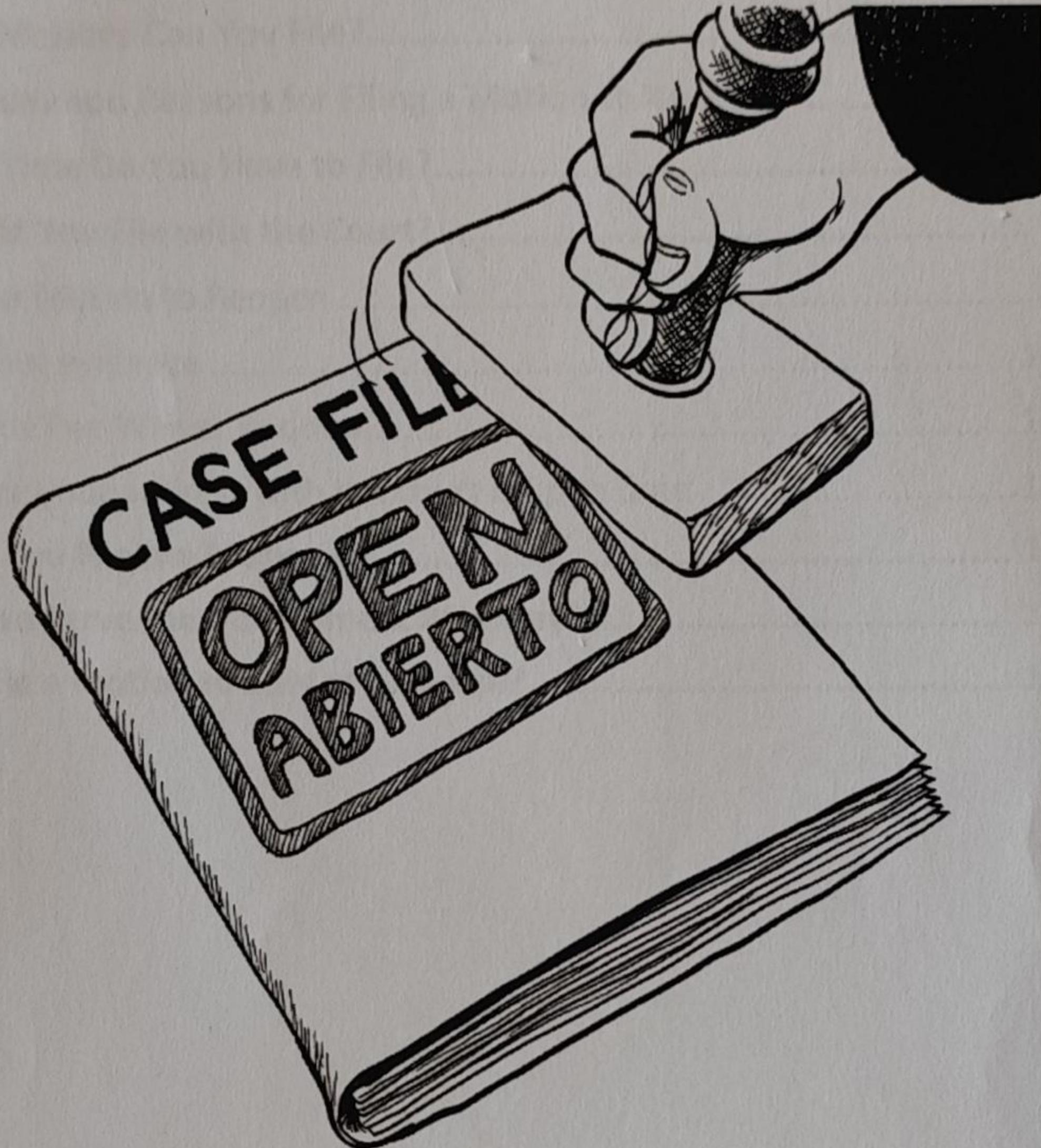


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How to Have Your Case Opened Again

A Guide About Motions to Reopen



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. We do not charge for our services. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Your Motion to Reopen should include new facts discovered after the court ordered you deported. You must show that **the new information is material** (*really important*) and **was not available** when the judge ordered you deported.

