

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

In the Matter of:)	DETAINED
)	
CLIENT)	Honorable Judge
A #)	
)	Ordered removed: March 6, 2008
In Removal Proceedings)	

**EMERGENCY MOTION TO REOPEN AND, IN THE ALTERNATIVE,
REQUEST FOR SUA SPONTE REOPENING
AND
EMERGENCY MOTION FOR STAY OF REMOVAL
PENDING DECISION ON MOTION TO REOPEN**

Respondent CLIENT (“Respondent” or “CLIENT”), by and through undersigned counsel moves for an emergency reopening of his removal proceeding pursuant to 8 CFR § 1003.23(b)(4)(i) due to chanted country conditions and, in the alternative, requests that the court reopen proceedings on its own motion pursuant to 8 CFR § 1003.23(b)(1). CLIENT further moves this court to immediately issue a stay of removal pursuant to 8 CFR §§ 1003.23(b)(4)(i) and 1003.23(b)(1)(v) while his request for reopening is considered by this court. In support of CLIENT requests for reopening and a stay of removal, he states the following:

I. INTRODUCTION

CLIENT, a detained Iraqi national, face imminent removal to Iraq and asks this court to issue an immediate stay of removal in order to adjudicate this motion to reopen, and to reopen his proceedings. An order of removal was entered against Respondent on March 6, 2008 when he represented himself *pro se* following his transfer to Immigration & Customs Enforcement

(“ICE”) custody from prison. *See* Record of Proceeding (ROP). Following his release from ICE custody on an order of supervision in 2008, CLIENT turned around his life and converted from Islam to Christianity; he has practiced Christianity for the last several years and has a close network of church friends who have provided letters of support.

Since CLIENT was ordered removed on March 6, 2008, conditions in Iraq have changed and new evidence has become available demonstrating that Iraqi Christians now face a far graver risk of persecution, torture, and death at the hands of terrorist organizations such as the Islamic State. The Iraqi government has done little to prevent such harm and has indeed allowed entire towns to be ceded to the Islamic State. The government has moreover allowed government-funded militias to harm civilians with impunity.

Moreover, at the time of CLIENT’s removal order and until very recently, the United States government was not deporting individuals to Iraq due to Iraq’s reluctance to issue travel documents to its nationals facing deportation. Mica Rosenberg, *U.S. Targets Iraqis for Deportation in Wake of Travel Ban Deal*, REUTERS, June 12, 2017, attached as Ex. Y; Abigail Hauslohner, *Dozens of Iraqi Nationals Swept Up in Immigration Raids in Michigan, Tennessee*, THE WASHINGTON POST, June 12, 2017, attached as Ex. Y. However, as part of an agreement between the United States and Iraq to remove Iraq from the current travel ban, Iraq has now agreed to issue travel documents and ICE has begun pursuing removals of Iraqi nationals with final orders. *Id.*

CLIENT, who had been complying with his ICE order of supervision for the last several years, came back into ICE custody on approximately June 15, 2017 while attending a routine

check-in with ICE. He understands that ICE now intends to remove him to Iraq and believes his removal is imminent.¹

For these reasons, discussed in greater detail below, CLIENT requests an emergency stay of removal pending adjudication of his meritorious motion to reopen, and requests that the Court reopen his proceedings so that he may pursue protection under the Convention Against Torture (“CAT”).

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

CLIENT entered the United States in 1997 as a refugee; he had fled Iraq because he was tortured and imprisoned due to his refusal to continue serving in Saddam Hussein’s army. Ex. B. After serving several years in prison for a first degree assault conviction in Jefferson County, Kentucky, in early 2008 CLIENT was transferred to ICE custody. *Id.* He did not have any contact with an attorney and did not understand his options, and so CLIENT accepted a removal order in March 2008, designating Denmark as his country of removal because he had a friend there. *Id.* Because ICE was unable to effectuate his removal to Iraq (or Denmark), CLIENT was released from ICE custody on an order of supervision. *Id.* In late 2008, he was convicted of attempted burglary in Cook County, Illinois and again was transferred to ICE custody. *Id.* After another 90 plus days in ICE custody, CLIENT was again released on an order of supervision. *Id.* Since that time, CLIENT has complied with his order of supervision and regularly reported to ICE. *Id.* However, ICE did not pursue his removal to Iraq and CLIENT did not have any reason

