



U.S. Department of Justice

Executive Office for Immigration Review

Office of the Chief Immigration Judge

Chief Immigration Judge

5107 Leesburg Pike, Suite 2500
Falls Church, Virginia 22041

September 15, 2010

MEMORANDUM

TO: All Immigration Judges
All Court Administrators
All Attorney Advisors and Judicial Law Clerks
All Immigration Court Staff

FROM: Brian M. O’Leary 
Chief Immigration Judge

SUBJECT: Operating Policies and Procedures Memorandum 10-01:
Procedures for Handling Requests for a Stipulated Removal Order

Table of Contents

I. Introduction 2

II. Statutory and Regulatory Authority 2

III. Uniform Process 2

 A. Request for Stipulated Removal Order 2

 B. Stipulated Removal Orders 3

IV. Immigration Court Procedures 3

 A. Timely Processing 3

 B. Filing 3

 C. Assignment 4

 D. Adjudicatory Process 4

 1. Request Granted 4

 2. Request Denied 4

V. Conclusion 5

Attachments:

- A. Motion for Stipulated Removal Order and Waiver of Hearing
- B. Sample Order Granting a Motion for Stipulated Removal Order and Waiver of Hearing
- C. Sample Order Denying a Motion for Stipulated Removal Order and Waiver of Hearing

I. Introduction

The entry of removal orders upon stipulation by the parties is authorized under section 240(d) of the Immigration and Nationality Act (Act). These orders allow interested respondents - that is, respondents who are removable from the United States and are ineligible for or do not wish to pursue relief from removal - to have their cases adjudicated expeditiously and without an in-person hearing. For interested respondents, stipulated removal orders reduce their time in detention and expedite their return to their homeland. These orders also create operational efficiencies for both the immigration courts and the Department of Homeland Security (DHS).

This Operating Policies and Procedures Memorandum (OPPM) contains guidance for the immigration courts on how to efficiently and fairly handle requests for a stipulated removal order.

II. Statutory and Regulatory Authority

Section 240(d) of the Act provides that “[t]he Attorney General shall provide by regulation for the entry by an immigration judge of an order of removal stipulated to by the alien (or the alien’s representative) and the Service. A stipulated order shall constitute a conclusive determination of the alien’s removability from the United States.” In complement to that provision, 8 C.F.R. § 1003.25(b) provides, in pertinent part, as follows:

An Immigration Judge may enter an order of deportation, exclusion or removal stipulated to by the alien (or the alien’s representative) and the Service. The Immigration Judge may enter such an order without a hearing and in the absence of the parties based on a review of the charging document, the written stipulation, and supporting documents, if any. If the alien is unrepresented, the Immigration Judge must determine that the alien’s waiver is voluntary, knowing, and intelligent. The stipulated request and required waivers shall be signed on behalf of the government and by the alien and his or her attorney or representative, if any. The attorney or representative shall file a Notice of Appearance in accordance with § 1003.16(b). A stipulated order shall constitute a conclusive determination of the alien’s deportability or removability from the United States.

III. Uniform Process

A. Request for Stipulated Removal Order

In an effort to promote uniformity in its procedures, U.S. Immigration and Customs Enforcement (ICE) has informed the Office of the Chief Immigration Judge (OCIJ) that it intends to use a standard motion nationwide for requesting a stipulated removal order and a waiver of an in-person hearing. A copy of the motion for stipulated removal order and waiver of hearing is included with this OPPM as Attachment A.

B. Stipulated Removal Orders

In an effort to promote uniformity in the immigration courts, the following sample orders are provided. OCIJ has provided these template orders to ICE for their use and preparation and to permit compliance with Chapter 5.2(b) of the Immigration Court Practice Manual, which includes a provision stating that all motions must be accompanied by a proposed order. In addition, until such time as these orders are created in the Case Access System for EOIR (CASE), courts may use the WordPerfect versions provided by the Chief Clerk of the Immigration Court if the need arises.

