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Practitioner's Notes for Template Prosecutorial Discretion Request: Joint Motion to Reopen an *in Absentia* Removal Order and Dismiss or, in the alternative, a Joint Motion to Reopen

- This template is intended for practitioners who represent a client who has been ordered removed *in absentia* and is requesting prosecutorial discretion following the vacatur of DHS's immigration enforcement priorities set out in the Mayorkas and Doyle Memoranda.
- The template contains bracketed placeholders for case-specific facts in [yellow highlighted text] and instructions/notes for practitioners in [blue highlighted text.] Some arguments and/or information in this template may be inapplicable to a given case.
- Highlighting and arguing the specific facts of a client's case are key to a persuasive request for prosecutorial discretion. Practitioners should cite to the record when asserting facts.
- The cases cited in this template do not constitute an exhaustive search of relevant case law in all jurisdictions. Practitioners should conduct legal research in their jurisdiction based on the facts of their case and ensure that the arguments are viable in their jurisdiction.
- Practitioners should add any additional arguments that may be available based on the circumstances of the case.
- Note that if seeking to reopen for purposes of Non-LPR Cancellation of Removal or other relief that is solely within the IJ's jurisdiction, the request would be solely for a joint motion to reopen, and not a request to simultaneously dismiss.
- If ICE OPLA declines to join in your *in absentia* motion to reopen, you could ask ICE OPLA for permission to title the unilateral motion to reopen as unopposed.
- If ICE OPLA declines to join in your *in absentia* motion to reopen and you file a unilateral motion to reopen, remember that *in absentia* motions to reopen based on exceptional circumstances are subject to a strict 180-day deadline from the time of the removal order. If the IJ issued the removal order over 180 days ago, you should present all applicable exceptions to the 180-day motion to reopen deadline. *See* INA § 240(c)(7)(C)(i); 8 C.F.R. § 1003.2(c)(2); 8 C.F.R. § 1003.23(b)(1). These exceptions include equitable tolling, changed country conditions, the Violence Against Women Act (VAWA), and requesting that EOIR exercise its sua sponte authority.

DATE

Attn: Assistant Chief Counsel
Office of the Chief Counsel
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security
Address
City, State, Zip Code
Email Address

Re: Request for Prosecutorial Discretion: Join a Motion to Reopen and Dismiss or, in the alternative, a Joint Motion to Reopen

Name, A# XXX-XXX-XXX

Dear Assistant Chief Counsel:

[NAME] respectfully requests that ICE OPLA exercise prosecutorial discretion. [NAME] requests that ICE OPLA join a motion to reopen and dismiss [her/his/their] case so that [she/he/they] may seek [RELIEF] before USCIS, or in the alternative, a motion to reopen in order to seek relief before the immigration judge (IJ). The IJ ordered [NAME] removed *in absentia* on [DATE]. [NAME]'s *in absentia* order of removal merits reopening because [NAME] was unable to attend the hearing due to [exceptional circumstances AND/OR inadequate notice of hearing]. [NAME] also merits ICE OPLA's prosecutorial discretion because, in the totality of the circumstances, [NAME] presents many positive equities that outweigh any negative factors in [her/his/their] case. A joint motion to reopen and dismiss or, in the alternative, a joint motion to reopen in this case therefore aligns with DHS's inherent prosecutorial discretion authority.

I. SUMMARY OF RELEVANT FACTS AND PROCEDURAL HISTORY

[NAME] is a citizen of [COUNTRY] and entered the United States on or around [DATE] in [MANNER OF ENTRY OR ATTEMPTED ENTRY (type of visa/as an "arriving alien"/without inspection)]. [Include any of the following that are accurate:] [NAME] filed for asylum with USCIS on [DATE] [or] [NAME] passed a credible/reasonable fear interview on [DATE]. [NAME] was served with a Notice to Appear on [DATE] and was scheduled for a master calendar hearing on [DATE]. However, [NAME] was unable to attend that master calendar hearing because [explain briefly the exceptional circumstances in a factual manner AND/OR respondent did not have proper notice of the hearing.] [If the respondent did attend a master calendar hearing, include more of the procedural history:] At the master calendar hearing on [DATE], [NAME] appeared [pro se/with counsel] and [pled to the charges/submitted written pleadings]. [NAME] informed the IJ that [she/he/they] would seek [FORM OF RELIEF]. The IJ scheduled [NAME] for an individual hearing on [DATE]. [For asylum claims, briefly explain why respondent left their country / why they fear return / how they were placed into removal proceedings, if such facts are part of the record. For other cases where respondent has filed or intends to file a form of relief with the immigration court, briefly describe the facts in the record underlying the respondent's eligibility; for example, in a 42B cancellation case, briefly and factually describe the amount of time the respondent has been living in the United States, the identity of the qualifying relative, the nature of the exceptional and extremely unusual hardship