If you leave the U.S. before the judge or the Board of Immigration Appeals decides on your motion, the court will consider it withdrawn (removed). No decision will be made.

在拿到 result 之前，不要 leave U.S. ✘

How Much Time Do You Have to File?

Generally, within 90 days of date of your deportation order, you must file the Motion to Reopen. (This is sometimes called the *90-day deadline*.)

But in some cases, the 90-day deadline does not apply.



If certain things have happened

A Motion to Reopen has NO TIME LIMIT if:

- Changes in your country's condition make it dangerous for you to return now (asylum, Withholding of Removal and Convention Against Torture).
- The immigration court did not tell you or your attorney about your hearing.
- You can show that you were in federal or state custody when the hearing occurred. The reason that you did not appear was not your fault.
- You were ordered to be deported before September 30, 1996.
- You can get the government attorney to agree to join with you in a Motion to Reopen.

If exceptional circumstances have occurred

If exceptional *circumstances* occurred, you have 180 days of the date of your deportation order to file a Motion to Reopen.

Exceptional circumstances could be:

- You were seriously ill;
- Your spouse, child, or parent was seriously ill or died;
- Your lawyer gave you ineffective help; or
- Other compelling circumstances were beyond your control.



If the case involves abuse

If you are a spouse, child, or parent of a U.S. citizen or permanent resident and you have been abused or battered, you have 1 year after receiving a deportation order to file a Motion to Reopen.

This 1-year deadline may be waived if you can show extraordinary circumstances or extreme hardship to your child. In that case, with your motion you must include a copy of an *Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents* or a copy of the self-petition (Violence Against Women Act petition) that you will file with United States Citizenship and Immigration Services.

VAWA reopen old case to VAWA
PR&HJ

If no other exceptions apply

If more than 90 days have passed since you were ordered deported and none of the exceptions apply to your case, you can try to persuade the court to exercise its power to **toll the deadline** or use its power to **reopen sua sponte**.

First, **the court can toll or pause**. That means the court can excuse a late filing if:

- You did not know that something had gone wrong in your hearing, and
- You took immediate action once you discovered it.

Or you can **ask the court to sua sponte**. That means “on its own.” The court can reopen your case because it is the fair, just, or the efficient thing to do. Since it is difficult to persuade the court to reopen on its own or to excuse a late filing, you must explain:

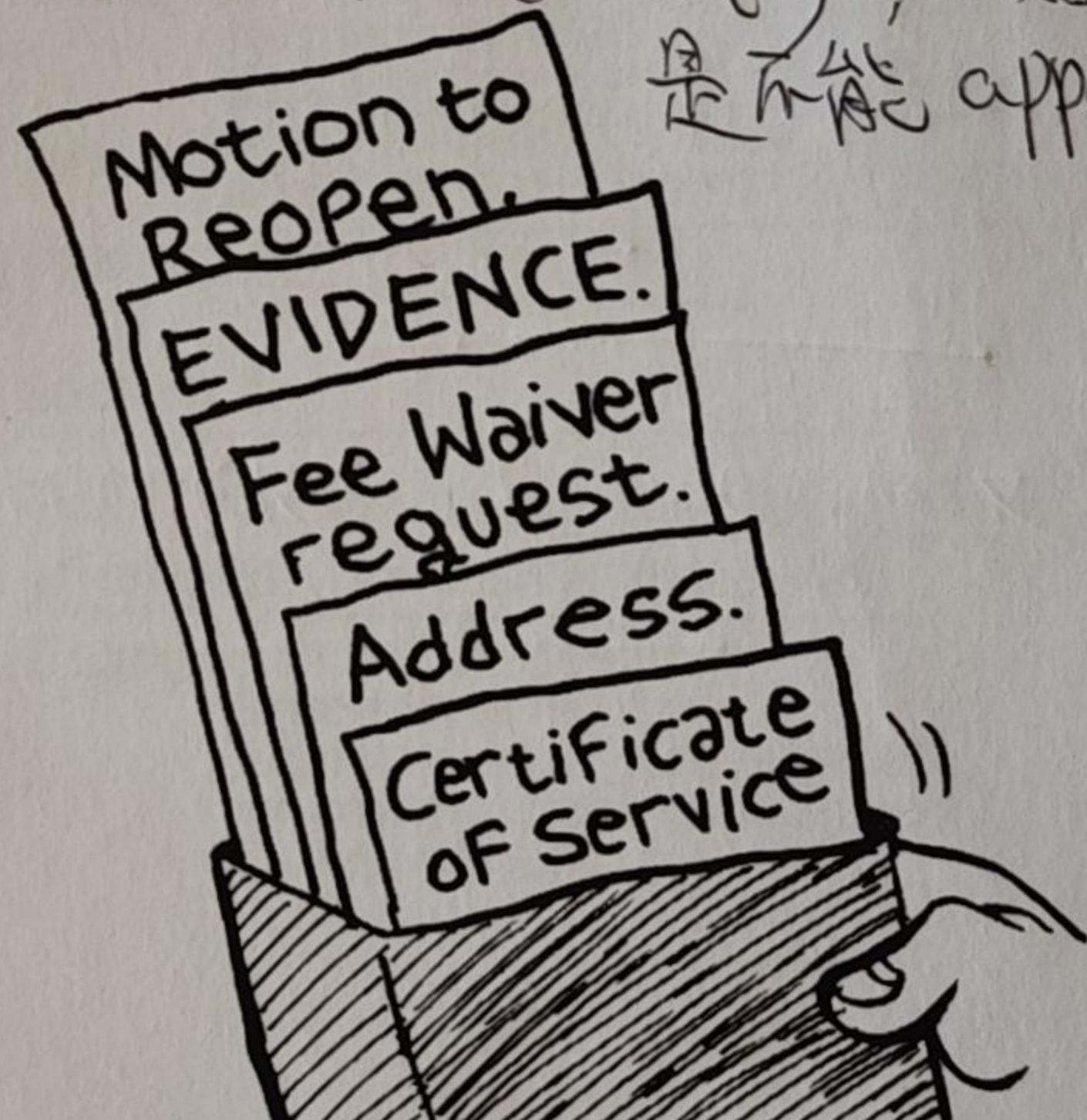
- When you discovered the problem,
- How quickly you acted to fix it, and
- Why it is fair or efficient to reopen your case.

根據 (under) 何時提出動議
這會是個說法 (what is a sua Sponte motion to reopen?)
What Should You File with the Court? 沒有時間限制 (no time limit) of no number
limit (the best), 只要 (只要) 是合法的 appeal

In the package, include the following:

- Motion to Reopen
- Your Evidence
- Fee Waiver Request — *Fee Waiver Request*, form EOIR-26A
- An Update of Your Address — *Change of Address*, form EOIR-33
- A Certificate of Service

On the next few pages, you will find more information about what to include in your package.



Write your Motion to Reopen

The Motion to Reopen is your written brief explaining **why your situation justifies allowing new evidence into your old case and why the judge should look at your case again**. It must state new facts that you will prove at a hearing if the motion is granted. You must support the facts with documents or evidence.

Below is an outline for a good motion. Remember to sign the motion.

An Outline for a Motion to Reopen a Case

Cover Page:

On the first page, in the top left corner, put your name, A#, and current address at the detention center.

Tell the court if you are detained and if you have any other pending proceedings.

Example: I am currently detained in Florence, Arizona. I don't have any appeals or other cases pending.

Write *Detained Motion to Reopen*.

In one sentence say *why* you are asking to reopen your immigration proceedings.

Example: I am asking this court to reopen my immigration proceedings because my wife is a U.S. citizen, I have an approved I-130, and I entered on a student visa.

Section 1:

Write your name, your immigration status, your country of citizenship, and your age.

Example: My name is Rigoberto Salazar, and I am a 25-year-old student from El Salvador with a pending deportation order.

Give the location of the immigration court and the date that you were deported.

Example: I was ordered deported on January 25, 2009 before the Buffalo Immigration Court in New York.