¹ On June 22, 2017, the Eastern District of Michigan granted a 14-day stay of removal to a class of Iraqis with final orders detained in the district. *See Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich.). On June 26, 2017, the court extended the class to cover all Iraqi nationals with final orders nationwide and extended the stay of removal an additional 14 days. On July 7, 2017, the stay was extended again. **It now expires on July 24, 2017.**

to believe that ICE would pursue his removal to Iraq until June 15, 2017 when – during a routine check-in – CLIENT was taken into custody and informed that ICE would now pursue his removal. *Id.* Until his recent detention and contact with the National Immigrant Justice Center (“NIJC”) CLIENT was not aware that moving to reopen his case was an option. *Id.*

CLIENT converted to Christianity in 2008, following his release from prison, and he was baptized at the Willow Creek Church, a Baptist church in Chicago, in 2010. Ex. B, C, D. In practicing his new faith, CLIENT has engaged in weekly Bible study and participated in church volunteer activities, particularly working at the church’s homeless ministry, 5Loaves. *Id.* Through his church membership, CLIENT has gained a new community of friends, all of whom attest to his genuine faith, devotion to public service, and commitment to their friendships and the church. Ex. B, C. In a testament to his faith, CLIENT obtained a tattoo that says, “Faith, hope, and love,” a verse from 1 Corinthians in the New Testament. Ex. B, C (letter from Kathryn Liss Ibatuan).

CLIENT fears returning to Iraq due to his conversion to Christianity as well as his association with the United States. Ex. B. He would not hide his Christian faith and, if asked about his tattoo, he would explain that it relates to Christianity. *Id.* Moreover, due to his time away from Iraq, CLIENT fears that his differences will be noticeable and that he will be perceived to be a spy for the West in Iraq. *Id.*

III. STATEMENT OF COUNTRY CONDITIONS

A. Sectarian violence in Iraq

Despite, and perhaps partially due to, the United States invasion of Iraq in 2003, Iraq today is in turmoil. As the Department of State’s most recent country report on Iraq outlines, civilian authorities are unable to maintain effective control over the country’s security forces,

violence continues to divide the country, and both the Islamic State, also known as Da'esh, and government forces perpetrate severe human rights abuses. U.S. Department of State, Human Rights Report: Iraq (March 29, 2017), attached as Ex. F. While terrorists commit the majority of human rights abuses in Iraq, security and government militia forces also commit abuses with impunity. *Id.*

Since the end of the U.S. intervention in Iraq in 2011, the Iraqi government has been unable to reduce sectarian violence, and there are growing signs of fragmentation within Iraq. Ex. F. Furthermore, while the current Iraqi government itself states that it does not target and kill innocent civilians, armed Islamic militants that it supports and arms have done so. *Id.* During 2015 the UN Assistance Mission in Iraq (UNAMI) recorded a total of 19,266 civilian casualties: 6,878 killed, and 12,388 wounded. *Id.*

Iraqi Christians have been left particularly vulnerable and have been increasingly targeted by religious extremists and terrorist attacks by ISIS since U.S. military forces left Iraq in 2011. *Iraq's Christian's Persecuted by ISIS*, CBS NEWS, March 22, 2015, attached as Ex. G. By 2015 the population of Christians in Iraq had declined to 300,000 from 1.5 million under Saddam Hussein's regime as hundreds of thousands have had to flee the country due to the increasing violence. Greg Botelho, *Faith Turns Christians into Terrorist Targets*, CNN, April 24, 2015, attached as Ex. H. Former Secretary of State John Kerry has gone so far as to call what is happening in Iraq genocide. Andrea Mitchel et al, *Kerry: ISIS Is Committing Genocide Against Yazidis, Christians and Shiite Muslims*, NBC, March 17, 2016, attached as Ex. I.

