

## **6.4. Emergency Motions**

### **c. Motions for Stay of Deportation or Removal in Petitions for Review *(Effective 4/1/19)***

#### **1. Temporary Stay**

Upon the filing of an initial motion or request for stay of removal or deportation, the order of removal or deportation is temporarily stayed until further order of the Court.

#### **2. Supplemental Motion**

If the initial motion for stay of removal or deportation fails to discuss the merits of the petition for review or to identify the potential hardships faced by the petitioner due to deportation or removal during the pendency of the petition, petitioner may, within 14 days from the filing of the initial motion, file a supplemental motion for stay. The Court will ordinarily not issue any orders directing or inviting the filing of a supplemental motion.

#### **3. Response**

The electronic certified administrative record shall be filed with the Court within 35 days from the filing of the petition for review. The respondent shall file its response to the motion for stay within 56 days from filing of the original request or motion. Any dispositive motions should be filed at the same time the response is due.

**4. Reply**

The petitioner may file a reply to the response within 7 days from service of the response.

**6. Non-Opposition**

If respondent files a notice of non-opposition to the stay motion in lieu of the response provided for in subsection (3) above, the temporary stay shall continue in effect during the pendency of the petition for review or until further order of the court. If the respondent does not file a response to the stay motion within the time limits set forth in subsection (3), the absence of a timely response will be treated as a notice of non-opposition and will be subject to the terms of this subsection.

Respondent may, at any time during the pendency of the petition for review, move to lift the temporary stay. Any such motion to lift the stay, along with any response filed by petitioner within 10 days after service of the motion, will be presented to the next available motions panel for disposition.

**7. Schedule for Record Preparation and Briefing in All Petitions for Review**

A briefing schedule will be established upon the filing of the petition for review. The electronic certified administrative record will be due 35 days from the filing of the petition rather than 40 days as provided in FRAP 17. The petitioner

must serve and file a brief within 60 days after the certified administrative record is filed. The respondent must serve and file a brief within 60 days after the petitioner's brief is served. The petitioner may serve and file a reply brief within 21 days after service of the respondent's brief.

**Note:** Pursuant to this court's decision in *DeLeon v. INS*, 115 F.3d 643 (9th Cir. 1997), a final order of deportation or removal is automatically temporarily stayed upon the filing of a motion or request for stay of deportation or removal in a petition for review of such an order. This temporary stay is in effect whether or not the court issues an order confirming such stay. See *id.* The court will not ordinarily issue such an order confirming the stay, although it may issue an order to show cause relating to jurisdictional questions or issues pertaining to the sufficiency of the stay request and/or the payment of fees. With regard to further briefing on the merits of the stay, petitioner may file a supplemental motion within 14 days. See *Abbassi v. INS*, 143 F.3d 513 (9th Cir. 1998).