Section 2:

Tell if you will be seeking a new form of relief if your case is reopened.

Example: I will be seeking immediate relative adjustment of status based on my marriage to a United States citizen.

turn negative into positive

Look at the eligibility requirements for this form of relief. Explain how you meet all every one of the requirements for this form of relief.

Refer to specific documents that you attach that prove that you are eligible for this relief.

Example: I am eligible for this form of relief because I entered on a student visa, I married a U.S. citizen, and USCIS approved her petition for me. See Attachments A (Marriage Certificate), B (My Wife's Birth Certificate), C (My visa), D (I-130 Approval Notice).

Section 3:

Identify each new piece of new evidence that you are now filing.

Explain why this information was not available for your earlier hearing.

Example: We got married six months after I was ordered deported and USCIS did not approve her petition until last month. See Attachments A, D.

Section 4:

Explain all of the good things in your life and why the court should give you this chance despite any bad things you may have in your immigration or criminal history.

Example: Even though I have a misdemeanor conviction for domestic violence, I would still ask the court to give me this chance. After my arrest, I participated in anger management classes and went to counseling.

Attachment E (Certificates from Classes). My wife and I have overcome our differences, and we now have a 6-month-old newborn child together. Attachment F (Letter from My Wife), Attachment G (My son's birth certificate).

Section 5: Sua Sponte

If you are filing your motion a long time after the deadline, tell the court why it is just, fair, and efficient to give you this chance.

Explain when you found out that something had gone wrong in the previous case and what you did to quickly act once you learned about the problem.

Section 6:

In the conclusion, tell the court what you want it to do.

Example: I am asking for this court to reopen my case so that I can have an opportunity to apply for adjustment of status. Attachment I (I-485 application).

Remember to sign the motion.

Where Do You File the Motion?

Generally, you must file your motion with the court that made the final decision in your case.

- If you or your attorney filed an appeal to the Board of Immigration Appeals, then your motion should probably be sent to them at:

Board of Immigration Appeals
Clerk's Office
5107 Leesburg Pike, Suite 2000
Falls Church, VA 22041

file appeal → BIA
X appeal → Immigration Court

- If you did not file an appeal, then the motion will probably go to the Immigration Court where you were ordered deported. The Immigration Court hotline, 1-800-898-7180, often has the address of the court that deported you.

Even if you are currently in immigration proceedings somewhere else, you should still send the motion to the court that made the final decision in your earlier immigration proceedings.

How Do You Serve the Government Attorney?

You may need to research to find the address for the government lawyers in the town where you were ordered deported if it happened before you were detained.

For the addresses for the government lawyers, go to:
<https://www.ice.gov/contact/legal>.

Once you have that address, make sure to attach a **Certificate of Service** to all 3 packets

A sample Certificate of Service is below:

Can You File a Motion to Stay of Removal?



Generally, a Motion to Reopen will NOT automatically stop your deportation unless it is based on the court's failure to notify you or your attorney of your hearing.

If you fear being deported while your motion is pending, you must file a separate Motion to Stay Removal either to the Immigration Court or to the Board of Immigration Appeals (depending on which court is considering your Motion to Reopen.)

A *Motion to Stay of Removal* is a motion to stop your deportation.

- If you are in detention and you will be removed within the next 3 days, you may file an Emergency Motion to Stay Removal.
- If your removal is not likely within the next 3 days, then file a regular Motion to Stay Removal.

In the motion, include a copy of the old deportation order and all of the important facts and dates about:

- When you were ordered deported,
- Why you are filing a motion to reopen,
- Why you need a stay of your deportation.
- When you would need the stay.

For example, if you are in detention and in separate removal proceeding, you should tell them the date of your next upcoming hearing.

In addition, you can also ask ICE for a *Stay of Removal* (ICE Form I-246). As of 2020, the fee is \$155.00. You should submit the form, the required documents, and the payment to your local ICE office. For more information, see the instruction sheet to the I-246.

If ICE denies your application for a stay, you can still try a stay with the court. Either way, ICE will not return the application fee.