Al Qaeda in Iraq ("AQI") (currently known as the Islamic State of Iraq and the Levant, "ISIL" or Islamic State of Iraq and Syria, "ISIS"), has taken personal credit for a series of terrorist attacks in Iraq since 2011. U.S. Department of State, *U.S. Condemns Terrorist Attacks in*

Iraq and Pledges to Help Combat al Qaeda, August 10, 2013, attached as Ex. J. ISIS was founded in 2003 as a reaction to the American-led invasion and occupation of Iraq. Zachary Laub, *The Islamic State*, COUNCIL ON FOREIGN RELATIONS, Aug. 10, 2016, attached as Ex. K It has been responsible for the deaths of thousands of Iraqi civilians, members of the Iraqi government, and its international allies. *Id.* Because of these constant deadly attacks on innocent civilians by Islamic militants, both the Iraqi government and the U.S. government have recognized the serious threat posed by al Qaeda and other terrorist groups. *Id.*

In June 2014, ISIS fighters gained control of Mosul, the second largest city in Iraq and the city with the highest Christian population in Iraq. Ex. H. Hundreds of Christian families were forced to flee when threatened with death if they did not abide by ISIS's decree. Stephen Starr, *Assyrians and Christians under attack in Iraq and Syria*, IRISH TIMES, July 19, 2014, attached as Ex. L. Under ISIS rule Christians would either be forced to convert to Islam, pay a fine or "die by the sword." *Iraq: ISIS Abducting, Killing, and Expelling Minorities*, HUMAN RIGHTS WATCH, July 19, 2014, attached as Ex. M. Three days before ISIS issued its edict ISIS militants began placing marks on minorities' properties to designate them as Christians, Shia Shabak or Shia Turkmen and levying a "jihad tax" on the few remaining Christian merchants. *Id.* The area is by many accounts nearly empty of Christians today. Ex. L. Christian homes were marked with "N" (for Nazarene, or Christian) and expropriated by ISIS. Declaration of Mark Lattimer in Support of Petitioners' Motion for a Temporary Restraining Order and/or a Stay of Removal (filed in *Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich.)), attached as Ex. N.

Many reports have referred to ISIS systematic roundups, expulsions, and targeting of individuals based on their ethnic and religious beliefs as a form of ethnic/religious cleansing or genocide. Ex. M; *Human Rights Watch Researcher Reports ISIS Abuses in Iraq*, NPR, July 28,

2014, attached as Ex. O. ISIS has also reinforced its message to ethnic and religious minorities that there is no place for them in Iraq by systematically destroying their places of worship and cultural heritage, including defacing or removing statues and destroying churches. Ex. M; *Ethnic Cleansing on a Historic Scale: Islamic State's Systematic Targeting of Minorities in Northern Iraq*, AMNESTY INTERNATIONAL, Sept. 2014, attached as Ex. P.

Converts to Christianity suffer a similar – if not worse - fate to those who were born into the Christian faith. UNHCR reported:

Given the widespread animosity towards converts from Islam and the general climate of religious intolerance, the conversion of a Muslim to Christianity would likely result in ostracism and/or violence at the hands of the convert's community, tribe or family. Many, including (Sunni and Shi'ite) religious and political leaders, reportedly believe that apostasy from Islam is punishable by death, or even see the killing of apostates as a religious duty.⁶⁸³ Additionally, Christian converts risk being suspected as working with the MNF-I/USF-I or more generally the “West”, which in the opinion of some has fought a “holy war” against Iraq.

UNHCR, *Eligibility Guidelines for Assessing the International Protection Needs of Asylum-Seekers from Iraq*, May 21, 2012, attached as Ex. Q. And the Danish Immigration Service, in its report on conditions in Iraq, states that, since converting to Christianity is illegal for a Muslim, a convert who needs protection from those wanting to kill him “**will be prosecuted rather than protected if approaching police.**” Danish Immigration Service, *Security and Human Rights Issues in Kurdistan Region of Iraq (KRI), and South/Central Iraq (S/C Iraq)*, July 2009, attached as Ex. R.

Despite over ten years of war, ISIS remains stronger than ever as neither the security forces of Iraq nor the Iraqi government as a whole has been able to prevent further attacks. The Iraqi people have lost hope in the security forces to protect them. Indeed, Iraqis now have government-backed militia forces that not only are incapable of providing security but are

responsible for killings themselves. *Iraq: Pro-Government Militias' Trail of Death, Attacks on Sunnis in At Least 3 Provinces*, HUMAN RIGHTS WATCH (July 31, 2014), attached as Ex. S.

