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Pro Bono Counsel for Respondent

DETAINED

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
MIAMI, FLORIDA

In the Matter of:	)	
	)	
[redacted]	)	**A** [redacted]
	)	
Respondent	)	
	)	
In Removal Proceedings.	)	
	)	

Before the Hon. Adam Opaciuch

Next Hearing Date: N/A

RESPONDENT'S MOTION TO REOPEN AND FOR STAY OF REMOVAL

I. INTRODUCTION

Respondent [redacted] ("Respondent"), through undersigned counsel, respectfully requests that this Honorable Court reopen proceedings pursuant to section 240(c)(7)(C)(i) of the Immigration and Nationality Act ("INA") and stay his removal. Respondent is a 20-year-old violence survivor with a history of mental illness treatment since approximately [redacted] 2016 when he was the victim of felonious assault and attempted sexual assault in the first degree. Department of Homeland Security ("DHS") Immigration and Customs Enforcement ("ICE") has overseen his mental health treatment since [redacted] 2016 when they took Respondent into custody. At the Master Calendar Hearing on [redacted] 2016, the ICE Assistant Chief Counsel did not disclose evidence in its possession related to Respondent's incompetency. ICE's failure to disclose this evidence deprived this Honorable Court the opportunity to screen Respondent for competency and order safeguards as needed. *See* INA § 240(b)(3). As a result, this Honorable Court ordered Respondent removed.

The Respondent seeks reopening of his proceedings based on the due process violations by DHS at the [redacted] 2016 master calendar hearing that led to his removal and on his new and previously unavailable *prima facie* eligibility for U visa protection. Respondent will submit the U visa petition to U.S. Citizenship and Immigration Services ("USCIS") within the next two weeks.

II. STATEMENT OF JURISDICTION

Motions to reopen are timely if they are filed within 90 days of the date of entry of a final administrative order of removal. INA § 240(c)(7)(C)(i). On [redacted] 2016, this Honorable Court issued a removal order against the Respondent. This motion is therefore timely.

III. FACTUAL AND PROCEDURAL HISTORY[1]

A. The Respondent flees violence in Mexico as a minor and finds no family support in Houston, Texas.

The Respondent fled Mexico at the age of sixteen following attempts against his life and threats by the Los Zetas Cartel members, who, in retaliation for the Respondent's brother's Gulf Cartel affiliation, targeted the Respondent. Customs and Border Patrol ("CBP") officers apprehended the Respondent near Kingsville, Texas on [redacted] 2013 when attempting to enter the United States. CBP issued the Respondent voluntary return to Mexico. Respondent re-entered the United States soon after his voluntary on [redacted] 2013 and moved to the Houston, Texas area to reside with an aunt.

Lacking adequate supervision and support, on [redacted] 2013, the Houston Police Department arrests the Respondent on unauthorized use of a vehicle charges and takes him to Harris County Juvenile Detention. The case was dismissed, but on [redacted] 2016 the Respondent was released from juvenile detention into ICE custody. Respondent was served with a Notice to Appear ("NTA") dated [redacted] 2013 and charged under INA § 212(a)(6)(A)(i). Because Respondent was a minor child at the time, he was designated as an Unaccompanied Minor ("UAC"), transferred to the custody of the Department of Health and Human Services ("DHHS") Office of Refugee Resettlement ("ORR"), and placed at a children's shelter in El Paso, Texas. While residing at the ORR shelter in El Paso, Texas, Southwest Key Casa El Paso. ICE filed the NTA with the El Paso Immigration Court. Counsel from the Diocesan Migrant and Refugee Services, Inc. represented the Respondent.

[1] Unless otherwise noted, the facts in this section derive from Exhibit A, Respondent's Declaration.

On or about [redacted] 2013, DHHS ORR transferred the Respondent to a Long Term Foster Care facility in San Antonio, Texas. On [redacted] 2013, Respondent, through the Diocesan Migrant and Refugee Services, Inc., filed a motion to change venue to San Antonio, Texas, which the Immigration Judge granted.

