YOUSA Law Firm SANTANNA LAW·OFFICES

October 27, 2026

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

RE: NOTICE OF APPEAL FROM A DECISION OF AN IMMIGRATION JUDGE
Respondent: Mauro Antonio Lopez Hernandez
A-Number: 099-666-221

Dear Clerk of the Board,

Please find enclosed the Respondent's **Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge.**

The enclosed filing includes the following documents:

1. Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals;
2. Payment Receipt for Appeal (new filing of a Form EOIR-26);
3. Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge;
4. Immigration Judge's Order Denying the Motion to Reopen.

A copy of this entire package has been served on the Assistant Chief Counsel of the U.S. Immigration and Customs Enforcement (ICE) by mail.

Thank you for your attention to this matter.

Respectfully submitted,

_____

Natalia Vieira Santanna, SBN#337502
P.O. Box 7528
Oakland, CA 94601
(510) 922-0154

October 27, 2026

Department of Homeland Security
Immigration and Customs Enforcement
Office of the Principal Legal Advisor
55 E. Monroe Street, Suite 1400
Chicago, IL 60603

RE: NOTICE OF APPEAL FROM A DECISION OF AN IMMIGRATION JUDGE
Respondent: Mauro Antonio Lopez Hernandez
A-Number: 099-666-221

Dear Counsel,

Please find enclosed the Respondent's **Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge**, filed with the Board of Immigration Appeals (BIA).

The enclosed filing includes the following documents:

1. Form EOIR-27, Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals;
2. Payment Receipt for Appeal (new filing of a Form EOIR-26);
3. Form EOIR-26, Notice of Appeal from a Decision of an Immigration Judge;
4. Immigration Judge's Order Denying the Motion to Reopen.

This correspondence is provided to you pursuant to the applicable service requirements.

Thank you for your attention to this matter.

Respectfully submitted,

_____

Natalia Vieira Santanna, SBN#337502
P.O. Box 7528
Oakland, CA 94601
(510) 922-0154

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB#1125-0005

Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals

(Type or Print)
NAME AND ADDRESS OF REPRESENTED PARTY

Mauro Antonio		Lopez Hernandez
(First)	(Middle Initial)	(Last)

450 Entrada Dr.	74
(Number and Street)	(Apt. No.)

Novato	CA	94949
(City)	(State)	(Zip Code)

A-NUMBER
(Provide Alien ("A") number of the party represented)
099-666-221

USCIS Visa Appeal (Provide beneficiary name and A number)

Fine (Provide fine number)

Disciplinary case (Provide docket number)

Attorney or Representative (please check one of the following):

☑ I am an attorney eligible to practice law in, and a member in good standing of, the bar of the highest court(s) of the following states(s), possession(s), territory(ies), commonwealth(s), or the District of Columbia (use additional space on reverse side if necessary), and I am not subject to any order disbarring, suspending, enjoining, restraining or otherwise restricting me in the practice of law in any jurisdiction (if subject to such an order, do not check this box and explain on reverse).

Full Name of Court California **Bar Number (if applicable)** 337502

☐ I am a representative accredited to appear before the Executive Office for Immigration Review as defined in 8 C.F.R. § 1292.1(a)(4) with the following recognized organization:

☐ I am a law student or law graduate of an accredited U.S. law school as defined in 8 C.F.R. § 1292.1(a)(2).

☐ I am a reputable individual as defined in 8 C.F.R. § 1292.1(a)(3) and I have included a statement demonstrating that I meet the required criteria.

☐ I am an accredited foreign government official, as defined in 8 C.F.R. § 1291.1(a)(5), from _____ (country).

☐ I am a person who was authorized to practice on December 23, 1952, under 8 C.F.R. § 1292.1(b).

Attorney or Representative (please check one of the following):

☑ I hereby enter my appearance as attorney or representative for, and at the request of, the party named above.

☐ EOIR has ordered the provision of a Qualified Representative for the party named above and I appear in that capacity.