Client's Name and A#

the qualifying relative would face upon respondent's removal, and, if the qualifying relative is a child, note if a qualifying relative child is close to aging out, and the role the respondent plays in the qualifying relative's life.]

II. ARGUMENT

Prosecutorial discretion is the longstanding authority of a law enforcement agency, and an “indispensable feature of any functioning legal system,” necessary to achieve fair and just outcomes in individual cases. Immigration and Customs Enforcement (ICE), *Prosecutorial Discretion and the ICE Office of the Principal Legal Advisor*, <https://www.ice.gov/about-ice/opla/prosecutorial-discretion>. Prosecutorial discretion also serves the critical function of preserving limited government resources, which increases the efficiency and integrity of the law enforcement agency as a whole. *Id.* As the exclusive representative of Department of Homeland Security (DHS) in immigration removal proceedings, Office of the Principal Legal Advisor (OPLA) attorneys have the inherent authority to exercise prosecutorial discretion on a case-by-case basis in the handling and litigation of removal cases. *Id.* OPLA attorneys are “empowered and expected to use their professional judgment to do justice in each case,” including by joining motions to reopen and stipulating to relief in cases where the respondent has satisfied their burden to prove eligibility and merit favorable discretion. Memorandum from Kerry E. Doyle, “Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion” (April 3, 2022).

[NAME] respectfully requests that ICE OPLA join a motion to reopen [his/her/their] removal proceedings based on [if applicable:] the presence of [#] exceptional circumstances. [If applicable:] [NAME] also received [no OR inadequate] notice of [her/his/their] removal proceedings because [her/his/their] Notice to Appear failed to articulate a hearing place and time. Finally, [NAME] also merits relief as a matter of discretion.

A. ICE OPLA Should Join a Motion to Reopen and Dismiss [NAME]'s Removal Order Because [NAME] Faced Exceptional Circumstances that Prevented [Her/His/Their] Appearance at the Hearing.

An IJ may rescind an *in absentia* order of removal and reopen proceedings if the respondent's failure to appear was due to exceptional circumstances. INA §240(b)(5)(C)(i). Exceptional circumstances include issues “beyond the control of” the respondent, including, for example, serious illness of the respondent, or serious illness or death of the spouse, child, or parent of the respondent. INA § 240(e)(1). Ineffective assistance of counsel also constitutes an exceptional circumstance. *See, e.g., Matter of Grijalva*, 21 I&N Dec. 472 (BIA 1996). Where a respondent arrived late for the hearing, situations beyond commonplace delays, such as a serious and unforeseeable accident preventing a timely appearance, may constitute exceptional circumstances. *Matter of S-L-H & L-B-L*, 28 I&N Dec. 318 (BIA 2021).

In determining whether a respondent has established exceptional circumstances, the totality of the circumstances pertaining to the respondent's case should be considered. *Id.* (citing *E.A.C.A. v. Rosen*, 985 F.3d 499, 504 (6th Cir. 2021)). The totality of the circumstances approach may take into account factors such as a respondent's young age, attendance at prior hearings, eligibility for

relief from removal, and promptness in filing the motion to reopen. *Id.* The respondent must provide adequate documentary evidence to support a claim of exceptional circumstances, which may include affidavits, traffic and weather reports, medical records, verification of the respondent's arrival time at the court room, and other documentation verifying the cause of the late arrival. *Matter of S-L-H & L-B-L*, 28 I&N Dec. at 322. Here, [NAME] raises [#] of exceptional circumstances: 1) [NAME]'s serious illness [describe briefly], (2) ineffective assistance of counsel, (3) severe weather and traffic conditions [This template includes three potential bases for exceptional circumstances, but practitioners should include all exceptional circumstances. Whatever the exceptional circumstances bases, practitioners must include corroborating evidence of those circumstances]. Respondent submits evidence of these exceptional circumstances.

