitioner testified and

explained [X]/ Petitioner’s [parent/sibling/spouse/child] testified in support of [her/his] applications for relief/Petitioner presented [evidence in support of [her/his] [X] application]. The Immigration Judge then [X] and ordered her removed on [date]. See Exhibit [X] (IJ Decision).

Petitioner appealed to the Board of Immigration Appeals (BIA), which dismissed [her/his] appeal. See Exhibit [X] (BIA Decision). The BIA held [summarize holding]. On [date], Petitioner timely petitioned this Court for review of the Board’s decision.

For cases involving an appeal from a denial of a motion to reconsider/reopen or a reinstatement order, provide a brief synopsis of that decision. Two examples follow.

Example A (motion denial):

On [date], Petitioner filed a motion to [reconsider/reopen], alleging [explain grounds for motion]. On [date], the Board denied Petitioner’s motion to reopen. See Exhibit [X] (BIA Decision). The Board held that [explain basis for denial of motion]. *Id.* On [date], Petitioner timely petitioned this Court for review of the Board’s decision.

Example B (reinstatement order):

On [date], ICE issued a Notice of Intent to Reinstate Prior Order against Petitioner. Exhibit [X] (Form I-871). The notice charged [her/him] with removability under 8 U.S.C. § 1231(a)(5) for allegedly having been [provide basis for reinstatement]. Exhibit [X] (Form I-871). Petitioner contested the charges. *Id.* The ICE officer refused to reconsider the determination, and ICE issued a final reinstatement order on [date]. On [date], Petitioner timely petitioned this Court for review of ICE’s decision.

III. REASONS FOR GRANTING A STAY

Adjudication of a motion for stay of removal requires that the Court consider four factors: (1) whether the stay applicant demonstrates a strong likelihood of success 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 v. Holder*, 556 U.S. 418, 434 (2009). In Petitioner’s case, all four factors counsel the granting of a stay.

A. Petitioner is Likely to Succeed on the Merits.

This factor requires analyzing the agency’s decision and making arguments (supported by case law) explaining why the agency’s decision is erroneous. If current 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 arguing that petitioner is likely to succeed on the merits, 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.

Counsel are strongly advised to use **headings** for legal issues. For example,

1. Petitioner Has Made a Strong Showing of Likely Success on the Merits Because [Insert Applicable Reason/s]*

*Sample headings/potential reasons:

- The BIA Failed to Follow Its Precedent.
- The BIA Erred in Finding that *Matter of [X]* Applies Retroactively.
- Prior Counsel Failed to Investigate the Reasons Petitioner Feared Return to [Country], Which Falls Far Below the Standards of Competent Representation.
- The BIA Erred When It Failed to Consider Petitioner’s Argument that the IJ Had Not Made a Clear Credibility Determination.
- The BIA Erred By Failing to Consider All Relevant Evidence of [X].
- Substantial Evidence Does Not Support the Adverse Credibility Finding.

B. Absent a Stay of Removal, Petitioner Faces Irreparable Harm.

Along with the likelihood of success on the merits, the irreparable injury inquiry is one of “the most critical” factors in adjudicating stay applications. *Nken*, 556 U.S. at 433. Absent a stay of removal, Petitioner will suffer irreparable harm for two main reasons. First, forced deportation would [insert appropriate heading addressing specific harm from section III.B.1, below]. Second, Respondent, the Attorney General, lacks the capability to return Petitioner if [she/he] is deported and then prevails before this Court. Rather, the Department of Homeland

Security (DHS) is authorized to carry out the enforcement and administration of the immigration laws. *See* 8 U.S.C. § 1103(a). Whether DHS will return Petitioner depends entirely on DHS’ return policy, which is non-binding, vague, discretionary, and fraught with legal and practical impediments to return.

1. Forced Deportation Would [insert as many as applicable: Adversely Affect Petitioner’s Mental and Physical Health, Separate [Her/Him] from [U.S. Citizen/Lawful Permanent Resident] Family, and Subject [Her/Him] to Further [Persecution/Torture] by [X]].

This section will vary depending on the types of claims (*e.g.*, persecution/torture claims) and the types of potential harms the person will suffer if deported. Counsel should document potential harms through declarations and letters from the person’s family, friends, and community.