I have read and understand the statements provided on the reverse side of this form that set forth the regulations and conditions governing appearances and representations before the Board of Immigration Appeals. By signing this form, I consent to publication of my name and any findings of misconduct by EOIR, should I become subject to any public discipline by EOIR pursuant to the rules and procedures at 8 C.F.R. 1003.101 *et seq.* I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

SIGNATURE OF ATTORNEY OR REPRESENTATIVE	EOIR ID NUMBER	DATE
X	UY981323	10/27/2026

NAME OF ATTORNEY OR REPRESENTATIVE, ADDRESS, FAX & PHONE NUMBERS, & EMAIL ADDRESS

Name: Natalia		Vieira Santanna
(First)	(Middle Initial)	(Last)

Address: PO Box 7528
(Number and Street) (Suite)

Law Firm: Santanna Law Offices

Oakland	CA	94601
(City)	(State)	(Zip Code)

Telephone: 510-922-0154 Facsimile: 510-903-4211 Email: natalia@santannalaw.com

☐ Check here if new address

Indicate Type of Appearance:

☑ Primary Attorney/Representative ☐ Non-Primary Attorney/Representative

I am providing pro bono representation. Check one: ☐ yes ☑ no

Proof of Service

I (Name) Natalia Vieira Santanna provided a copy of this Form EOIR-27 on (Date) 10/27/2026 to the

☑ DHS (U.S. Immigration and Customs Enforcement – ICE) at 55 E. Monroe Street, Suite 1400, Chicago, IL 60603

☐ DHS (U.S. Citizenship and Immigration Services – USCIS) at _____

☐ EOIR Disciplinary Counsel at _____

☐ No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

X _____

Signature of Person Serving

APPEARANCES - A practitioner of record is authorized and required to appear on behalf of a respondent, to file all documents on behalf of a respondent, and to accept service of process of all documents filed in the proceedings before the Board of Immigration Appeals (BIA). *See* 8 C.F.R. §§ 1003.38(g)(1)(ii), 1292.5(a). To perform the functions of and become the practitioner of record, the practitioner must file a separate Form EOIR-27 for each represented party in each appeal or motion before the BIA (8 C.F.R. § 1003.2(g)(1), 1003.3(a)(3), 1003.38(g)(1)), even though the practitioner may have appeared in the case before the Immigration Judge or U.S. Citizenship and Immigration Services. For information on how to file a Form EOIR-27 with the BIA, see the BIA Practice Manual at www.justice.gov/eoir. If information is omitted from the Form EOIR-27 or is not properly completed, the appearance may not be recognized, and the accompanying filing may be rejected. When an appearance as a practitioner of record is made by a person acting in a representative capacity, his/her personal appearance or signature constitutes a representation that, under 8 C.F.R. part 1003, he/she is authorized and qualified to represent individuals and will comply with the EOIR Rules of Professional Conduct in 8 C.F.R. § 1003.102. Thereafter, substitution or withdrawal may be permitted upon approval by the BIA of a request of the practitioner of record in accordance with *Matter of Rosales*, 19 I&N Dec. 655 (1988). Appearances for limited purposes other than for document assistance to an unrepresented or *pro se* respondent are not permitted. 8 C.F.R. § 1003.2(g)(1), 1003.38(g)(2)*; Matter of Velasquez*, 19 I&N Dec. 377, 384 (BIA 1986). A Form EOIR-60, not a Form EOIR-27, is required for the entry of a limited appearance for document assistance on an appeal, brief, motion, or other document. Note: Attorneys and Accredited Representatives (with full accreditation) must register with the EOIR eRegistry to practice before the BIA. 8 C.F.R. § 1292.1(f). Registration must be completed online at www.justice.gov/eoir. Attorneys and Accredited Representatives (with full accreditation) must first update their address in eRegistry before filing a Form EOIR-27 that reflects a new address.

FREEDOM OF INFORMATION ACT - This form may not be used to request records under the Freedom of Information Act (FOIA) or the Privacy Act. *See* 28 C.F.R. § 16.1-16.11 and appendices. For information about FOIA requests, see How to File a Freedom of Information Act (FOIA) Request With the Executive Office for Immigration Review, at https://www.justice.gov/eoir.