1. Attachment B is an example of an order that judges can use for granting a motion for a stipulated removal order and waiver of hearing.
2. Attachment C is an example of an order that judges can use for denying a motion for a stipulated removal order and waiver of hearing. Judges should be mindful that any order denying a motion for a stipulated removal order and waiver of hearing should identify the reason(s) for the denial. *See Matter of M-P-*, 20 I&N Dec. 786 (BIA 1994) (finding a remand is warranted if the reasons for denying a motion “are either unidentified or not fully explained”).

IV. Immigration Court Procedures

A. Timely Processing

Courts must process motions for stipulated removal order and waiver of hearing in a timely fashion. Assistant Chief Immigration Judges (ACIJ) and court administrators, taking into account their available resources and capabilities, should coordinate with judges and court staff to ensure that the stipulated removal process works efficiently. ACIJs and court administrators should also coordinate with local ICE offices to achieve this goal.

B. Filing

A motion for stipulated removal order and waiver of hearing that is filed in conjunction with the Notice to Appear (Form I-862) should include the following documents:

- if the respondent is represented, a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28)
- if the respondent is not represented, a copy of the List of Free Legal Services Providers that the respondent received from DHS
- the written stipulation*

* The motion also may include additional supporting documents, such as the Record of Deportable/Inadmissible Alien (Form I-213) and, if a ground of removal is based on a criminal offense, evidence of the criminal conviction.

- a proposed stipulated removal order
- proof of service

C. Assignment

ACIJ's should work with the court administrators to develop an efficient local process for assigning motions for stipulated removal order and waiver of hearing in a timely fashion. Such motions must be entered into CASE and assigned to judges as expeditiously as possible.

D. Adjudicatory Process

The judge may adjudicate the motion without the parties being present. *See* 8 C.F.R. § 1003.25(b). Court staff should refrain from scheduling a master calendar hearing pending the disposition of the motion.

1. Request Granted

If the judge grants the motion for stipulated removal order and waiver of hearing, court staff should promptly:

- enter the motion as granted in CASE
- enter the CASE identifier "SR" (Stipulated Removal)
- enter the decision information in the disposition tab in CASE
- serve a copy of the order on the parties, executing the certificate of service

2. Request Denied

If the judge denies the motion, court staff should promptly:

- enter the motion as denied in CASE
- enter the CASE identifier "SRD" (Stipulated Removal Order - Denied)
- serve a copy of the order on the parties, executing the certificate of service
- schedule the master calendar hearing

If the motion is denied because the judge finds that it is technically deficient in some manner (e.g., signatures are missing from the written stipulation), the judge, in the exercise of discretion, may return the original motion to ICE to afford the parties the opportunity to correct it. A copy of the motion (including the attachments) should be retained in the Record of Proceedings and a notation made on the copy indicating that the original was returned to ICE.

If the parties choose to correct the deficiency(ies) and resubmit the request for a stipulated removal order, ICE must file a new motion for stipulated removal order and waiver of hearing. If the motion is filed before the first master calendar hearing, the judge assigned to the case should adjudicate it as expeditiously as possible prior to the hearing.

V. Conclusion

This OPPM is intended to provide guidance to the immigration courts on how to efficiently and fairly handle requests for a stipulated removal order. If you have any questions regarding this OPPM, please contact your ACIJ.

ATTACHMENT A

The Department of Homeland Security, U.S. Immigration and Customs Enforcement (ICE), and the respondent respectfully request that the Court enter an order of removal in this matter based on the attached written stipulation. *See* section 240(d) of the Immigration and Nationality Act; 8 C.F.R. § 1003.25(b). The parties jointly request that the order be issued “without a hearing and in the absence of the parties,” as provided in 8 C.F.R. § 1003.25(b). Upon the Court granting this joint motion, both parties waive appeal.