B. The Respondent is designated a Special Immigrant Juvenile.

While residing at the ORR shelter, Respondent obtained legal representation from the Refugee and Immigrant Center for Education and Legal Services (RAICES) in San Antonio. His former attorney, [redacted] ("[redacted]"), continued representing the Respondent in removal proceedings at the San Antonio Immigration Court. On January 30, 2014, Respondent, represented by Ms. [redacted], sought and obtained Dependency and Special Immigrant Juvenile findings from the District Court of Bexar County in San Antonio as the court found that the Respondent "has been the subject of parental abuse neglect, and/or abandonment" as defined by the Texas Family Code.

On or about [redacted] 2014, the Respondent, through legal counsel, filed Form I-360, Petition for Amerasian, Widower, or Special Immigrant, which USCIS approved on [redacted], 2014. *See* Ex. E. On [redacted] 2014, the Honorable Judge Anibal D. Martinez terminated Respondent's immigration proceedings based on the approved I-360. On [redacted] 2014, Respondent, represented by former counsel, filed form I-485, Application to Register Permanent Residence or Adjust Status with USCIS.

C. The Respondent moves into long-term foster care in Washington, D.C.

On [redacted], 2014, Respondent was transferred to the care and custody of Lutheran Social Services National Capital Area, a Washington, D.C. Child and Family Services Agency

providing Long Term Foster Care placement services. Upon his relocation to Washington, D.C., the Respondent became a ward of the D.C. Superior Court.

On August 27, 2014, Respondent sought immigration legal services from Catholic Charities of the Archdiocese of Washington. [redacted] ("Ms. [redacted]"), a Fully Accredited Representative, continued representing the Respondent in his USCIS adjustment of status case. Ms. [redacted] submitted a request to USCIS seeking a transfer of the Respondent's adjustment of status application from Texas to the Washington Field Office.

D. In Washington, D.C., the Respondent's lacks mental health support and he enters the criminal justice system.

On [redacted], 2015, Respondent was arrested by the D.C. Metropolitan Police Department ("MPD") for Assault with A Dangerous Weapon, Code of the District of Columbia § 22–402, and assigned a public defender. Respondent was released pending further proceedings in the Superior Court of the District of Columbia.

On [redacted], 2015, Respondent, represented by Ms. [redacted], appeared at USCIS Washington Field Office for an interview in connection to his adjustment of status application. Due to the pending criminal case before the Superior Court of the District of Columbia, USCIS held the Respondent's adjustment of status case in abeyance.

On [redacted] 2016, Respondent was arrested by the MPD on Assault with a Dangerous Weapon charges and detained at the District of Columbia Central Detention Facility. Days later, on [redacted], 2016, while held at the D.C. jail, a cellmate feloniously and sexually assaulted the Respondent. Respondent suffered physical injuries, which required medical treatment. Respondent reported the incident to the MPD, which investigated and issued a police report regarding the incident.

On [redacted], 2016, Respondent was released from the D.C. jail under the High Intensity Supervision Program, which included a GPS monitor bracelet, pending further proceedings in the District of Columbia Superior Court. On [redacted], 2016, Respondent, afraid to go back to detention and being assaulted again, failed to appear to a scheduled Felony Status Conference hearing at the D.C. Superior Court. The Respondent was issued an arrest warrant.

On or about [redacted] 2016, Respondent turned himself in and was ordered held pending further proceedings on both of his criminal charges. On [redacted], 2016, Respondent, represented by counsel, reached a plea deal in which he pled guilty to his 2016 Assault with a Dangerous Weapon charge and the Assistant U.S. Attorney's Office would in exchange agree to have the court dismiss the 2015 Assault with a Dangerous Weapon charge at the sentencing hearing. On [redacted] 2016, Respondent was released from the D.C. jail under the High Intensity Supervision Program.

On [redacted], 2016, the D.C. Superior Court judge issued a bench warrant for Respondent's arrest as he failed to comply with his High Intensity Supervision Program. The Respondent had allegedly removed his GPS monitor and could not be located.

Despite the Respondent's history of trauma, including assault, and increasing contact with the criminal justice system, it took approximately a year for the Respondent to receive mental health care support.