B. Threats towards individuals associated with the United States

The threats facing U.S.-affiliated Iraqis have increased significantly in the last few years due to the rise of ISIS and renewed sectarian violence. Declaration of Rebecca Heller (filed in *Hamama v. Adducci*, 2:17-cv-11910 (E.D. Mich.), attached as Ex. T. In ISIS-controlled areas, the U.S. State Department has warned that “people who express support for ...Western institutions are at grave risk in these areas, and may face kidnapping, imprisonment, or execution.” *Iraq Travel Warning*, U.S. Department of State, June 14, 2017, attached as Ex. W. The Islamic State is not the only source of increased threats to U.S.-affiliated Iraqis, however. Rebecca Heller, the director and co-founder of the International Refugee Assistance Project (IRAP), states:

The same religious militias that targeted U.S. troops and Iraqi allies during the Iraqi Civil War have once again become active throughout the country. Although at odds with each other, both Sunni and Shi'ite extremist groups share a common goal in targeting and attacking Americans and any Iraqis with a significant ties to the United States. For example, in 2016 three Americans were kidnapped in Baghdad after the U.S. embassy received intelligence that a Shi'ite militia was planning to kidnap an American or an American contractor. U.S. Iraqi allies are also increasingly being targeted in kidnappings, extrajudicial killings, and other attacks throughout the country.

Ex. T.

These are significant changes since CLIENT's March 2008 removal order was entered and thus his case should be reopened to allow him the opportunity to apply for relief under the Convention Against Torture based on the changed country conditions. Moreover, CLIENT reasonably believed that he would not be deported to Iraq, since for the past nine years he reported regularly to ICE without any indication that ICE would seek and obtain travel

documents. Ex. B. CLIENT was unaware that he could face actual removal and that moving to reopen his case was an option available to him. *Id.*

IV. ARGUMENT

A. Changed country conditions strongly support reopening CLIENT's case to allow him to pursue relief under the Convention Against Torture.

Although more than 90 days have passed since CLIENT was ordered removed, this court should grant reopening pursuant to 8 CFR § 1003.23(b)(4)(i) “based on changed country conditions arising in the country of nationality or the country to which removal has been ordered,” because “such evidence is material and was not available and could not have been discovered or presented at the previous proceeding.” As explained above, *see supra*, STATEMENT OF COUNTRY CONDITIONS, conditions in Iraq for Christians have considerably worsened in the last few years due to the rise of religious extremism in Iraq. Due to these changes CLIENT, a Christian convert, now faces a substantial risk of torture or death if deported to Iraq.

B. Alternatively, CLIENT merits *sua sponte* reopening so that he may pursue relief under the Convention Against Torture.

In the alternative, CLIENT asks this court to exercise its authority to reopen his case *sua sponte* pursuant to 8 CFR § 1003.23(b)(1) because he merits the opportunity to file for relief under the Convention Against Torture, as explained above; he is eligible for relief under the Convention Against Torture; and he should be given the opportunity to file for this relief on account of country conditions changes that affect his eligibility for relief.

C. CLIENT is eligible for relief under the Convention Against Torture.

Because of the substantial likelihood that he will be tortured or killed if removed to Iraq, with the acquiescence of the Iraqi government, this Court should allow CLIENT to pursue his

claim under the CAT. The CAT is a multilateral treaty designed to prevent torture and to compensate victims of torture. Article 1 of the CAT defines torture as follows:

For purposes of this Convention, the term “torture” means any act by which *severe pain or suffering, whether physical or mental, is intentionally inflicted upon a person* for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person has committed or is suspected of having committed, or intimidating or coercing him or a third person, or *for any reason based on discrimination of any kind*, when such pain or suffering is inflicted by or at the instigation of or with consent or *acquiescence* of a public official or other person acting in an official capacity. It does not include pain or suffering arising from, inherent in, or incidental to lawful sanctions (emphasis added).

The Convention Against Torture forbids the return of “a person to another State where there are *substantial grounds* for believing that he would be in danger of being subjected to torture.”