The specific facts of Petitioner’s case demonstrate that Petitioner would suffer irreparable injury if forced to return to a country [insert applicable text, *e.g.*: where [she/he] previously suffered persecution/where [she/he] has not lived since the age of [X] and has no family members/where [she/he] will be separated from [her/his] [U.S. citizen/lawful permanent resident husband] and [number of] U.S. citizen children].²

Insert applicable text, *e.g.*:

[Persecution/torture claims]: If deported, Petitioner faces further [persecution/torture] at the hands of [X]. [Explain harm faced based on fear of persecution/torture and cite to relevant Exhibits.]

[Medical harm]: Petitioner suffers from [condition], takes [medicine] daily, and [has been hospitalized in the past]. [She/he] will suffer greatly if removed to [country], where quality

² *Accord Padilla v. Kentucky*, 559 U.S. 356, 130 S.Ct. 1473, 1481 (2010) (“[D]eportation is a particularly severe ‘penalty.’”) (quoting *Fong Yue Ting v. United States*, 149 U.S. 698, 740 (1893); *Lehman v. United States*, 353 U.S. 685, 691 (1957) (Black, J., concurring) (“To banish [an immigrant] from home, family, and adopted country is punishment of the most drastic kind.”); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945) (“Though deportation is not technically a criminal proceeding, it visits a great hardship on the individual and deprives him of the right to stay and live and work in this land of freedom.”).

medical care is [inaccessible/less accessible]. *See id.*

[Family separation]: Petitioner will be forced to separate from his [U.S. citizen/LPR] [relatives] and extended family here in the United States. Petitioner and [her/his] [relative] [of more than [X] years] enjoy a close relationship and depend on each other emotionally. *See* Exhibit [X]. Due to [relative's] close ties to [her/his] many [e.g., children, grandchildren, and great-grandchildren] here in the United States, as well as [her/his] inability to find gainful employment in [country], a country that [she/he] has only visited on a couple of occasions, [she/he] would not be able to join Petitioner in [country] if Petitioner were removed there. *See* Exhibit [X]. Petitioner will thereby be deprived of [relative]'s daily companionship and emotional support throughout the pendency of this Court's review of the merits of [her/his] petition for review, an indeterminate period of time that, in some cases, can last years.

[Emotional harm]: Petitioner will similarly suffer emotional harm knowing that [her/his] U.S. citizen [relative/s] [is/are] suffering as a result of their separation. The emotional harm and stress [relative] will suffer if Petitioner is removed to [country] may put [her/his] physical and mental health at risk. *See* Exhibit [X].

[Employment]: Petitioner's loss of [her/his] job here in the United States and inability to obtain gainful employment in [country] will result not only in monetary loss, but also in considerable emotional harm and stress. Without Petitioner's income, [her/his] [U.S. citizen/LPR] [relative/s] will not be able to pay the rent, which [she/he] currently is responsible for paying, and will therefore be at risk of being evicted from the family's home. *See* Exhibit [X]. [Relative] particularly depends on Petitioner's financial assistance because [explain]. Petitioner also will suffer emotional harm and stress because he will no longer be able to provide

financial assistance to [her/his] [relative/s] in [country], who rely in part on the money that Petitioner regularly sends for their survival. *See* Exhibits [X].

For these reasons, the harm that Petitioner will suffer if removed to [country] is qualitatively different from the harm that a petitioner would ordinarily suffer. Thus, Petitioner has met the second factor under *Nken*.

2. DHS' Return Policy Does Not Afford Petitioner Effective Relief If She Prevails on Her Petition for Review.

i. Background.

Petitioner also faces irreparable injury because Respondent cannot ensure that the government will facilitate [her/his] return to the United States in pre-removal status if the Court grants the instant petition for review. This is because an effective return policy—one that consistently and predictably returns immigrants who prevail on their petitions for review—does not exist.

With respect to irreparable harm, the Court in *Nken* stated:

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, 556 U.S. at 435. The Court's belief in the existence of effective return procedures arose from a claim that the Solicitor General (SG) made in its brief, which the Court cited:

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 alien's 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.

Id. (citing Resp. Br. at 44, *Nken v. Holder*, 556 U.S. 418, No. 08-861 (Jan. 2009)).