1. [If applicable:] [NAME]'s illness constitutes an exceptional circumstance.

In unpublished decisions, the BIA has found that illnesses including the flu and dental issues are serious enough to constitute exceptional circumstances. *See, e.g., Matter of Sanchez-Cazarez*, A205-943-262 (Aug. 3, 2016) (concluding that respondent's severe case of the flu constituted an exceptional circumstance); *Matter of Montano*, A075-689-668 (Feb. 9, 2016) (finding that respondent's partially impacted tooth constituted an exceptional circumstance). U.S. courts of appeals have held that serious illness may be demonstrated through sufficiently detailed documentation from a medical professional regarding the severity of the illness alleged. *See Lonvem v. U.S. Att'y Gen.*, 352 F.3d 1338, 1341 (11th Cir. 2003); *Celis-Castellano v. Ashcroft*, 298 F.3d 888, 892 (9th Cir. 2002) (determining that a noncitizen provided insufficient evidence of the severity of his illness); *Ursachi v. INS*, 296 F.3d 592, 594 (7th Cir. 2002) (same).

[NAME] submits a detailed declaration, medical records, and medical evaluation corroborating [her/his/their] [illness/injury]. *See Exh. X. [Describe illness or injury: how it occurred, what symptoms are, when they present etc.] [NAME]'s illness is [similar to / more serious than... compare to illnesses in cases above or other cases.]*

2. [If applicable:] [NAME]'s prior legal representative provided ineffective assistance of counsel.

Noncitizens who are represented in removal proceedings have the right to effective assistance of counsel. *See, e.g., Gbaya v. U.S. Att'y Gen.*, 342 F.3d 1219, 1221 (11th Cir. 2003) ("It is well established that '[a]liens enjoy the right to the effective assistance of counsel in deportation proceedings."); *Fustaguio Do Nascimento v. Mukasey*, 549 F.3d 12, 17 (1st Cir. 2008) ("Ineffective assistance of counsel in a deportation proceeding is a denial of due process under the Fifth Amendment if the proceeding was so fundamentally unfair that the alien was prevented from reasonably presenting his case.") (quoting *Rodríguez-Lariz v. INS*, 282 F.3d 1218, 1226 (9th Cir. 2002)). The Board has determined that evidence of ineffective assistance of counsel constitutes an exceptional circumstance and merits reopening of *in absentia* orders. *See, e.g., Matter of N-K- & V-S-*, 21 I&N Dec. 879 (BIA 1997); *Matter of Grijalva-Barrera*, 21 I&N Dec. 472 (BIA 1996).

To succeed on an ineffective assistance of counsel claim, the motion to reopen must meet certain requirements. The motion to reopen based on ineffective assistance of counsel must demonstrate that prior counsel's conduct was ineffective, and that the ineffective assistance of counsel prejudiced the case. *Matter of Lozada*, 19 I&N Dec. 637, 638 (BIA 1988). Additionally, the motion must comply with specific procedural requirements. *Id.*

i. The prior legal representative rendered ineffective assistance of counsel by [failing to inform / misinforming] [NAME] of the hearing, which prejudiced [her/his/their] case.

The right to effective assistance of counsel in immigration proceedings stems from the Fifth Amendment's guarantee of due process. *See Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005). A legal representative's performance in an immigration proceeding is a context-dependent inquiry into whether the attorney acted with "sufficient competence." *Mohammed v. Gonzales*, 400 F.3d 785, 793 (9th Cir. 2005). Deficiency is established if the attorney's representation does not adhere to reasonable professional standards. *Padilla v. Kentucky*, 559 U.S. 356, 375 (2010). The Model Rules of Professional Conduct require that a lawyer shall "keep the client reasonably informed about the status of the matter." Model Rules of Professional Conduct, Rule 1.4(a)(3). [Describe the ineffective assistance of counsel: when was the legal representative retained? What were the expectations at the start, how were these expectations communicated, and was this communication method tailored to the client's needs (language abilities, illiteracy, hearing impaired, etc.)? What was the client's understanding of the expectations? How often did the legal representative communicate with the client? When the legal representative communicated, what was the purposes of the communication? How did the legal representative fail to inform the client or what were the inconsistencies or confusion regarding communication about the hearing? Was the legal representative present at any hearing? Was the client also present at hearing before being ordered removed in absentia? If so, did the client understand the interpreter and did the legal representative rely on the interpreter to communicate the next hearing date information? Provide other facts of representation falling below the standards of professional conduct.]

