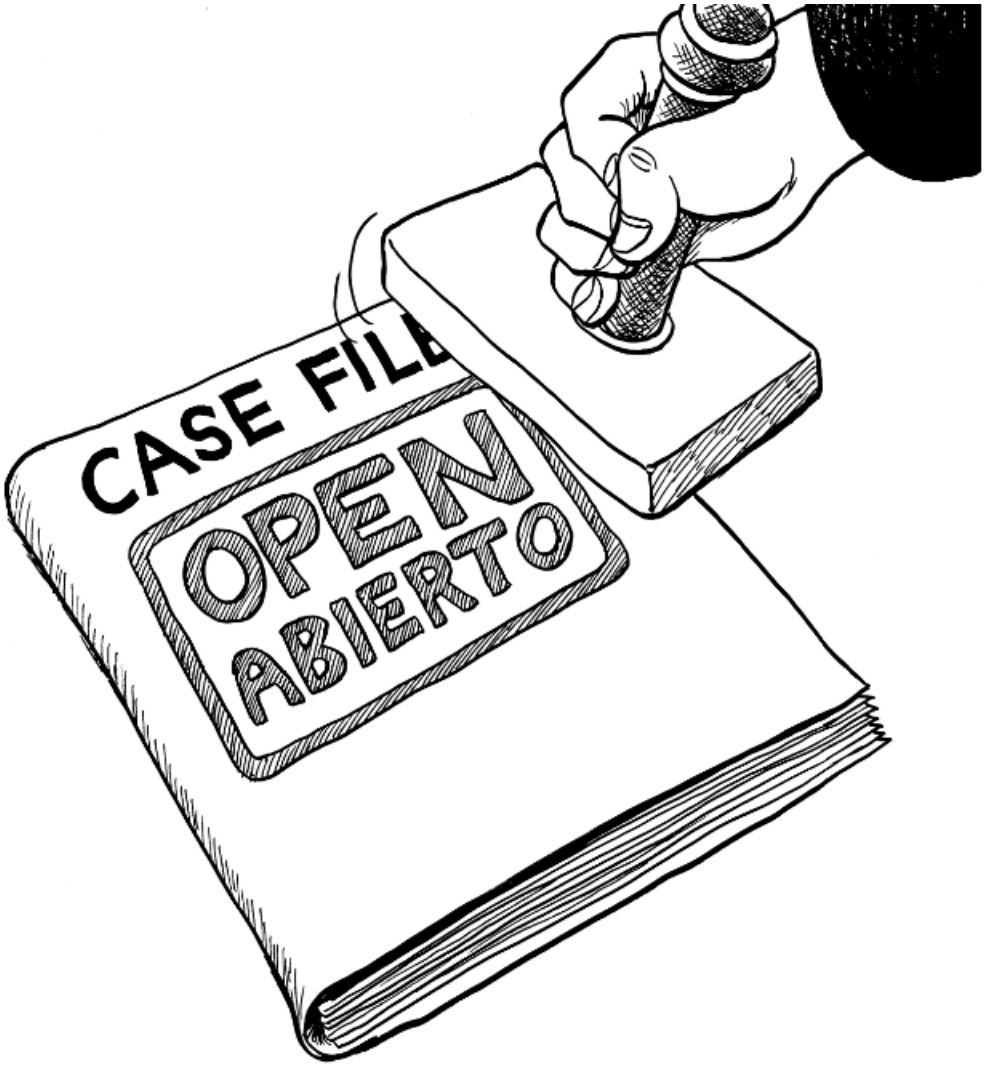
How to Have Your Case Opened Again

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.

This guide is copyright protected but you can share and distribute it widely to help immigrants around the country. If you adapt the information in this guide into your own publication, please credit the Florence Project.

©FIRRP – updated February 2022

Contents

What Is a Motion to Reopen? 3
How Many Motions Can You File? 4
What Are Common Reasons for Filing a Motion to Reopen? 4
How Much Time Do You Have to File? 5
What Should You File with the Court? 7
Write your Motion to Reopen 8
Gather your evidence 10
Include the Fee Waiver Request 11
Make sure your address with the court is up to date 11
Where Do You File the Motion? 12
How Do You Serve the Government Attorney? 12
Can You File a Motion to Stay of Removal? 14

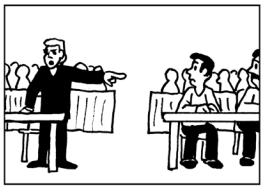
Important Words to Know

Immigration law has a lot of technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

- **Deportation:** ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or "removed" from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.