E. The Respondent is involuntarily committed for psychiatric observation.

On [redacted] 2016, Respondent was involuntarily committed to Washington Hospital Center for psychiatric observation. On that same day, [redacted], Assistant Attorney General for Child Protection Section I of the D.C. Office of the Attorney General, filed an emergency petition with the D.C. Superior Court on behalf of Respondent to allow for further hospitalization

and mental health treatment. The motion, titled "Petition for Order Authorizing Continued Hospitalization of Person for Emergency Observation and Diagnosis", was granted by Judge Dalton pursuant to D.C. Official Code § 21-524 of the D.C. Superior Court, The decision allowed for continued hospitalization of Respondent for up to seven days. *See* Ex. H. The petition, supported by affidavits of Respondent's social worker stating that the Respondent had tried to stab himself on the neck with a pen, and hospital admission records, asserted that the "respondent continues to exhibit symptoms of mental illness and, as a result thereof, continues to be likely to injure self and/or others if not detained." *Id.*

On [redacted] 2016, Respondent was discharged from the Washington Hospital Center. According to the discharge records, his diagnoses included Major Depression, severe with psychosis; Polysubstance Dependence and his prescriptions included least one anti-depressant (Sertraline) medication, and one antipsychotic (Aripiprazole) medication. *See* Ex. I & Ex. K. In addition, his discharge documents also listed "Active suicidal ideations in the context of severe mood disturbance and substance abuse." *See* Ex. I.

F. ICE detains the Respondent and assumes responsibility over his supervision and mental health treatment.

On [redacted] 2016, Respondent was transferred to the D.C. jail due to the previously issued bench warrant. On [redacted] 2016, Respondent was ordered released from the D.C. jail and detained by Immigration and Customs Enforcement (ICE).

Around this time, Ms. [redacted], submitted a formal request for a U visa certification to the D.C. Metropolitan Police Department based on the Respondent being the victim of assault while detained. At the same time, Ms. [redacted] sought information on the Respondent's location and assigned ICE officer. On [redacted] 2016, Ms. [redacted] obtained information that the Respondent was being held at the Virginia Peninsula Regional Jail in Williamsburg, Virginia and

contacted ICE Deportation Officer John Killian of the Washington Field Office to inquire about Respondent's whereabouts and mental health condition. Officer Killian verified that ICE was holding the Respondent at said location. Ms. [redacted] proceeded to provide Officer Killian a brief background history on Respondent's mental health condition and shared that the Respondent was in a vulnerable mental state due to past trauma and crimes to which he had been a victim. Officer Killian confirmed that Respondent was being closely monitored and treated at this facility. *See* Ex. B.

G. ICE transferred the Respondent Krome Detention Center "Due to his Mental Situation" and the Immigration Judge issued a removal order at the Master Calendar Hearing.

On [redacted], 2016, Ms. [redacted] earned that Respondent was being detained at Krome Detention Center in Miami, Florida. On [redacted] 2016, Officer Colley sent Ms. [redacted] an email confirming that the Respondent had been transferred to Krome Detention Center "due to his mental situation". Officer Colley further added that Krome Detention Center had "more efficient medical staff that can address his issues." *See* Ex. L.

On [redacted], 2016, USCIS issued a "Notice of Administrative Closure" in connection to the Respondent's I-485, Application to Register Permanent Residence or Adjust Status, filed [redacted] 2014 due to lack of jurisdiction since the Respondent was in removal proceedings citing 8 C.F.R. §§245.2(a), 1245.2(a). *See* Ex. F.

On [redacted] 2016, [redacted], Legal Orientation Program (LOP) Attorney at Catholic Legal Services of Miami, visited with the Respondent at the Krome Detention Center. *See* Ex. M. Mr. [redacted], who was initially contacted by Ms. [redacted] in an effort to locate legal representation for the Respondent, stated that during his visit he observed the Respondent to be "scared and has been cutting/scraping himself" and added that the Respondent was being

housed at the Krome Detention Center's Mental Health Unit. *Id*. Respondent provided written consent for Catholic Charities of the Archdiocese of Washington to release his immigration file to Mr. [redacted]. *Id.*

On or around [redacted] 2016, ICE filed an NTA with the Krome Immigration Court and the initial master calendar hearing was set for August 25, 2016, at which time Respondent, appearing *pro se*. At that hearing, the Immigration Judge issued a removal order.