PRIVACY ACT NOTICE - The information requested on this form is authorized by 8 U.S.C. § 1362 and 8 C.F.R. § 1003.3 in order to enter an appearance to represent a party before the BIA. The information you provide is mandatory and required to enter an appearance. Failure to provide the requested information will result in an inability to represent a party or receive notices of actions in a proceeding. EOIR may share this information with others in accordance with approved routine uses described in EOIR's system of records notice, EOIR-001, Records and Management Information System, 69 Fed. Reg. 26,179 (May 11, 2004), and EOIR-003, Practitioner Complaint-Disciplinary Files, 64 Fed. Reg. 49237 (September 1999), or their successors. Furthermore, the submission of this form acknowledges that an attorney or representative will be subject to the disciplinary rules and procedures at 8 C.F.R. § 1003.101 et seq., including, pursuant to 8 C.F.R. §§ 292.3(h)(3), 1003.108(c), publication of the name of the attorney or representative and findings of misconduct should the attorney or representative be subject to any public discipline by EOIR.

CASES BEFORE EOIR - Automated information about cases before EOIR is available by calling (800) 898-7180 or (304) 625-2050 or by checking online at https://acis.eoir.justice.gov.

ADDITIONAL INFORMATION:

PAPERWORK REDUCTION ACT NOTICE - A person is not required to respond to a collection of information unless it displays a valid OMB control number. We try to create forms and instructions that are accurate, can be easily understood, and which impose minimal burden on you to provide us with information. The estimated average time to complete this form is six (6) minutes. If you have comments regarding the accuracy of this estimate, or suggestions for making this form simpler, you can write to the Executive Office for Immigration Review, Office of the General Counsel, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia 22041.

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Payment Receipt

A payment has been processed for the following case before the Executive Office for Immigration Review.

For cases before the Immigration Court, please contact the Court that is currently hearing your case for questions regarding payment. For cases before the Board of Immigration Appeals (BIA), please contact the BIA Clerk's Office for questions regarding payment at (703) 605-1007.

A copy of this receipt must be included with the application, motion, or appeal that is filed with the Immigration Court or the BIA Clerk's Office. Failure to include a receipt showing proof of payment will result in rejection of the filing.

A-Number: 099-666-221

Payment Tracking ID: 2875VRME

Payment Processed On: 10/23/2026 4:13:37 PM EST

Payment Type: PLASTIC_CARD

Payment Amount: $1,060.00

Filing Type: BIA - Appeal (new filing of a Form EOIR-26)

Save or print this receipt immediately. A copy will not be sent via email. The tracking ID is required to retrieve a duplicate receipt.

*Please note there is an **annual fee** for all asylum applications, which is due on the anniversary of each calendar year that an alien's asylum application remains pending; no fee-waiver or reduction in fee is permitted. **This fee must be paid timely**; failure to pay within 30 days of the anniversary due date will likely result in pretermission of the asylum application and an order of removal. This will be the only notice that the alien will receive regarding this annual payment requirement. Payment of this fee can be made at https://epay.eoir.justice.gov/index.

Current annual fee amounts can be found at www.justice.gov/eoir/types-appeals-motions-and-required-fees.

U.S. Department of Justice
Executive Office for Immigration Review
Board of Immigration Appeals

OMB #1125-0002
Notice of Appeal from a Decision of an Immigration Judge

1. List Names and Alien Numbers (A-Numbers) of all Respondents/Applicants.

Mauro Antonio Lopez Hernandez

WARNING: Names and A-Numbers for everyone appealing the Immigration Judge's decision must be written in item #1. The names and A-Numbers listed will be the only ones considered to be the subjects of the appeal.

2. I am ☑ the Respondent/Applicant ☐ DHS-ICE *(Mark only one box.)*

3. I am ☐ DETAINED ☑ NOT DETAINED *(Mark only one box).*

4. My last hearing was at: Immigration Court, Chicago, IL *(Location, City, State)*

5. **What decision are you appealing?**

Mark only one box below. If you want to appeal more than one decision, you must use more than one Notice of Appeal (Form EOIR-26).

☐ I am filing an appeal from the Immigration Judge's decision *in **merits** proceedings* (example: removal, deportation, exclusion, asylum, etc.) dated

☐ I am filing an appeal from the Immigration Judge's decision *in **bond** proceedings* dated (For DHS use only: Did DHS invoke the automatic stay provision before the Immigration Court? ☐ Yes ☐ No)

☑ I am filing an appeal from the Immigration Judge's decision ***denying a motion to reopen or a motion to reconsider*** dated 9/30/26

☐ I am filing an ***interlocutory appeal*** from the Immigration Judge's decision dated

(Please attach a copy of the Immigration Judge's decision that you are appealing.)