In fact, no formalized “policy and practice” existed. The SG subsequently informed the Supreme Court that it was “not confident that the process for returning removed aliens, either at the time the brief was filed or during the intervening three years, was as consistently effective as the statement in its brief in *Nken* implied.” Ltr. From Michael R. Dreeben, Deputy Solicitor General, to William K. Suter, Clerk of the Supreme Court, at 4 (Apr. 24, 2012) (SG Letter).³ In this letter, the SG acknowledges the “significant impediments” facing erroneously deported noncitizens seeking return. As the SG explains,

Those difficulties stemmed in part from the absence of a written, standardized process for facilitating return; the resulting uncertainty in how to achieve that objective in field offices, U.S. embassies and consulates, and other agencies involved in the process; and the lack of clear or publicly accessible information for removed aliens to use in seeking to return if they received favorable judicial rulings.

Id. at 3–4. Recognizing that lower courts have relied, and likely will continue to rely, on its misrepresentation in *Nken*, the SG Letter promised that the Government “will submit to the lower courts the procedures to facilitate return” in future stay litigation, such that “lower courts will therefore have the opportunity to address the adequacy of the government’s procedures for facilitating return in evaluating requests for stays of removal.” *Id.* at 5.

Thus, in addition to assessing the individualized injury that will result absent a stay of removal, this Court also should assess whether Respondent is capable of returning Petitioner and restoring [her/his] pre-removal status if the Court grants the instant petition for review.⁴

ii. Respondent Cannot Ensure Petitioner’s Return and Restoration of Pre-Removal Status If the Court Denies a Stay and Later Grants [Her/His] Petition for Review.

³ Available at http://nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/OSG%20Letter%20to%20Supreme%20Court,%20Including%20Attachments%20-%20April%2024%202012.pdf.

⁴ These factors overlap to the extent that the inability to return is itself an individualized injury that results from deportation.

On February 24, 2012, U.S. Immigration and Customs Enforcement (ICE), a component agency of DHS, issued a general policy directive regarding returns for a limited set of cases. *See* ICE Policy Directive Number 11061.1: Facilitating the Return to the United States of Certain Lawfully Removed Aliens (ICE Policy Directive).⁵ ICE further supplemented the policy directive by creating a “Frequently Asked Questions” page on its website. *See* FAQs on Facilitating Return for Certain Lawfully Removed Aliens (FAQ).⁶ Notably, however, as DHS controls implementation of the policy and is not a party to this case, the Attorney General lacks the authority to speak to whether and to what extent DHS could or would apply this policy in Petitioner’s case.

Even if Respondent could authoritatively state that ICE would apply its policy to Petitioner, the policy is entirely inadequate to ensure return and restoration of pre-removal status. In particular, it places unfettered discretion in ICE, contains broad and unexplained exceptions, and is riddled with cost and logistical obstacles. Furthermore, Congress has defunded the primary point of contact for managing the policy.

a. ICE Asserts that Its Return Policy Is Not Binding and Not Enforceable.

The ICE return policy is problematic because ICE asserts that it is non-binding and “is not intended to, does not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.” ICE

⁵ Available at http://www.ice.gov/doclib/foia/dro_policy_memos/11061.1_current_policy_facilitating_return.pdf.

⁶ Available at <http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/faq.htm>. The web version of the FAQ contains a series of drop-down boxes, which are cited herein as paragraph numbers. For example, reference to the first drop-down box is cited as FAQ ¶1.

Policy Directive ¶8. As ICE did not promulgate the policy through notice and comment procedures, it is not subject to forces of political accountability. Furthermore, it can be retracted or replaced at any time.

b. ICE’s Return Policy Is Vague and Discretionary.

[If Petitioner **IS NOT** an LPR:] ICE’s return policy does not ensure that ICE would facilitate Petitioner’s return to the United States if [she/he] prevails on [her/his] petition. Under the policy, ICE facilitates *only* the return of persons who were previously lawful permanent residents or whose “presence is necessary for continued administrative removal proceedings,” and, within those groups, only those who can afford to pay. ICE Policy Directive ¶¶ 2, 3.1. The policy directive does not address mechanisms to facilitate the return of prevailing non-lawful permanent residents, nor does it define under what circumstances a noncitizen’s presence is “necessary” for continued proceedings.