(Date)

(Signature of ICE Attorney)
[Printed Name, Title and Address]

STIPULATION
ESTIPULACIÓN

I, _____, make the following statements and admissions:

Yo, _____ declaro y admito lo siguiente:

1. I am at least 18 years of age.

Tengo o soy mayor de 18 años.

2. I have received a copy of the Notice to Appear dated _____, which contains my full, true, and correct name. The allegations and charge(s) on the Notice to Appear have been read to me in _____, which is a language that I fully understand.

He recibido una copia del Aviso para Comparecer con fecha _____, el cual incluye mi nombre completo, verdadero y correcto. Me han leído los alegatos y cargo(s) en el Aviso para Comparecer en el idioma _____, el cual entiendo perfectamente.

3. I understand that I have the right to a hearing before an Immigration Judge. I also understand that if I have a hearing, the Immigration Judge will decide if I am subject to removal from the United States. If I am subject to removal, I understand that the Immigration Judge will decide if I can apply for relief from removal.

Entiendo que tengo derecho a una audiencia ante un juez de inmigración. También entiendo que si tengo una audiencia, el juez de inmigración decidirá si estoy sujeto a expulsión/remoción de los Estados Unidos. Si estoy sujeto a expulsión/remoción, entiendo que el juez de inmigración decidirá si puedo solicitar recursos para ayuda contra la expulsión/remoción.

4. I understand that I have the right to be represented in removal proceedings by an attorney or authorized representative. I understand that I have the right to choose my own attorney or representative. I also understand that the government will not pay for my attorney or representative. I have received a list of free legal services providers published by the Executive Office for Immigration Review.

Entiendo que tengo el derecho a ser representado en los procedimientos de expulsión/remoción por un abogado (a) o representante acreditado. Entiendo que tengo el derecho de escoger mi propio abogado o representante. También entiendo que el gobierno no va a pagar por mi abogado o representante. He recibido la lista publicada por la oficina ejecutiva para la revisión de inmigración, de servicios legales gratuitos.

I understand the above, and I wish to proceed as follows: (Check "A" or "B")

Entiendo lo antedicho y deseo proceder con lo siguiente: (marque "A" ó "B")

- A. I do not wish to be represented in these proceedings by an attorney or authorized representative. I wish to represent myself in these proceedings.

No deseo ser representado (a) en estos procedimientos por un (a) abogado (a) o un representante acreditado. Deseo ser mi propio representante en estos procedimientos.

(or) (ó)

- B. I am represented in these proceedings by an attorney or other representative whose Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR-28) is attached.

Estoy representado (a) en estos procedimientos por un abogado (a) u otro representante acreditado (a) cuyo Registro para Comparecencia como abogado (a) o representante ante un tribunal de inmigración (formulario EOIR-28) se adjunta aquí.

5. I have been advised that by signing this Stipulation, I will be giving up the following legal rights and privileges:

He sido informado que al yo firmar esta Estipulación estoy renunciando a los siguientes derechos y privilegios:

- a) the right to require the government to prove I am removable from the United States;

al derecho de requerir que el gobierno compruebe que estoy sujeto (a) a expulsión/remoción de los Estados Unidos;

- b) the right to have a hearing before an Immigration Judge who would review my case and inform me if I may be eligible to apply for any relief from removal;

al derecho a una audiencia ante un juez de inmigración para que revise mi caso, y me informe si soy elegible para solicitar algún recurso de ayuda contra la expulsión/remoción;

- c) the right to question any witnesses presented by the government, and to present witnesses on my behalf;

al derecho de interrogar testigos presentados por el gobierno y de presentar testigos a mi favor;

- d) the right to present evidence and object to evidence presented by the government;
al derecho a ofrecer pruebas y refutar pruebas presentadas por el gobierno;
- e) the right to have all removal hearings before the Immigration Judge recorded; and
al derecho a que quede constancia de toda la audiencia de expulsión/remoción ante el juez de inmigración y;
- f) the right to appeal the Immigration Judge's decision.
al derecho de apelar la decisión del juez de inmigración.