Form EOIR-26
Rev. Mar. 2026
Exp. 12/31/2028

6. State in detail the reasons for this appeal. Please refer to the General Instructions at item F for further guidance. You are not limited to the space provided below; use more sheets of paper if necessary. Write your name(s) and A-Number(s) on every additional sheet.

Respondent, by and through undersigned counsel, hereby submits the following reasons for appeal, in response to the Immigration Judge's ("IJ") denial of Respondent's Motion to Reopen Proceedings and Application for VAWA Cancellation of Removal.

1. The IJ erred as a matter of law and abused his discretion by failing to conduct a proper, independent analysis of Respondent's showing of "extraordinary circumstances" justifying a waiver of the 1-year deadline under INA § 240(c)(7)(C)(iv)(III). Respondent submitted uncontradicted, expert medical evidence establishing establishing that he suffered severe domestic abuse, coercive control, deportation threats, and severe mental health impairment at the hands of his U.S. citizen spouse. The IJ improperly discounted these psychological barriers and trauma dynamics as mere "unjustified"delay, applying an erroneous legal standard for extraordinary circumstances and due diligence in the domestic violence context. By summarily pretermitting Respondent's claim on discretionary grounds, thus, the Immigration Judge failed to conduct a reasoned evaluation and holistic assessment of the evidentiary record, constituting a clear abuse of discretion.

2. The IJ committed reversible error of law and abused his discretion by failing to analyze and adjudicate Respondent's statutory eligibility for a waiver of the one-year filing deadline under the independent statutory ground of "extreme hardship to the alien's child" set forth in INA § 240(c)(7)(C)(iv)(III). Under the plain, disjunctive language of INA § 240(c)(7)(C)(iv)(III), the Attorney General, and by regulatory delegation, the Immigration Judge, is empowered to waive the one-year limitation where the movant establishes either: (1) extraordinary circumstances; OR (2) extreme hardship to the alien's child. In his decision, the IJ failed to make any substantive findings or meaningfully consider the uncontroverted record evidence documenting the severe extreme hardship that Respondent's removal would inflict upon him and his qualifying children: his Lawful Permanent Resident son and his U.S. citizen daughter. Respondent's motion, declaration, and extensive corroborating record specifically established that his continuous presence and day-to-day emotional and financial support have been vital to shielding, de-escalating, and protecting his children from the volatile, dangerous domestic environment generated by the abusive spouse. Furthermore, Respondent submitted unrefuted expert clinical evidence showing that the traumatic destruction of this familial support system and the resulting destabilization would cause profound and irreparable psychological and physical harm to the family unit. Rather than examining this substantial body of evidence under the statutory criteria for extreme hardship, the Immigration Judge issued a sweeping dismissal of the claim as a matter of discretion. By summarily brushing aside the distinct, statutory ground of extreme hardship without engaging in an individualized evidentiary assessment, the Immigration Judge applied an improper legal framework, disregarded Congress's explicit humanitarian mandate in VAWA special-rule proceedings, and entered an arbitrary and legally flawed denial.

The remaining grounds for the Respondent's appeal are provided in the additional sheets attached to this Notice of Appeal.

(Attach additional sheets if necessary)

WARNING: You must clearly explain the specific facts and law on which you base your appeal of the Immigration Judge's decision. The Board may summarily dismiss your appeal if it cannot tell from this Notice of Appeal, or any statements attached to this Notice of Appeal, why you are appealing.

7. Do you desire oral argument before the Board of Immigration Appeals? ☐ Yes ☑ No

WARNING: If you mark "Yes" in item #7, you should also include in your statement in item #6 why you believe your case warrants review by a three-member panel. The Board ordinarily will not grant a request for oral argument unless you also file a brief.

8. Do you intend to file a separate written brief or statement after filing this Notice of Appeal? ☑ Yes ☐ No

WARNING: If you mark "Yes" in Item #8, you will be expected to file a written brief or statement after you receive a briefing schedule from the Board. The Board may summarily dismiss your appeal if you do not file a brief or statement within the time set in the briefing schedule.

9. Signature of Person Appealing (or attorney or representative):

Print Name: Mauro Antonio Lopez Hernandez

Sign Here: 

Date: 10/22/26

10. Mailing Address of Respondents/Applicants:

Name: Natalia Vieira Santanna

Street Address: 450 Entrada Dr.