Thus, as Petitioner was not previously a lawful permanent resident, ICE will have absolute, unfettered discretion to determine whether and how to facilitate [her/his] return. For Petitioner, and many individuals like [her/him], this discretion ultimately renders return dependent on ICE’s determination that presence is necessary, not on a court’s decision that the petitioner is entitled to judicial relief. Further, if Petitioner’s case is remanded and [she/he] is not returned, [she/he] risks having the immigration judge administratively close proceedings or order removal in absentia pursuant to 8 U.S.C. § 1229a(b)(5), thereby effectively rendering this Court’s review meaningless and denying [her/him] all relief.

[If petitioner **IS** an LPR:] ICE’s return policy does not ensure that Petitioner can return to the United States if this Court grants her petition for review. While the policy purports to require facilitation of the return of deported LPRs who prevail in a petition for review, significant

discretion is retained by ICE to refuse return where there are “extraordinary circumstances.” *See* ICE Policy Directive ¶2. ICE provides no concrete and binding definition for what constitutes “extraordinary circumstances,” other than the vague instruction that such circumstances “include, but are *not limited to*, situations where the return of an alien presents serious national security considerations or serious adverse foreign policy considerations.” *See* FAQ ¶3 (emphasis added). Without further guidance, this nebulous standard leaves ICE with the ability to refuse return under nearly any rationale and places an intolerable risk of irreparable harm upon Petitioner.

c. Congress Has Defunded the ICE Point of Contact With Responsibility for Implementing the Policy.

The agency initially designated the ICE Public Advocate as the primary point of contact to request return to the United States once a removal order is vacated or reversed. SG Letter at 4, (*see* n.3, *supra*). Significantly, however, after the policy issued, Congress defunded the Office of ICE Public Advocate.⁷ The ICE Public Advocate’s responsibilities for facilitating the return of deported noncitizens that prevail in a petition for review may have been folded into the ERO Community Outreach office. However, no explicit information is provided on the ERO Community Outreach website regarding the office’s role in return.⁸

d. ICE’s Return Policy Places Prohibitive Financial and Practical Burdens on Petitioner.

ICE’s policy imposes a range of practical burdens that calls into question Petitioner’s ability to return should [she/he] prevail. First, ICE’s return policy will impose additional financial and practical burdens by conditioning, without exception, return on possession of a

⁷ *See* Consolidated and Further Continuing Appropriations Act, 2013. Pub. L. No. 113-6, § 567, 127 Stat. 198, 382 (Mar. 26, 2013) (“None of the funds made available by this Act may be used to provide funding for the position of Public Advocate within U.S. Immigration and Customs Enforcement.”).

⁸ *See* <http://www.ice.gov/about/offices/enforcement-removal-operations/ero-outreach/>.

valid foreign passport (or on possession of another government-issued ID if returning by land).

FAQ ¶¶ 15-16. [Explain why it may be difficult, if not impossible, to obtain a foreign passport].

Second, ICE’s return policy will require Petitioner—an indigent person, whose resources have been depleted by [insert applicable text, e.g.: detention/bars to employment/legal proceedings]—to pay return expenses. *See* FAQ ¶18. Petitioner’s current estimated cost to return is \$[X]. *See* Airline Pricing Information from [expedia.com/priceline.com] (attached as Exhibit [X]). [Explain why Petitioner cannot, or may not, be able to afford return expenses.]

Third, removal would greatly impact Petitioner’s ability to pursue [her/his] case on remand. ICE’s suggested use of teleconferencing and videoconferencing from U.S. embassies and consulates abroad, *see* FAQ ¶4, is not a workable solution for a variety of due process reasons. These include, but are not limited to, little or no ability for individuals to communicate with their counsel, problematic presentation of evidence, and technological malfunctions and/or failure. There also is no indication that a system is in place to facilitate the use of videoconferencing or teleconferencing from abroad.

e. ICE’s Return Policy Does Not Require or Ensure Coordination with Critical Entities.