On [redacted] 2016, Ms. [redacted], on behalf of the Respondent, submitted an expedited request for the Respondent's record of most recent proceedings from EOIR pursuant to the Freedom of Information Act (FOIA). In a letter dated [redacted] 2016, the EOIR's Office of the General Counsel denied the request for expedited treatment of the Respondent's FOIA. *See* Ex. N.

H. The D.C. Metropolitan Police Department issues a U visa certification for the Respondent notice of which he receives after the removal order.

On August 30, 2016, Ms [redacted], on behalf of the Respondent, received a signed U visa certification based on felonious assault and sexual assault crimes to which he was a victim while detained at the D.C. Central Detention Facility on or around [redacted], 2016. Said U visa certification was postmarked by the D.C. Metropolitan Police Department on [redacted] 2016.

Ms. [redacted] through Mr [redacted], made efforts to notify the Respondent regarding the U visa certification and his new options for legal relief, but such attempts were unsuccessful while the Respondent was detained at Krome Detention Facility.

On or about [redacted] 2016, the Respondent, under U.S. Marshal's custody, was transferred to Washington, D.C. due to the existing bench warrants issued by the D.C. Superior Court.

On [redacted] 2016, the Respondent, represented by his public defender, appeared in the D.C. Superior Court. He was ordered held until his sentencing hearing set for [redacted] 2016.

IV. STANDARD TO REOPEN PROCEEDINGS

The Immigration Judge may reopen any case in which it has rendered a decision. INA § 240(c)(7)(C)(i); 8 C.F.R. § 1003.23(b)(1). A motion to reopen "shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material." INA § 240(c)(7)(B). Evidence is "new" if it was unavailable or could not have been presented at the prior hearing before the Immigration Judge. *Verano-Velasco v. U.S. Att'y Gen.,* 456 F.3d 1372, 1377 (11th Cir. 2006). Evidence may be submitted in support of a motion to reopen if it is "material and was not available and could not have been discovered or presented at the former hearing." 8 C.F.R. § 1003.23(b)(3).

V. ARGUMENT

The Respondent moves the Honorable Court to reopen his case for two reasons. First, the Respondent presents new, material evidence previously unavailable to the Immigration Judge regarding indicia of his mental incompetency. This evidence was previously unavailable to the Immigration Judge because the DHS withheld this evidence from the Immigration Judge in violation of its obligations. *See Matter of M-A-M-*, 25 I&N Dec. 474, 480 (BIA 2011); *see also* 8 C.F.R. § 1240.2(a). Had DHS provided the evidence, the Immigration Judge would have evaluated the then *pro se* Respondent for competency to participate in immigration proceedings and, if required, prescribed safeguards to protect the Respondent's rights and privileges. Given DHS's due process that rendered Respondent's mental competency evidence unavailable at the

master calendar hearing, this Honorable Court should reopen proceedings and schedule another hearing. Second, the Respondent presents new, material evidence that was previously unavailable to the Immigration Judge and that renders him *prima facie* eligible for a U visa pursuant to section 101(a)(15)(U) of the INA. Specifically, the Washington D.C. Police Department certified Form I-918, Supplement B, U Nonimmigrant Status Certification, for the Respondent, which is required for U nonimmigrant visa status. *See* Ex. G. This certification confirms that the Respondent was the victim of felonious assault and attempted sexual assault, and that he was helpful in the detection, investigation or prosecution of the sexual assault. *Id*.

A. DHS violated its obligation to provide this Honorable Court with evidence in its possession bearing on the Respondent's mental competency.