Apartment or Room Number: Apt. 74

City, State, Zip Code: Novato, CA 94949

Telephone Number: (415) 756-2663

NOTE: You must notify the Board within five (5) business days if you move to a new address or change your telephone number. You must use the Change of Address Form/Board of Immigration Appeals (Form EOIR-33/BIA).

11. Mailing Address of Attorney or Representative for the Respondents/Applicants:

Name: Natalia Vieira Santanna

Street Address: PO Box 7528

Suite or Room Number: N/A

City, State, Zip Code: Oakland, CA 94601

Telephone Number: (510) 922-0154

Email: natalia@santannalaw.com

NOTE: If an attorney or representative signs this appeal for you, he or she must file *with this appeal*, a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR-27).

12. **PROOF OF SERVICE**
You must complete this section.

I Natalia Vieira Santanna

mailed or delivered a copy of this Notice of Appeal on 10/27/26

to Assistant Chief Counsel of DHS – ICE

at 55 E. Monroe Street, Suite 1400, Chicago, IL 60603

☐ No service needed. I electronically filed this document, and the opposing party is participating in ECAS.

SIGN HERE:

NOTE: If you are the Respondent or Applicant, the "Opposing Party" is the Assistant Chief Counsel of DHS – ICE.

WARNING: If you do not complete this section properly, your appeal will be rejected or dismissed. If you do not attach a fee payment receipt or a completed Fee Waiver Request (Form EOIR-26A) to this appeal, your appeal may be rejected or dismissed.

HAVE YOU?

- ☑ Read all of the General Instructions.
- ☑ Provided all of the requested information.
- ☑ Completed this form in English.
- ☑ Provided a certified English translation for all non-English attachments.
- ☑ Signed the form.
- ☑ Served a copy of this form and all attachments on the opposing party, if applicable.
- ☑ Completed and signed the Proof of Service.
- ☑ Attached the required fee payment receipt or Fee Waiver Request.
- ☑ Attached a completed and signed EOIR-27 for each respondent or applicant represented by an attorney or representative.

ADDITIONAL SHEETS OF RESPONDENT'S REASONS FOR APPEAL - FORM EOIR-26, SECTION 6

The Respondent respectfully presents the following remaining grounds for his appeal:

3. The IJ committed an abuse of discretion by impermissibly penalizing Respondent for factual circumstances inherent to VAWA Special Rule reopening claims. By treating Respondent's long-term presence following an in absentia order as an "egregious" violation of law that automatically outweighs all positive and humanitarian equities, the IJ improperly applied a standard that renders Congress's statutory exception under INA § 240(c)(7)(C)(iv) virtually unobtainable for survivors of abuse under prior removal orders, creating an obstacle that Congress neither contemplated nor intended, and undermining the very purpose of the statutory relief it expressly provided. The IJ erred in relying on inapposite precedent involving reinstatement and tactical litigation delays (e.g., *Fernandez-Vargas v. Gonzales*, 548 U.S. 30 (2006), *INS v. Doherty*, 502 U.S. 314, 323 (1992) and *Reno v. AADC*, 525 U.S. 471 (1999)) to characterize Respondent's delay as bad-faith tactical maneuvering, while ignoring the unrefuted clinical evidence presented by the Respondent, the strong likelihood of success on his special cancellation of removal claim, and the specific humanitarian mandate enacted by Congress to protect abused noncitizens under VAWA.

4. The IJ committed clear error in fact-finding and failed to properly weigh all positive equities and evidence of prima facie eligibility for relief: The IJ erred in failing to consider and properly weigh Respondent's strong prima facie eligibility for VAWA Cancellation of Removal under INA § 240A(b)(2). The IJ further failed to give due weight to Respondent's objective corroborating evidence of battery and extreme cruelty, two decades of continuous U.S. residence, tax compliance, property ownership, extensive family and community ties, and a completely clean criminal record. The IJ's determination that these positive equities were completely 'mitigated' simply because they accrued post-order and failure to engage in a holistic discretionary assessment constitutes an arbitrary and unbalanced exercise of discretion.

5. The IJ erred and abused his discretion in denying Respondent's request for a stay of removal under 8 C.F.R. § 1003.23(b)(1)(v), despite Respondent demonstrating a substantial likelihood of success on his statutory reopening claim, irreparable severe psychological and family harm if removed prior to full adjudication, and that the balance of equities and public interest strongly favor maintaining the status quo for domestic violence survivors.