A respondent seeking reopening based on a claim of ineffective assistance of counsel must show a reasonable probability that, but for counsel's error, [he/she/they] would have prevailed on [her/his/their] claim. *Matter of Melgar*, 28 I&N Dec. 169, 171-72 (BIA 2020) (explaining that prejudice requires the respondent to show "a reasonable probability" that, but for former counsel's mistake, the respondent would have prevailed on the claim). However, prejudice is presumed if the noncitizen received an *in absentia* order as a result of ineffective assistance. *Matter of Grijalva*, 21 I&N Dec. 472, 474 n.2 (BIA 1996). Although not necessary to establish in this case, the prior legal representative's ineffective assistance of counsel prejudiced the outcome in these matters. [Describe how but for the legal representative's deficient representation with regard to communication about the hearing, the client would not have missed the hearing. Include facts that go to the client's prior compliance with their immigration obligations and incentives to appear to appear at the hearing].

- ii. **[NAME]** has strictly complied with the procedural requirements of *Matter of Lozada*.

Motions to reopen based on ineffective assistance of counsel must generally comply with the procedural requirements set forth in *Matter of Lozada*, which requires: (1) that the motion is supported by an affidavit of the respondent setting forth in detail the agreement that was entered into with counsel; (2) that counsel be informed of the allegations and be given an opportunity to respond; and (3) that the motion reflect whether a complaint has been filed with the appropriate disciplinary authorities. 19 I&N Dec. 637 (BIA 1988); 8 C.F.R. § 1208.4(a)(5)(iii).

[NAME] has complied with *Lozada*'s procedural requirements and submits evidence of this compliance. [Describe the notice provided to prior counsel (and response, if any), the complaint filed with relevant disciplinary authority and, if eligible for relief, include the application for relief and any available supporting documentation including a declaration from the client and you, the current legal representative.]

3. **[If applicable:]** [NAME] faced severe weather and traffic conditions that caused [her/him/them] to arrive late at the hearing.

Exceptional circumstances, including severe weather and traffic conditions, prevented [NAME] from arriving at the hearing on time. In *Matter of S-L-H- & L-B-L-*, 28 I&N Dec. 318 (BIA 2021), the BIA determined that the respondent's credible tardiness assertions, together with supporting documentation, were sufficient to meet the exceptional circumstances standard.

[Describe circumstances which prevented respondent from arriving on time: e.g., severe weather, multiple traffic accidents, severe traffic delays. Include detailed and consistent affidavits from both the respondent and, if the respondent was not driving, the driver, detailing being stuck in traffic, the location of the traffic jam and traffic accident, and their attempts to find and take an alternative route in order to arrive at the hearing on time as well as relevant weather and traffic reports. Describe other factors to consider under the totality of the circumstances e.g., appearance at prior hearings, prior affirmative applications, prompt submission of motion to reopen, etc.]

B. ICE OPLA Should Join a Motion to Reopen [NAME]'s Removal Order Because [NAME] Did Not Receive Proper Notice of Hearing.

An *in absentia* order of removal may be rescinded upon a motion to reopen at any time if the respondent demonstrates either that [she/he/they] did not receive notice in accordance with INA §§ 239(a)(1)-(2) or that [she/he/they] was in federal or state custody and the failure to appear was through no fault of their own. INA § 240(b)(5)(C). *See also, Pereira v. Sessions*, 138 S. Ct. 2105 (2018); *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021).

[If received NTA with no hearing date:] Here, [NAME] did not receive proper notice to support [her/his/their] *in absentia* removal order because [her/his/their] NTA contained no hearing date or time. *See Exh. X*. Although the BIA recently concluded that lack of hearing date or time can be cured by a subsequent hearing notice in this context, *Matter of Laparra*, 28 I&N Dec. 425

(BIA 2022), both the Fifth and Ninth Circuits have determined that *in absentia* orders based on statutorily non-compliant NTAs should be rescinded. *Singh v. Garland*, 24 F.4th 1315 (9th Cir. 2022); *Rodriguez v. Garland*, 15 F.4th 351 (5th Cir. 2021); *but see Dacostagomez-Aguilar v. U.S. Atty. Gen.*, 40 F.4th 1312 (11th Cir. 2022).