In *Matter of M-A-M-,* 25 I&N Dec. 474 (BIA 2011), the Board of Immigration Appeals (BIA) set forth a framework for immigration judges to follow when hearing cases involving respondents with mental competency issues. Under this framework, respondents are presumed to be competent and an Immigration Judge need not apply the *Matter of M-A-M-* test in the absence of any "indicia of mental incompetency." 25 I&N Dec. at 477. Following *Matter of M-A-M-*, on April 22, 2013, DHS ICE issued a Memorandum entitled "Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees With Serious Mental Disorders or Conditions" and on December 31, 2013, EOIR released guidance to the nation's immigration judges entitled "Phase I of Plan to Provide Enhanced Procedural Protection to Unrepresented Detained Respondents with Mental Disorders" applicable to *pro se* detained respondents.

In determining "indicia of mental incompetency," *Matter of M-A-M-* and the December 31, 2013 guidance obligate DHS to provide the court with any evidence in its possession bearing on the respondent's mental competency. *Id*. at 480. Relevant documentary evidence could include

mental health reports or assessments; criminal records or court-ordered treatment indicating the respondent was found to be incompetent to stand trial or not guilty by reason of insanity; detention center medical records; and, *inter alia*, any detention incident reports indicating the respondent was put into isolation because of mental illness. *See* 25 I&N Dec. at 479- 81. Similarly, the DHS ICE April 22, 2013 Memorandum unequivocally states that "ERO and IHSC personnel should also immediately begin developing procedures to ensure that documents related to an unrepresented detainee's mental competency, including a mental health review report and mental health records in ICE's possession, are provided to the applicable Office of Chief Counsel (OCC)." Where there is a "bona fide doubt" about a respondent's competence to represent himself, the Immigration Judge should conduct a judicial inquiry. EOIR's "Phase I of Plan to Provide Enhanced Procedural Protection to Unrepresented Detained Respondents with Mental Disorders."

DHS had these types of evidence for the Respondent yet failed to disclose them at the [redacted], 2016 Master Calendar Hearing thereby preventing a "bona fide doubt" of Respondent's competence from arising. The Respondent has received mental health treatment since approximately [redacted] 2016 after being feloniously assaulted and the victim of attempted sexual assault in the first degree. *See* Ex. J. On [redacted] 2016, Washington Medstar Hospital discharged the Respondent into the Central Detention Facility's care and custody. On those discharge records appears the "major depression, severe with psychosis" diagnosis. *See* Ex. I. The Central Detention Facility record for [redacted], 2016 describes the Respondent receiving an emergency injection after being found naked and displaying behavior that prompted the unit to inform the psychiatrist. On [redacted] 2016, the follow-up visit included a diagnosis of "increased risk for injury r/t display of suicidal behaviors or ideation." It was on this date, [redacted] 2016, that ICE assumed custody and care for the Respondent. On [redacted], 2016,

Ms. [redacted] spoke with ICE Officer John Killian and when she began describing the Respondent's mental health condition and his vulnerable mental state due to the crimes he had been a victim of, Officer Killian confirmed that Respondent was being closely monitored and treated at the Virginia Peninsula Regional Jail in Williamsburg. *See* Ex. B. On [redacted] 2016, Ms. [redacted] learned that Respondent was being detained at Krome Detention Center in Miami, Florida. On [redacted] 2016, Officer Colley sent an email to Ms. [redacted] confirming that the Respondent had been transferred to Krome Detention Center "due to his mental situation." Officer Colley further added that Krome Detention Center had "more efficient medical staff that can address his issues." *See* Ex. L. The records documenting the Respondent's mental health illness and treatment are extensive. *See* Ex. C, D. ICE was aware of these issues, as proven by the communications of ICE ERO officers with Ms [redacted]. However, at the [redacted] Master Calendar Hearing at which the Respondent appeared *pro se*, the ICE Assistant Chief Counsel did not disclose these records.