Respondent reserves the right to raise additional arguments in a separate written brief after review of the complete record of proceedings.

Natalia Vieira Santanna (Bar N. 337502)
Attorney at Law
P.O. Box 7528
Oakland, CA 94601
(510) 922-0154
Counsel for Respondent

Exhibit list

Exhibits:	Pages:
Exhibit 1	
Order fo the Immigration Judge Denying Motion to Reopen	1-4

Exhibit 1

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
CHICAGO, ILLINOIS

File #: A099-666-221 Date: September 30, 2026

In the Matter of

Mauro Antonio LOPEZ-HERNANDEZ,

Respondent.

IN REMOVAL PROCEEDINGS

DECISION ON RESPONDENT'S MOTION TO REOPEN

I. Introduction

On June 26, 2026, Respondent filed a motion to reopen his removal proceedings, asking the Court to reopen his case and rescind the 2006 in absentia removal order to allow him to apply for cancellation of removal under INA § 240A(b)(2). The Court will deny the motion to reopen for the reasons discussed below.

II. Procedural History

Respondent is a native and citizen of El Salvador who illegally entered the United States on February 24, 2006. The same day, Border Patrol issued and personally served on him a Notice to Appear (NTA), charging him under INA § 212(a)(6)(A)(i). The NTA ordered him to appear for a hearing at the Chicago Immigration Court on April 18, 2006. It included the specific address, date, and time for the hearing, as well as a warning on the consequences of failing to appear. On April 18, 2006, Respondent failed to appear. DHS filed a Form I-213, and the Immigration Judge ordered him removed *in absentia*.

Twenty years passed without any effort by Respondent to seek relief from the *in absentia* removal order. Then, on June 26, 2026, he filed the instant motion. Respondent does not claim a lack of notice nor exceptional circumstances to justify reopening. Rather, he asks the Court to reopen to allow him to file a Form 42B, special rule cancellation of removal application, under the Violence Against Women Act (VAWA). He claims he married a U.S. citizen woman on August 17, 2019, and that she subjected him to battery and extreme cruelty.

III. Analysis

Typically, an alien seeking reopening of an *in absentia* removal order must show that exceptional circumstances caused his failure to appear (a claim for which a 180-day deadline applies) or that he did not receive proper notice of the hearing (or was in federal or state custody

at the time of the hearing). INA § 240(b)(5)(C). Respondent does not invoke these grounds for reopening. Both the record and the evidence attached to the motion indicate that none of these grounds apply.

Instead, Respondent invokes a special provision of law specifically applicable to aliens asking to reopen to apply for VAWA cancellation. As it applies to this case, Congress created an exception to the typical 90-day deadline for motions to reopen if: (1) the basis for the motion to reopen is to apply for relief under INA § 240A(b) (special rule VAWA cancellation); (2) the motion is accompanied by a cancellation of removal application to be filed; (3) the motion to reopen is filed within 1 year of the entry of the final order of removal, except that the Attorney General may, in his discretion, waive this time limitation in the case of an alien who demonstrates extraordinary circumstances or extreme hardship to the alien's child; and (4) the alien is physically present in the United States at the time of filing the motion. INA § 240(c)(7)(C)(iv).

The first, second, and fourth criteria appear to be satisfied here. The third, however, is not. Respondent did not file this motion within 1 year of entry of the final order of removal – he missed that deadline by about 19 years. The Court has the discretion to waive the one-year deadline, but only where extraordinary circumstances or extreme hardship to the alien's child is shown. Even assuming the existence of extraordinary circumstances or extreme hardship, the Court denies the waiver as a matter of discretion.