[If received no notice:] Here, [NAME] did not receive written notice of [her/his/their] [NTA or Notice of Hearing in Removal Proceedings] [Explain: Was NTA / Notice of Hearing mailed to wrong address, an address lacking or mistyping an apartment number, or otherwise incorrect address? Did respondent receive no notice despite having correct address on file? Did respondent provide new address to ICE before ICE filed NTA with Immigration Court? Did the legal representative of record receive notice but fail to inform respondent? Note that the BIA has held that service on the legal representative is constructive notice that prompts the *Lozada* process. See *Matter of Rivera*, 21 I&N Dec. 599 (BIA 1996).]

C. [NAME] Merits ICE OPLA's Prosecutorial Discretion.

The enduring principles of prosecutorial discretion support the [reopening and dismissal / reopening] of removal proceedings where such [reopening and dismissal / reopening] preserves limited government resources necessary to achieve just and fair outcomes in individual cases. Here, the [reopening and dismissal / reopening] of [NAME]'s removal proceedings will ensure justice in this case and preserve OPLA's limited resources by avoiding the need for OPLA to review and respond to a lengthy unilateral motion to reopen and to launch a defense before the BIA and the U.S. Court of Appeals for the [Number] Circuit.

Over the past decades, DHS has frequently released policy memos outlining the parameters of the agency's inherent prosecutorial discretion power. These memos have generally identified groups of people that are particularly amenable to prosecutorial discretion, factors that warrant the favorable consideration of cases, and factors that weigh in favor of enforcement.

DHS has also historically articulated compelling humanitarian factors that should inform the exercise of prosecutorial discretion. These factors have included the respondent's length of presence in the United States, contributions to public service, medical treatment in the United States, and history of victimization. DHS has also expressed its commitment to preserving family unity and prioritizing discretion for individuals who are eligible for relief. For example, in August 2021, ICE issued a directive outlining its commitment to protecting and assisting noncitizen victims of crime, including using prosecutorial discretion to facilitate access to justice and victim-based immigration benefits for noncitizen crime victims. ICE Directive 11005.3, "Using a Victim-Centered Approach with Noncitizen Crime Victims" (Aug 10, 2021).

Here, [NAME] presents a range of humanitarian factors that support the favorable exercise of prosecutorial discretion. [Describe any applicable humanitarian factors including, e.g., length of time in United States, U.S. citizen or LPR children and U.S. citizen or LPR relatives, public service work / contribution to local community, education, work history, serious illness, injury, or health condition, victim of crime, victim of domestic violence, family / role as sole caretaker.]

[NAME] is also prima facie eligible for [FORM OF RELIEF].

[If asylum:] A respondent demonstrates prima facie eligibility for relief where the evidence reveals “a reasonable likelihood that the statutory requirements for relief have been satisfied.” *Salim v. Lynch*, 831 F.3d 1133, 1139 (9th Cir. 2016) (quoting *Ordonez v. INS*, 345 F.3d 777, 785 (9th Cir. 2003)). Under the statutory requirements, an asylum applicant must be “unable or unwilling to return to” and “unable or unwilling to avail himself or herself of the protection of” their country of nationality or country in which they last resided “because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion.” INA § 101(a)(42)(A).

The respondent may qualify as a refugee either because [she/he/they] has suffered past persecution or because [she/he/they] has a well-founded fear of future persecution. 8 C.F.R. § 1208.13(b). To establish a “well-founded fear” of persecution, the respondent need only show a *reasonable possibility* that [she/he/they] will be persecuted. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 (1987). Even a ten percent chance of persecution may establish a well-founded fear. *Cardoza-Fonseca*, 480 U.S. at 440; *Al-Harbi v. INS*, 242 F.3d 882, 888 (9th Cir. 2001). Although the definition of “persecution” has been interpreted diversely by adjudicators, it generally includes threats to life or freedom, confinement, torture, and economic restrictions so severe that they constitute a threat to life or freedom. *Matter of Acosta*, 19 I&N Dec. 211, 222 (BIA 1985); *see also Cardoza-Fonseca*, 480 U.S. at 444. The respondent establishes the nexus requirement when [she/he/they] demonstrates that the proposed protected status is “one central reason” for the persecution. *Alvarez Lagos v. Barr*, 927 F.3d 236, 250 (4th Cir. 2019). Where the persecutor is a government or government-sponsored, it is presumed that internal location would not be reasonable. 8 C.F.R. § 1208.13(b)(3).