In its letter to the Supreme Court, the SG explicitly recognized that “field offices, U.S. embassies and consulates, and other agencies,” such as Customs and Border Protection (“CBP”), play a critical role in returning a deported noncitizen. SG Letter at 4. Inaction or coordination failures by any of these entities can effectively defeat the promise of return. Nevertheless, ICE’s policy not only fails to mandate action by these critical entities, but fails to create any protocols whatsoever. The government’s only attempt at inter-agency coordination is a single cable sent in April 2012 from then-Secretary of State Clinton to embassies and consular offices, which requests that officials refer return inquiries to ICE and await parole notification. *See* Cable from

Secretary of State to All Diplomatic and Consular Posts 40718 (Apr. 24, 2012) (DOS Cable).⁹

This request, one cable among the many thousands sent daily, has not been codified in the Foreign Affairs Manual—DOS’s official operative directives—or incorporated into any other permanent policy directive.

The DOS Cable fails to address important hurdles facing deported noncitizens. For example, the cable does not contain any procedures for coordinating the timely issuance of a transportation letter to facilitate return. Furthermore, the State Department has not posted any information about any return policy on U.S. embassy and consulate websites. Nor has the State Department made available other critical information, including how Petitioner would arrange to meet with a consular officer, the paperwork required, or whether there are processing fees and charges.

Even were Petitioner to assemble all necessary documentation, there is no guarantee that CBP officers would permit [her/his] entry into the United States. ICE’s policy authorizes parole as the mechanism through which prevailing noncitizens are allowed to enter the United States. However, the decision whether to parole an individual into the United States at a port of entry is within CBP’s authority, not ICE’s authority. CBP Directive No. 3340-043 (Sept. 3, 2008).¹⁰ Further, CBP’s parole procedures were not designed for the return policy, or for these kinds of cases. Regardless, paroling individuals into the United States, as opposed to allowing them to reenter in their prior status, is problematic because parolees are arriving aliens and therefore subject to grounds of inadmissibility under 8 U.S.C. § 1182(a) and detention without a bond hearing. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B). Parole also is temporary, lasting only as long

⁹ Available at <http://www.ilw.com/immigrationdaily/news/2012,0427-cableparole.pdf>.

¹⁰ Available at [http://nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/CBP%20Parole%20Directive%20\(Partially%20Redacted\)%20-%20Sept%203%202008.pdf](http://nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/CBP%20Parole%20Directive%20(Partially%20Redacted)%20-%20Sept%203%202008.pdf).

as DHS authorizes, which is often for short time periods.¹¹ Parolees must request that DHS renew their parole, and may have to make further renewal requests as parole expiration dates approach.

C. The Issuance of a Stay Will Not Substantially Injure the Government, and the Public Interest Lies in Granting Petitioner’s Request for a Stay of Removal.

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 Respondent is both the opposing litigant and the public interest representative. *Nken*, 556 U.S. at 435. The Court further noted that the interest of Respondent 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*, 556 U.S. at 436 (citations omitted).

Here, neither of these factors nor any other factors exist to suggest that the Respondent or the public have any interest in Petitioner’s removal beyond the general interest noted in *Nken*.

Explain here why the petitioner is not a threat to the community and/or not particularly dangerous, including, as applicable, such information as: client’s age; employment; health; medical infirmities; adherence to conditions of release; nature of crime (if non-violent); tax payments; religious attendance; community service; close relationship with family members. **Attach** and cite corroborating exhibits or exhibits that highlight petitioner’s positive qualities.

The *Nken* Court also recognized the “public interest in preventing aliens from being wrongfully removed,” which must weigh heavily in the Court’s consideration. *See Nken*, 556 U.S. at 436. Respondent cannot make any particularized showing that granting Petitioner a stay of removal would substantially injure its interests or conflict with the public interest in preventing a wrongful removal, such that the third and fourth *Nken* factors would outweigh the

¹¹ *See, e.g.*, Sample Parole Documents (produced Oct. 31, 2012) (three separate travel documents issued to returning aliens, all valid for seven days after issuance), *available at* http://nationalimmigrationproject.org/legalresources/NIPNLG_v_DHS/Sample%20Parole%20Documents.pdf.

hardship Petitioner would face if removed.

IV. CONCLUSION

The Court should grant this motion for a stay of removal.

Dated: [X]

Respectfully Submitted,

/s/ Attorney Name

[Attorney Name

Organization/Law Firm

Street Address

City, State Zip

Tel. (XXX) XXX-XXXX]

Attorney for Petitioner