The Court finds that, as a matter of discretion, Respondent does not warrant a waiver of the time limitation referenced in INA § 240(c)(7)(C)(iv)(III). The Court finds the extreme delay by Respondent in moving to reopen to be egregious and unjustified. Respondent is asking the Court to waive 19 years of delay. Even if the delay were only measured from the point at which Respondent may have become prima facie eligible for VAWA cancellation, he still appears to have delayed filing the motion by around five years. All the equities Respondent cites in support of his motion were accrued after he was ordered removed and remained illegally present in the United States for decades. Granting reopening here would improperly reward Respondent for his lack of diligence, and his deliberate, long-term, and continuing violation of United States law. *See generally Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 44 (2006) (holding that the reinstatement provision of the INA "applies to stay an indefinitely continuing violation that the alien himself could end at any time by voluntarily leaving the country"); *INS v. Doherty*, 502 U.S. 314, 323 (1992) (finding it "especially true" that motions to reopen in immigration proceedings are disfavored because "as a general matter, every delay works to the advantage of the deportable alien who wishes merely to remain in the United States"); *Reno v. Am.-Arab Anti-Discrimination Committee*, 525 U.S. 471, 490 (1999) ("Postponing justifiable deportation (in the hope that the alien's status will change—by, for example, marriage to an American citizen—or simply with the object of extending the alien's unlawful stay) is often the principal object of resistance to a deportation proceeding . . . ."). Another related negative factor here is Respondent's original illegal entry, and his failure to appear for his hearing despite receiving notice. His excuses for his nonappearance, as well as his extensive delay in filing the instant motion, are weak.

The Court recognizes the equities in Respondent's favor, including his lengthy residence in the United States, his work history, alleged payment of taxes and property ownership, his family and community ties, and the effects of his alleged mistreatment by his spouse. These are mitigated,

however, by the fact that they accrued only after Respondent was ordered removed. The Court finds that the negative equities discussed above outweigh the positives, and thus denies the waiver request.

In sum, the Court denies Respondent's request for a discretionary waiver of the filing deadline under INA § 240(c)(7)(C)(iv)(III). The Court therefore denies the motion as untimely. For the same discretionary reasons set forth above, even setting aside the one-year deadline, the Court also denies the motion purely in an exercise of discretion. *See* 8 C.F.R. § 1003.23(b)(3) ("The Immigration Judge has discretion to deny a motion to reopen even if the moving party has established a prima facie case for relief."); *INS v. Doherty*, 502 U.S. 314, 323 (1992) (finding that the Attorney General has "broad discretion" to grant or deny motions to reopen); *INS v. Abudu*, 485 U.S. 94, 105-106 (1988) (in cases involving discretionary relief, the Board may deny a motion to reopen solely in the exercise of discretion, even where prima facie eligibility for such relief has been shown).

ORDER OF THE IMMIGRATION JUDGE

IT IS HEREBY ORDERED that Respondent's motion to reopen be DENIED.

IT IS FURTHER ORDERED that Respondent's request for a stay of removal be DENIED.

CRAIG A. DEFOE[1]
IMMIGRATION JUDGE

APPEAL INFORMATION AND ADVISALS

If you disagree with the Court's decision, you have the right to appeal. A notice of appeal, Form EOIR-26[2], must be filed with the Board of Immigration Appeals within thirty calendar days after the mailing or electronic service of this decision. *See* 8 C.F.R. § 1003.38(b). If the final date for filing the notice of appeal falls on a Saturday, Sunday, or federal holiday, the time period for filing will be extended to the next business day. *Id.* If the appeal is not filed within the specified time period, this decision becomes final. *See* 8 C.F.R. § 1003.38(d).

If a respondent is subject to a final order of removal and willfully fails or refuses to depart from the United States pursuant to the order, to make timely application in good faith for travel or other documents necessary to depart the United States, or to present himself or herself at the time and place required for removal by the Department of Homeland Security, or conspires to or takes any action designed to prevent or hamper the respondent's departure pursuant to the order of removal, the respondent shall be subject to a civil monetary penalty for each day the respondent is in violation. *See* INA §§ 240(c)(5), 274D(a); 8 C.F.R. §§ 280.53(b)(14), 1240.13(d); 85 Fed. Reg. 36469, 36471 (June 17, 2020).

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[1] See below for signature.

[2] The appeal form and instructions are available here: https://www.justice.gov/eoir/list-downloadable-eoir-forms

Order of the Immigration Judge



Immigration Judge: Defoe, Craig 09/30/2026

Certificate of Service

This document was served:

Via: [M] Mail | [P] Personal Service | [E] Electronic Service | [U] Address Unavailable

To: [ ] Alien | [ ] Alien c/o custodial officer | [M] Alien atty/rep. | [M] DHS

Respondent Name : | A-Number :

Riders:

Date: 09/30/2026 By: Calderon, Ariana, Court Staff