- **Florence Project:** A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.

- **Government Attorney**: The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and talks to the judge. Government attorneys should see that justice is done. Usually, they ask the judge to order to deport you.



- **Immigration and Customs Enforcement (ICE):** The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.

- **Immigration Judge (*judge*):** The person who will decide your case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.

What Is a Motion to Reopen?

If an Immigration Court or the Board of Immigration Appeals has ruled that you must be deported, you may be able to file a Motion to Reopen. A *Motion to Reopen* (MTR) allows immigrants who lose their cases in immigration court to present new or changed facts to the immigration judge. It is a request to open your case again and to undo a deportation order.

In some instances, you may ask that your case be opened again so that you can:

- Submit new evidence,
- Apply for a new type of relief, or
- Have another chance because your first proceeding was unfair.

How Many Motions Can You File?

By law, **you may file only 1 Motion to Reopen**.

If you are still waiting for more documents or you think you might need to file a Motion to Reopen later, then you may want to wait to file until you have all of your new evidence.

What Are Common Reasons for Filing a Motion to Reopen?

For a number of reasons, the immigration court may allow you to open your case again. **But the court will only reopen your case for a really good reason.**

Some of the most common reasons for filing a Motion to Reopen are:

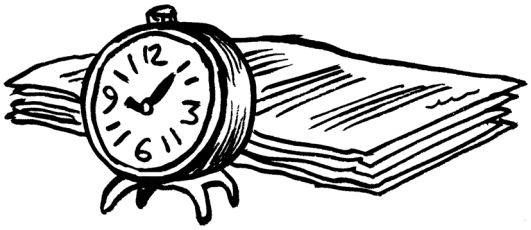
- **The Immigration Court did not notify you or your attorney** of the hearing.
- **The situation in your country has changed**. It is now dangerous for you to return.
- **You have new information that was completely unavailable before.** Your motion is based on *new* facts. You could not have had that information when your last hearing occurred. For instance, the criminal court vacated (*threw out*) a conviction that caused you to be ordered removed.
- **You could have applied for a type of relief that the immigration judge did not explain to you.** For instance, the immigration judge did not ask if you were afraid of torture in your home country.
- Because of new circumstances in your life, **you are now eligible for a type of relief**. For example, *y*ou are now eligible for a green card based on a family member.
- **Your previous attorney made a mistake** that harmed you. For example, your attorney did not file an application for relief or your attorney missed a deadline. In legal terminology, this is called *Ineffective Assistance of Counsel*.

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.

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:

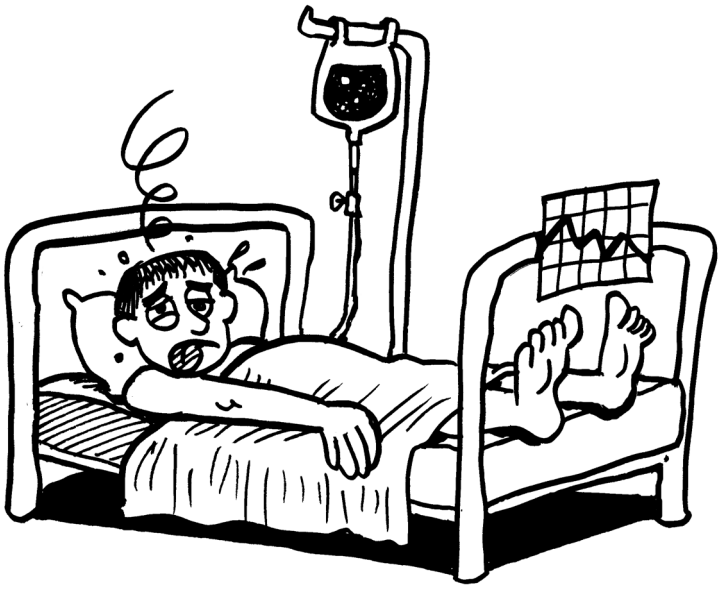
- Changes in your country's condition make it dangerous for you to return now (asylum, Withholding of Removal and Convention Against Torture).
- The immigration court did not tell you or your attorney about your hearing.
- You can show that you were in federal or state custody when the hearing occurred. 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.

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.