I understand each of the above rights, and I waive these rights.

Entiendo los derechos arriba mencionados y renuncio a ellos.

6. I do not want to have a hearing before an Immigration Judge. I request that the Immigration Judge issue a written order of removal without a hearing. I understand that the Immigration Judge will only review this Stipulation and any other documents in my court record. I understand that the Immigration Judge's written order of removal will be final.

No deseo tener una audiencia ante un juez de inmigración. Solicito que el juez de inmigración emita por escrito la orden de expulsión sin una audiencia. Entiendo que el juez de inmigración solo revisará esta Estipulación y otros documentos de mi expediente penal. Entiendo que la orden escrita de expulsión/remoción del juez de inmigración es una orden final.

7. I admit that all of the factual allegations contained in the Notice to Appear are true and correct. I also agree that I am removable as charged on the Notice to Appear.

Admito que todos los alegatos de fundamento en el Aviso para Comparecer son verdaderos y correctos; también estoy de acuerdo a que estoy sujeto (a) a la expulsión/remoción como lo indica el Aviso para Comparecer.

8. I am not a citizen of the United States. I am a citizen of _____. My father is a citizen of _____. My mother is a citizen of _____. I do not claim United States citizenship or nationality. I have not filed an application for naturalization.

No soy ciudadano de los Estados Unidos. Soy ciudadano de _____. Mi padre es ciudadano de _____. Mi madre es ciudadana de _____. No alego tener ciudadanía o naturalización de los Estados Unidos. No he presentado una solicitud para naturalización.

9. I choose _____ as the country designated for my removal.

Elijo _____ como el país designado para mi expulsión/remoción.

10. I have no fear of harm of any kind if I return to that country, and do not wish to apply for asylum, withholding of removal, or protection under the Convention Against Torture.

No temo que me vayan a hacer ningún tipo de daño si regreso a ese país, y no deseo solicitar asilo, paralización de procedimientos de la expulsión/remoción o protección bajo la Convención Contra la Tortura.

11. I do not wish to apply for any other relief from removal. I understand that such other relief could include voluntary departure, adjustment of status, change of status, cancellation of removal, or registry. I understand that, by signing this written request, I will be giving up the right to a hearing in which the Immigration Judge will review my case and inform me if I may be eligible to apply for any relief from removal.

No deseo solicitar ningún recurso de ayuda contra la remoción/expulsión. Entiendo que otro tipo de ayuda podría ser una salida voluntaria, ajuste de estatus, cambio de estatus, cancelación de la expulsión/remoción o registro. Entiendo que al firmar esta petición escrita voy a renunciar a una audiencia en donde el juez de inmigración revisaría mi caso y me informaría si soy elegible para solicitar un recurso de ayuda para remoción/expulsión.

12. The box I checked below indicates my current immigration status. (Check "A" or "B")

La casilla que he marcado aquí indica mi estatus inmigratorio actual (Marque "A" o "B")

A. I am not a lawful permanent resident of the United States.

No soy residente permanente legal de los Estados Unidos.

(or) (ó)

B. I am a lawful permanent resident of the United States. I understand that by signing this written request I will no longer have lawful permanent resident status. I understand that by giving up my lawful permanent resident status it is possible that I may never be able to become a lawful permanent resident again.

Soy residente permanente legal de los Estados Unidos. Entiendo que al firmar esta petición escrita voy a perder el estatus de residente permanente legal. Entiendo que al renunciar a mi estatus de residente permanente legal es posible que no vuelva a obtener ese estatus nuevamente.

13. I agree that this Stipulation will be made part of the record for the Immigration Judge to review.

Estoy de acuerdo que esta Estipulación formará parte del acta que revisará el juez de inmigración.