Immigration Judges may not accept an admission of removability from an unrepresented respondent who is incompetent and unaccompanied. 8 CFR § 1240.10(c). However, this Honorable Court accepted the Respondent's admission of removability and ordered him removed because DHS violated its *Matter of M-A-M* obligations and its "Civil Immigration Detention: Guidance for New Identification and Information-Sharing Procedures Related to Unrepresented Detainees With Serious Mental Disorders or Conditions" Memorandum. Had DHS notified the Immigration Judge that the Respondent had documented mental health issues, the Immigration Judge would not have accepted the Respondent's plea and ordered him removed. DHS's violation of *Matter of M-A-M-* and the December 31, 2013 guidance deprived the Respondent of the opportunity to present material evidence that would have likely changed the outcome of

hearing. Therefore, the Respondent merits reopening and a new hearing because DHS caused the Immigration Judge to miss material evidence of the Respondent's incompetency during the hearing. *Matter of L-O-G-*, 21 I&N Dec. 413 (BIA 1996); 8 C.F.R. § 1003.23(b)(3).

B. Five days after this honorable court ordered the Respondent removed, respondent's prior legal counsel received a U visa certification From the Washington, D.C. Metropolitan Police Department.

A motion to reopen "shall state the new facts that will be proven at a hearing to be held if the motion is granted, and shall be supported by affidavits or other evidentiary material." INA § 240(c)(7)(B). Evidence may be submitted in support of a motion to reopen if it is "material and was not available and could not have been discovered or presented at the former hearing." 8 C.F.R. § 1003.23(b)(3). "Reopening may be had where the new facts alleged, together with the facts already of record, indicate a reasonable likelihood of success on the merits, so as to make it worthwhile to develop the issues at a hearing." *Matter of L-O-G-,* 21 I&N Dec. 413 (BIA 1996). Respondent submits certified Form I-918, Supplement B, U Nonimmigrant Status Certification, as proof of the new, material fact that he is *prima facie* eligible for U visa relief.

The U visa certification dated [redacted] 2016 was not available and could not have been discovered or presented at the former hearing. On [redacted] 2016, the Respondent was feloniously assaulted during an attempted sexual assault while he was detained at the Washington, D.C. Central Detention Facility. The Respondent reported the incident and, after receiving medical attention for his injuries, cooperated with the investigation of the crimes. On [redacted] 2016, the Respondent's social worker obtained a copy of the police record for the incident so that his legal counsel could determine the Respondent's U visa eligibility. On [redacted] 2016, legal counsel mailed the D.C. Metropolitan Police Department a request for a U visa certification for the Respondent. On [redacted] 2016, the D.C. Metropolitan Police Department

issued a U visa certification for the Respondent. Respondent's U visa certification arrived in the mail on [redacted], 2016. The Immigration Judge ordered the Respondent removed on [redacted] 2016 and, during that hearing, the Immigration Judge was unaware that the D.C. Metropolitan Police Department had issued a U visa certification. For this reason, evidence of the U visa certification "was not available and could not have been discovered or presented at the former hearing." 8 C.F.R. § 1003.23(b)(3).

The U visa certification dated [redacted] 2016 is material evidence. The U visa is humanitarian relief established under the Trafficking Victims Protection Act of 2000 (TVPA) (and subsequently reauthorized in 2003, 2005, and 2008) for victims of certain serious crimes who have suffered substantial physical or mental harm and can document cooperation with law enforcement. To qualify for a U visa, the victim must prove (1) substantial mental or physical abuse as a result of having been a victim of certain criminal activity, (2) possession of information concerning that criminal activity, (3) violation of a U.S. law that occurred in the United States, (4) and assistance to a Federal, State or local authority investigating or prosecuting the crime. *See* INA § 101(a)(15)(U); 8 CFR § 214.14. The fourth requirement, that the victim was helpful, is being helpful, or is likely to be helpful in the criminal investigation or prosecution of the crime is proven through a "U Nonimmigrant Status Certification," on Form I-918, Supplement B, from a federal, state or local law enforcement official, or a judge investigating or prosecuting the criminal activity. *See* 8 CFR § 214.14(c)(2)(i). Without this certification, U.S. Citizenship and Immigration Services would deny the U visa petition. Therefore, with this certification, the Respondent is *prima facie* eligible for U nonimmigrant status. Even if Respondent faces inadmissibility issues due to his criminal record, Respondent may apply for a generous waiver of inadmissibility, which covers most inadmissibility grounds except for those

under INA § 212(a)(3)(E) (participants in Nazi persecutions, genocide, acts of torture, or extrajudicial killing). *See* INA § 212 (d)(14); 8 C.F.R. § 212.17. Therefore, the U visa certification is material evidence that renders the Respondent eligible for a humanitarian U nonimmigrant visa and a generous waiver before U.S. Citizenship and Immigration Service.