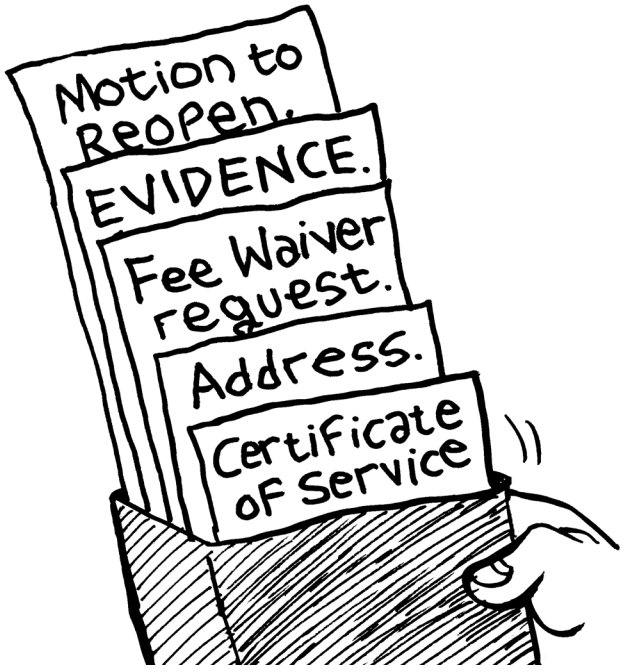
What Should You File with the Court?

When you file a Motion to Reopen, you will prepare a package to send to the court.

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.

Write *Detained Motion to Reopen*.

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.

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.

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 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.

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:

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.

Gather your evidence

In your package, you will **include ALL of the evidence** that might help convince the court to reopen your case. The type of evidence you should file depends on the reason that you need the case reopened.

We recommend that you read other Florence Project guides to learn what evidence you will need to prove your eligibility for a certain form of relief. Go to https://firrp.org/resources/prose/.

- **If you are asking to submit an application, then you must attach a copy of the completed application and other documents that prove that you are actually eligible for the relief.** The court will likely deny your motion if you do not include a copy of the completed application.

- **If you are asking to reopen your case based on "ineffective assistance of counsel**," then you must include 3 things. **If you do not attach all of them, the court could deny your motion:**
  - **A signed affidavit** explaining what you think the attorney did wrong and what you had contracted the attorney to do. If you have a copy of any written agreements between you and the former attorney, attach those.
  - **Proof that you notified the attorney of your complaint**. Include a copy of any written response from the attorney.
  - **Proof that you filed a licensing or bar complaint** in the state in which the attorney has a law license, or if you did not, why.

Organize your documents

Once you have all your documents, organize them.

- List everything you have and then put that list on top.
- Separate each document by a blank piece of paper. Mark those blank pages A, B, C, D, etc.
- Then attach each piece of evidence to the motion.

  You can also write out a separate list of exhibits at the end of your motion. Include the list as a guide to the new documents that you are submitting.

  For example, here is a list that you might use if your basis for reopening is because you are now eligible for permanent residency (*a green card*) through Adjustment of Status:

  — Exhibit A: Marriage Certificate
  — Exhibit B: Wife's Birth Certificate
  — Exhibit C: My Visa
  — Exhibit D: I-130 approval notice
  — Exhibit E: I-485 application

Make 2 copies of everything. The original is for the judge, one is for the government attorney, and one is for you.

Include the Fee Waiver Request

Fees can change, so check what the current fee is before you file your motion.

- **As of 2020, the fee for a Motion to Reopen or an appeal of a Motion to Reopen was $110.00.** These fees can change, so be sure to check with the immigration court before paying. Up-to-date information is available here: https://www.justice.gov/eoir/eoir-policy-manual.
- But, **if your motion is based only on a new claim for asylum, then there is no fee.**

If you cannot pay for the Motion to Reopen, then attach a *Fee Waiver Request*, form EOIR-26A.

Make sure your address with the court is up to date

If you are trying to reopen an older deportation order, it is likely that the court has an older address for you.

To make sure the court can notify you when it makes a decision, include an EOIR-33, *Change of Address Form* with your Motion to Reopen.

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

- **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:

Certificate of Service

I, _____
(Write your name)

swear that I provided a copy of this package to the Department of Homeland Security Office of Chief Counsel. I mailed it to this address:

_____

_____

_____

on the date below.

Signed: _____

Date: _____ /_____/_____
Day / Month / Year

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.