14. I understand that I have the right to appeal the Immigration Judge's written order of removal. I also understand that I might even qualify to appeal for free. I knowingly and willingly waive the right to appeal. I understand that the Immigration Judge's written order of removal will be final.

Entiendo que tengo el derecho de apelar la orden escrita de expulsión/remoción. También entiendo que puedo calificar para apelar sin costo alguno. A sabiendas y voluntariamente renuncio al derecho de apelar. Entiendo que la orden escrita del juez de inmigración será una orden final.

15. I understand that it is possible I will not be allowed to return to the United States for 5 or 10 years, or even possibly for 20 years. I also understand that it is possible I will never be allowed to return to the United States.

Entiendo que es posible que no pueda regresar a los Estados Unidos por 5 o 10 años, posiblemente por 20 años. También entiendo que es posible que nunca pueda regresar a los Estados Unidos.

16. I understand that if I return to the United States without permission I could be removed again. I also understand that by returning or attempting to return without permission, I could be criminally prosecuted and sentenced to up to 20 years in prison.

Entiendo que si regreso a los Estados Unidos sin permiso podría ser expulsado/removido de nuevo. También entiendo que si regreso sin permiso podría ser enjuiciado y condenado hasta 20 años de prisión.

17. I understand this Stipulation because: (Check "A" or "B" or "C")

Entiendo esta Estipulación porque: (Marque "A" o "B" o "C")

A. This Stipulation was read to me in _____, a language that I fully understand.

Esta Estipulación me fue leída en _____, un idioma que entiendo perfectamente.

(or) (ó)

- B. I read this Stipulation without assistance because I am capable of reading and understanding English.

He leído esta Estipulación sin ninguna asistencia porque tengo la capacidad de leer y entender el idioma inglés.

(or) (ó)

- C. I read this Stipulation without assistance because I am capable of reading and understanding Spanish.

He leído esta Estipulación sin ninguna asistencia porque tengo la capacidad de leer y entender el idioma español.

I fully understand and accept the consequences that will result from signing this Stipulation. I also understand that if I sign this Stipulation, I will be removed from the United States if an Immigration Judge signs a final order of removal. I voluntarily, knowingly, and intelligently submit this request for an order of removal, as demonstrated by my initials on each page and my signature.

Entiendo completamente y acepto las consecuencias de firmar esta Estipulación. También entiendo que al yo firmar esta Estipulación voy a ser expulsado/removido de los Estados Unidos si un juez de inmigración firma una orden final de expulsión/remoción. Presento esta petición para una orden de expulsión/remoción voluntariamente con conocimiento e inteligentemente, como lo indican mis iniciales en cada página y mi firma.

18. I certify that the information I have provided in this Stipulation is all true and correct. I understand that, if any of the information I have provided is false, I may be criminally prosecuted for perjury. I also understand that I may be criminally prosecuted for making a false statement to a United States official if any of the information I have provided is false or intentionally misleading. I understand that, if I am convicted of either of these offenses, I could be fined and sentenced to up to five years in prison.

Certifico que toda la información que he dado en esta Estipulación es verdadera y correcta. Entiendo que si cualquier información que he dado es falsa podría ser enjuiciado por perjurio. También entiendo que puedo ser enjuiciado por presentar una declaración falsa a un oficial de los Estados Unidos si la información que he dado es deliberadamente fraudulenta. Entiendo que en caso de ser condenado por uno de estos delitos podría ser multado y recibir una sentencia de hasta cinco años en prisión.

Date/Fecha

Respondent/Compareciente

Initials/Iniciales _____

CERTIFICATION OF IMMIGRATION OFFICER (IF APPLICABLE)

I, _____, hereby certify that on _____, I read this Stipulation to the respondent in its entirety in the (English/Spanish) language (circle one).