[Describe basis for asylum claim in detail, supported by documentary evidence that establishes prima facie eligibility. Use sub-headings if multiple bases.]

[If non-LPR cancellation of removal:] [NAME] is prima facie eligible for cancellation of removal under section 240A(b)(1) of the INA because (1) [she/he/they] [was/were] continuously physically present in the United States for at least ten years immediately preceding service of a statutorily compliant NTA, (2) [she/he/they] has good moral character and no disqualifying criminal convictions, (3) [her/his/their] removal would result in exceptional and extremely unusual hardship to [her/his/their] [U.S. citizen / lawful permanent resident] [spouse / child / parent], and (4) [she/he/they] merit[s] this relief as a matter of discretion.

In support of [her/his/their] prima facie eligibility for INA § 240A(b)(1) cancellation of removal, [NAME] submits Form EOIR 42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, birth certificates or marriage certificates to prove the relationship to the qualifying relative, birth certificate [or a copy of the qualifying relative’s lawful permanent resident card / naturalization certificate] of the [NAME OF THE QUALIFYING RELATIVE] to prove [U.S. citizenship / lawful permanent resident status], photos of [NAME] with [NAME OF THE QUALIFYING RELATIVE], and a declaration from [NAME OF THE QUALIFYING RELATIVE] discussing the hardship [she /he/they] would face if [NAME] were forced to return to [COUNTRY OF ORIGIN].

[Describe basis for non-LPR cancellation of removal claim in detail, supported by documentary evidence that establishes prima facie eligibility. Use sub-headings if multiple bases.]

Recent memoranda have set out priority enforcement frameworks. For example, in May 2021, OPLA issued a memo explaining that cases involving national security, border security, or public safety are enforcement priorities, and noting that OPLA should continue to address requests for joint motions to reopen on a case-by-case basis, “giving favorable consideration to cases that are not priorities.” Memorandum from John D. Trasviña, “Interim Guidance to OPLA Attorneys Regarding Civil Immigration Enforcement and Removal Policies and Priorities,” at 12 (May 27, 2021). Most recently, in April 2022, OPLA issued a guidance memo that reiterated its policy of prioritizing the removal of individuals who represent a threat to national security, public safety, or border security. Memorandum from Kerry E. Doyle, “Guidance to OPLA Attorneys Regarding the Enforcement of Civil Immigration Laws and the Exercise of Prosecutorial Discretion” (April 3, 2022). While OPLA is following this guidance only to the extent that it does not rely on or cite to the Mayorkas Memo, it represents the continuation of DHS’s longstanding practice of exercising prosecutorial discretion in a fair and just manner that preserves limited resources.

Here, [NAME] presents no threat to national security, public safety, or border security. Regarding national security, [NAME] has absolutely no history of terrorist activities, or human rights abuses. Regarding public safety, [NAME] does not present a threat to the community because [she/he/they] have never been arrested or convicted on criminal charges in the United States or any other [COUNTRY] [or, if the client has a criminal history, explain the client’s mitigating factors or rehabilitation efforts that signal that [she/he/they] [is/are] not a threat to public safety]. Regarding border security, [NAME] was not apprehended at the border attempting to unlawfully enter the United States [or, if the client was apprehended at the border: [NAME] entered the United States in [DATE], and has been in the United States for X years. *Exh X.* [If applicable: [NAME] initially entered the United States fleeing persecution in [COUNTRY]. *Exh X.*] [More details on entry.]

4. CONCLUSION

For the foregoing reasons, [NAME] respectfully requests that ICE OPLA join a motion to reopen and dismiss or, in the alternative, a joint motion to reopen. Based on the totality of the circumstances in this case, [NAME] merits a favorable exercise of prosecutorial discretion in the form of a [joint motion to reopen/joint motion to reopen and dismiss].

Respectfully submitted,

[Signature Block for the Legal Representative]

EXHIBIT LIST IN SUPPORT OF REQUEST FOR PROSECUTORIAL DISCRETION

TAB	DESCRIPTION	PAGES
A		
B		
C		
D		
E		
F		