Rodriguez-Molinero v. Lynch, 808 F.3d 1134, 1135 (7th Cir. 2015) (quoting the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, Senate Treaty Doc. No. 100–20, p. 20, 1465 U.N.T.S. 85, Art. 3(1)) (emphasis added).

This definition has been incorporated into United States law as 8 C.F.R. § 208.18(a). While pursuant to 8 C.F.R. § 208.16(c) deferral of removal under CAT is mandatory relief available where a respondent establishes “it is more likely than not” that he or she would be tortured in the proposed country of removal”, 8 C.F.R. § 208.16(c)(2); *see* 64 Fed. Reg. 8478, 8480 (Feb. 19, 1999), the Seventh Circuit has clarified in its recent decisions that this is not to be interpreted as a requirement for statistical percentage over fifty percent, rather the question is whether “on the basis of actually obtainable information ... there is, or is not, a substantial risk that a given alien will be tortured if removed from the United States.” *See Rodriguez-Molinero*, 808 F.3d at 1136; *see also Mendoza-Sanchez v. Lynch*, 808 F.3d 1182 (7th Cir. 2015).

1. CLIENT faces a likelihood of torture and death if returned to Iraq.

CLIENT faces likely torture in Iraq due to his conversion to Christianity and current practice of the Christian faith. If forced to return to Iraq, CLIENT would have to choose between practicing his faith and facing a substantial risk of torture or death. If asked to explain his tattoo, CLIENT would be faced with the choice of either denying his faith and lying about what the tattoo signifies or disclosing the tattoo's true meaning and facing harm. As the country conditions in Iraq above demonstrate, Christians are systematically targeted throughout Iraq, churches are being bombed and destroyed, and Christians are forced to convert or flee their homes or be killed by ISIS and other Islamic extremists. *See supra*, § III, Statement of Country Conditions. Indeed, several reports verify that ISIS is engaging in ethnic and religious cleansing in parts of Iraq where Christians have historically lived.

Additionally, individuals who have converted from Islam to Christianity are considered apostates who should be punished by death. Those who face harm on account of their conversion are not protected by the authorities; rather, they face persecution since conversion is a crime. *See supra*, § III, Statement of Country Conditions.

Beyond his faith, CLIENT faces a heightened risk if forced to return to Iraq because he has been residing in the United States for the past 20 years and would be identified as Americanized or Westernized. CLIENT's tattoo will make him stand out amongst others in Iraq, where tattoos are rare, frowned upon both culturally and religiously, and associated with the West. Joshua Partlow, *Operating Quietly, Tattoo Artists Make their Mark in Iraq*, WASHINGTON POST (July 25, 2006), attached as Ex. U. Additionally, given that CLIENT has lived in the United States for 20 years, it is likely the Islamic State may target him because of his actual sympathy with the United States.

Finally, CLIENT faces a likely risk of death given the overall instability and violence in Iraq. *See supra*, § III, Statement of Country Conditions. Although foreign governments have worked together to combat the Islamic State, the violence against civilians continues and Iraq does not have the infrastructure to support those fleeing violence. *Id.* If CLIENT lost contact with his family in Iraq more than a decade ago. Ex. B. If he were to return, he would have no one to live with and would most likely be displaced without the possibility of seeking refuge in another country. CLIENT faces almost certain displacement if removed to Iraq, suggesting he will have no ability to protect himself and may be targeted by the Islamic State on this basis alone.

Indeed, the U.N. High Commissioner for Refugees late last year concluded that it is terribly unsafe for any Iraqi nationals “who originate from areas of Iraq that are affected by military action, remain fragile and insecure after having been retaken from ISIS, or remain under control of ISIS”—that is, much of the country—to be forcibly returned to any part of Iraq. *UNHCR Position on Returns to Iraq*, UNHCR, Nov. 14, 2016), attached as Ex. V.

2. CLIENT would be tortured or killed with the acquiescence of the Iraqi government.

CLIENT is also able to establish that the harm he faces would be with the Iraqi government’s acquiescence. Acquiescence requires that “the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity.” 8 C.F.R. § 208.18(a)(7). Most circuits recognize that a government’s willful blindness is sufficient to establish government acquiescence. *See Suarez v. Holder*, 714 F.3d 241 (4th Cir. 2013); *Hakim v. Holder*, 628 F.3d 151 (5th Cir. 2010); *Mouawad v. Gonzales*, 479 F.3d 589 (8th Cir. 2007); *Silva-Rengifo v. Att’y Gen. of U.S.*, 473 F.3d 58 (3d Cir. 2007); *Cruz Funez v. Gonzales*, 406 F.3d 1187 (10th Cir.