-or-

I, _____, hereby certify that on _____, I read this Stipulation in its entirety to the respondent in the (English/Spanish) language (circle one). A telephonic interpreter identified as _____, certified in (English/Spanish) (circle one) and the _____ language, interpreted for the respondent from (English/Spanish) (circle one) into the _____ language.

-or-

I _____, hereby certify that on _____, the respondent stated to me that (he/she) (circle one) read the entire Stipulation in the (English/Spanish) language (circle one). I determined that the respondent could read (English/Spanish) (circle one) by having the respondent read to me paragraphs 2, 3, 5, and 10 of this Stipulation in (English/Spanish) (circle one).

(Date)

(Signature of Immigration Officer)

(Printed Name and Title)

CERTIFICATION OF IN-PERSON INTERPRETER (IF APPLICABLE)

I, _____, am competent to translate and interpret from (English/Spanish) (circle one) into the _____ language and I certify that I have read this Stipulation to the respondent in its entirety in the _____ language

(Date)

(Signature of Interpreter)

(Printed Name and Title)

CONCURRENCE OF ICE ATTORNEY

The respondent's alien registration file and the attached documents have been reviewed and do not reflect that the respondent has filed a claim to United States citizenship or nationality, that the respondent has an application for legalization under sections 210 or 245A of the Immigration and Nationality Act pending, or that a visa petition has been approved on the respondent's behalf. The government concurs with the respondent's request pursuant to 8 C.F.R. § 1003.25(b) that the Immigration Judge issue a written order of removal without holding a hearing and waives its right to appeal.

(Date)

(Signature of ICE Attorney)

(Printed Name and Title)

CONCURRENCE OF RESPONDENT'S ATTORNEY OR REPRESENTATIVE (IF APPLICABLE)

I have discussed this Stipulation with the respondent. I have read the respondent's statements and representations and concur that the facts and admissions contained in this Stipulation are true and correct. The respondent will accept a written order of removal as a final disposition of these removal proceedings and waives the right to appeal. The respondent's decision to accept the order of removal and waive the right to appeal is done voluntarily, knowingly and intelligently, in full understanding of the consequences.

(Date)

(Signature of Respondent's Attorney or Representative)

(Printed Name)

ATTACHMENT B

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT**
[the court's location (city or town) and state]

In the Matter of: (Name)

File No.:

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

The Department of Homeland Security has submitted a Motion for Stipulated Removal Order and Waiver of Hearing pursuant to 8 C.F.R. § 1003.25(b).

Upon consideration of the evidence submitted with the Motion, and based on the respondent's admission of the factual allegations and the concession to the charge(s), the Court finds the respondent removable from the United States as charged. Accordingly, the Motion for Stipulated Removal Order and Waiver of Hearing is hereby **granted** and the following order shall be entered:

ORDER: It is hereby ordered that the respondent be **removed** from the United States to _____ based on the charge(s) set forth in the charging document.

Date: _____

[Name]

Immigration Judge

Appeal: Waived by both parties.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL PERSONAL SERVICE

TO: ALIEN ALIEN c/o Custodial Officer ALIEN'S ATTY/REP DHS

DATE: _____ BY: COURT STAFF _____

ATTACHMENT C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[the court's location (city or town) and state]

In the Matter of: (Name)

File No:

Respondent

IN REMOVAL PROCEEDINGS

ORDER OF THE IMMIGRATION JUDGE

The Department of Homeland Security has submitted a Motion for Stipulated Removal Order and Waiver of Hearing pursuant to 8 C.F.R. § 1003.25(b). The Motion is hereby **denied** for the following reason(s):

Accordingly, the following order shall be entered:

ORDER: It is hereby ordered that the Motion for Stipulated Removal Order and Waiver of Hearing is hereby **denied**.

Date: _____

[Name]
Immigration Judge

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL PERSONAL SERVICE
TO: ALIEN ALIEN c/o Custodial Officer ALIEN'S ATTY/REP DHS
DATE: _____ BY: COURT STAFF _____