

1. This is an emergency motion to prevent the forced removal of
Petitioner **XXXXXXXXXXXXX** on JANUARY X, 20XX AT 8:00 A.M.
2. Due to the short time-frame for removal. I am simultaneously filing a motion for a temporary restraining order.
3. This honorable Court has the discretion to grant a stay of removal pending consideration of a petition for review. Four factors guide the Court's decision: (1) whether the petitioner has made a "strong showing that he is likely to succeed on the merits"; (2) whether he 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); *see also Slyusar v. Holder*, 740 F.3d 1068, 1074 (6th Cir. 2014). "These factors are not prerequisites that must be met, but are interrelated considerations that must be balanced together." *Serv. Emps. Int'l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (internal quotation marks omitted).
4. **XXXXXXXXXXXXX** overwhelming humanitarian equities, set forth below, weigh in favor of a stay.

5. Yesterday, counsel confirmed that local XXXX Immigration and Customs Enforcement is definitely not belying their intention to deport XXXXXXXXXXX on Thursday at 8:00 a.m.
6. Therefore, I notified Respondent of my intention to file an emergency motion for a stay of removal and an emergency motion for temporary restraining order.
7. Respondent opposes this motion.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

INSERT YOUR FACTS AND PROCEDURAL HISTORY HERE

Practice Pointer: An overwhelming number of Petitions for Review are denied. I put the strongest section first, which I usually find is the irreparable harm section.

IRREPARABLE HARM IN SUPPORT OF PETITIONER'S STAY REQUEST

8. List of exhibits supporting irreparable harm with some description of relevancy of document:

INSERT YOUR EXHIBIT LIST HERE

EXAMPLES OF TYPICAL DOCUMENTS SUPPORTING A STAY REQUEST:

- i. Birth Certificates
- ii. Passports (with Translation),
- iii. Birth Certificates of U.S. Citizens/LPR Children,
- iv. Proof of Spouse's Status (USC or LPR),
- v. Proof of Medical Hardship (Doctor's Letters, Medication Lists, affidavits about how applicant needs or gives care),
- vi. Proof of Income (Letter of Employment, Paystubs, affidavits about applicant will suffer if family does not have adequate support)
- vii. Proof of Insurance,
- viii. Federal Income Tax Returns,
- ix. Property Taxes,
- x. Property Deeds,
- xi. Bank Account Statements,
- xii. Household Bills,
- xiii. Credit Card Statements,
- xiv. School Records (Transcripts, Diplomas, Report Cards),
Character Reference Letters,
- xv. Affidavits of applicant for stay is very important.
- xvi. Affidavits of spouse/family-members
- xvii. Difficulty in bringing the Petitioner back to the U.S. should he/she prevail. If Court designated petitioner a pauper who might not be able to afford a return trip ticket to the U.S., mention it here. Also, there is no established procedure guaranteeing aliens will be re-admitted to the U.S. after prevailing on a petition for review if they do not have lawful permanent resident status.
- xviii. Evidence of country conditions if there is a threat to human life (does not have to be on account of a protected ground for purposes of a stay).

Practice Pointer: Remember that your focus must be on irreparable harm to the petitioner ----**not** the petitioner's family. You can try to frame injury to

the family as harming petitioner. For example, if Petitioner, a sole breadwinner, is deported, then Petitioner will suffer because his family will not have food and housing or he may lose equity in his home. If Petitioner's family suffers, then there are consequences and harm for the Petitioner.

LIKELIHOOD OF SUCCESS ON THE MERITS – WHAT DOES THE STANDARD MEAN:

9. As stated in the introduction, “These factors [likelihood of success on the merits, irreparable harm, et. al.] are not prerequisites that must be met, but are interrelated considerations that must be balanced together.” *Serv. Emps. Int’l Union Local 1 v. Husted*, 698 F.3d 341, 343 (6th Cir. 2012) (internal quotation marks omitted). Thus, even if you find that there is a lower likelihood of success on the merits, then Aguilar-Aguilar still warrants a stay in balance of the equities.

10. Petitioner stresses that Aguilar-Aguilar’s burden is merely to show a **strong likelihood** of success, not that success is more likely than not. In other words, Petitioner does not have to show that there is a 51 percent chance of winning, i.e., that it is more likely than not. Rather, Petitioner must show that his case is not frivolous and that there is strong chance of success.

11. To the extent that the irreparable harm in this case rises to the level of threat to human life, Petitioner prays that the Court weigh that heavily.

12. Likelihood is dictionary-defined as being probable. It is respectfully submitted that the standard is merely strong likelihood and not more likely than not. Petitioner respectfully submits that the Court should

consider far less than a 50 percent chance of winning as a strong showing of likelihood.

13. Certainly, strong likelihood would be less than 51% (more likely than not, i.e., more than 50 percent chance of prevailing).

14. The Supreme Court has quantified the “well-founded” standard as being merely a 10 percent chance. The United States Supreme Court quantified a “well-founded fear of persecution” as a mere 10 percent likelihood in *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987):

There is simply no room in the United Nations definition for concluding that because an applicant has a 10% chance of being shot, tortured, or otherwise persecuted, that he or she has no ‘well-founded fear’ of the event happening... [A] moderate interpretation of ‘well-founded fear’ standard would indicate “that so long as an objective situation is established by the evidence, it need not be shown that the situation will probably result in persecution, but it is enough that persecution is a reasonable possibility.”

Id. citing *INS v Stevic*, 467 U.S. 407, 424-425.

15. Petitioner thus submits that strong likelihood is approximately around the 10 percent chance that constitutes “well-founded” and definitely considerably lower than “more likely than not.” And, that is how Petitioner arrives at the calculation that strong likelihood of success on the merits would be about 10% chance of success.

16. In the instant case, Petitioner has a strong likelihood of success on the merits.

**WHY PETITIONER HAS A STRONG
“LIKELIHOOD OF SUCCESS ON THE MERITS”**

MAKE YOUR ARGUMENT HERE OF WHAT EACH OF YOUR ARGUMENTS ARE FOR APPEAL AND THE LEGAL BASIS FOR WINNING. IF YOU DID A DETAILED PETITION FOR REVIEW, YOUR REASONS FOR APPEAL WOULD BE YOUR STARTING POINT.

**NO SUBSTANTIAL INJURY TO THE GOVERNMENT
IF A STAY IS GRANTED**

17. The harm to the U.S. government if Petitioner were not removed from the U.S. would be nonexistent, as Petitioner pays his taxes, has a good record (OR: only relatively minor incidents and no recidivism) and a caring family.

18. Granting Petitioner’s stay of removal would serve the public interest by keeping this family together until there is a final decision on the merits.

19. A copy of this motion is being sent electronically to District Counsel, the District Director of the United States Citizenship and Immigration Service and to the Office of Immigration Litigation (OIL) in

Washington D.C., allowing them an opportunity to respond expeditiously.

20. In light of the foregoing, it is respectfully requested that this Court issue a Stay of Removal.

Respectfully submitted by,

/XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXX
XXXXXXXXXXXXX

Date

CERTIFICATE OF SERVICE

I, XXXXXXXXX, hereby certify that on DATE, I served one copy of the attached Petitioner’s Emergency Motion for Stay of Removal on the following by electronic filing via email:

Eric H. Holder Jr., Attorney General
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530-0001

XXXXXXXXXXXX
U.S. Department of Justice
450 Fifth St., NW
Washington, DC 20001

/S/ XXXXXXXXXXXXXXXXXXXX
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