Had this Honorable Court had knowledge of this U visa certification at the prior hearing, this Honorable Court would have considered alternatives like a continuance or administrative closure to allow the Respondent to pursue U nonimmigrant status. Therefore, the new question regarding the Respondent's prima facie eligibility for U nonimmigrant status requires a hearing before the Immigration Judge.

C. The Respondent Merits a Stay of Removal.

A stay prevents DHS from executing an order of removal, deportation, or exclusion. Stays are automatic in some instances and discretionary in others. A motion to reopen filed pursuant to INA § 240(c)(7)(C)(i) does not automatically stay an order of removal or deportation. The Immigration Judge may stay deportation pending his or her determination of the motion. 8 CFR §§242.22 and 243.4 (1997). The burden of proof for obtaining a stay of deportation is upon the respondent who must show that there is a likelihood of success of the underlying basis for reopening. For the foregoing reasons, there is high likelihood that USCIS will approve the Respondent's U visa petition and that Respondent has proven he is *prima facie* eligible for the benefit sought.

VI. CONCLUSION

The Respondent has complied with the motion to reopen requirements set forth under INA § 240(c)(7)(C)(i) and 8 C.F.R. § 1003.23(b)(1). If the Respondent's proceedings are not reopened and the removal order remains, the DHS will soon enforce the removal order thereby

depriving the Respondent of an opportunity to pursue U nonimmigrant status and continuing DHS's due process violations that arose when DHS failed to present evidence of the Respondent's mental incompetency. Therefore, the Respondent merits and requires reopening of his removal proceedings.

Dated: 11/20/2016 Respectfully submitted,

_____

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Silver Spring, Maryland 20910
Pro Bono Counsel for Respondent

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
MIAMI, FLORIDA

In the Matter of:	)	
	)	
[redacted]	)	**A** [redacted]
	)	
Respondent	)	
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In Removal Proceedings.	)	
	)	

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
MIAMI, FLORIDA

In the Matter of:	)	
	)	
[redacted]	)	**A** [redacted]
	)	
Respondent	)	
	)	
In Removal Proceedings.	)	
	)	

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Reopen Proceedings, it is HEREBY ORDERED that the motion be _____ because:

___ DHS does not oppose the motion.

___ A response to the motion has not been filed with the court.

___ Good cause has been established for the motion.

___ The court agrees with the reasons stated in the opposition to the motion.

___ Other:

_____

_____

_____ _____

Date Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Atty/Rep [ ] DHS

Date: _____By: Court Staff_____

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
U.S. IMMIGRATION COURT
MIAMI, FLORIDA

In the Matter of:	)	
	)	
[redacted]	)	**A** [redacted]
	)	
Respondent	)	
	)	
In Removal Proceedings.	)	
	)	

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of Respondent's Motion to Stay Removal, it is HEREBY ORDERED that the motion be _____ because:

___ DHS does not oppose the motion.

___ A response to the motion has not been filed with the court.

___ Good cause has been established for the motion.

___ The court agrees with the reasons stated in the opposition to the motion.

___ Other:

_____

_____

_____ _____

Date Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service

To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Atty/Rep [ ] DHS

Date: _____By: Court Staff_____

[redacted]

PROOF OF SERVICE

On [redacted], 2016, I, [redacted]

served a copy of RESPONDENT'S MOTION TO REOPEN AND FOR STAY OF REMOVAL

and any attached pages to the DHS-ICE Office of the Chief Counsel

at the following address 18201 SW 12th Street, Miami, FL, 33194-2700

by United States Postal Services Priority Mail .

_____ _____

Date