2005); *Khouzam v. Ashcroft*, 361 F.3d 161 (2d Cir. 2004); *Zheng v. Ashcroft*, 332 F.3d 1186 (9th Cir. 2003); *Ali v. Reno*, 237 F.3d 591 (6th Cir. 2001). In *Zheng v. Ashcroft*, the Ninth Circuit stated, and stated, “pursuant to the willful blindness standard, government officials acquiesce to torture when they have actual knowledge of or turn a blind eye to torture.” 332 F.3d at 1194 (internal quotation and citation omitted). Moreover, as the Seventh Circuit recently stated in *Mendoza-Sanchez v. Lynch*, 808 F.3d at 1185, an applicant for protection against torture should not be barred from such protection because the government is *trying without success* to prevent the torture from taking place.

Here, despite the formation of a new Iraqi government following the 2003 U.S. invasion in Iraq, the government of Iraq remains unable to quell the constant, extreme violence within Iraq at the hands of Islamic extremists, including ISIS, and the Iraqi people have lost hope in the security forces to protect them. *See supra*, § III, Statement of Country Conditions. ISIS’s take-over of Mosul, in 2013, Iraq’s second largest city by ISIS reveals that Iraq’s security forces are outmatched against foes such as Al Qaeda, which is responsible for the majority of the killing in Iraq. *Id.* Despite more than ten years of war, al Qaeda remains stronger than ever as neither the security forces of Iraq nor the Iraqi government as a whole has been able to prevent further attacks. *Id.*

As discussed above, while ISIS and other Islamic extremists groups are responsible for the targeted killings of Christian families and churches, *see supra*, § III, Statement of Country Conditions, the Iraqi Security forces are breaching their legal responsibility to protect these civilians and religious minorities by ceding entirely towns that have historically been the cultural home for Christian in that region to ISIS rule. Moreover, militias backed by the Iraqi government itself carry out killings, operating with impunity. *Id.* The Iraqi government is unwilling to

protect its citizens and, in essence, acquiesces to their harm. And in the case of a Muslim who has converted to Christianity, the government's reluctance to protect an individual from harm will be even more pronounced given the general attitude towards converts and the fact that conversion itself is a crime. *See supra*, § III, Statement of Country Conditions.

V. RESPONDENT MERITS A STAY OF REMOVAL PENDING RESOLUTION OF HIS MOTION TO REOPEN BEFORE THIS COURT

Courts deciding whether a stay of removal must issue should generally weigh: (1) the likelihood of success on the merits; (2) the irreparable harm to the petitioner if a stay is not granted; (3) the potential harm to the government if a stay is granted; and (4) the public interest. *Nken v. Holder*, 129 S.Ct. 1749, 1761 (2009). Under *Nken*, injunctive relief in the immigration removal context requires a showing that a petitioner is “likely to succeed on the merits.” *Id.* at 1762 (2009). The *Nken* Court held that the first two prongs of the stay inquiry (likelihood of success and irreparable harm) are the “most critical.” *Id.* at 1761.

In this case, the four factors weigh in favor of the issuance of a stay for CLIENT. Because CLIENT's case meets the *Nken* test for injunctive relief, he urges this Court to grant an emergency stay of removal pending a decision on his motion to reopen.

A. CLIENT Has a Strong Likelihood of Success on the Merits of His Motion to Reopen Due to the Exceptional Circumstances of His Case as Well as His Eligibility for Relief from Removal.

For reasons discussed above, *supra*, CLIENT's case warrants reopening due to changed country conditions as well as *sua sponte* reopening due to the exceptional circumstances of his case. CLIENT fears returning to Iraq because he converted to Christianity and has been a practicing Christian for the past several years, and because terrorist organizations such as ISIS now torture and kill Christians. Based on these facts, CLIENT is eligible to apply for relief under

the Convention Against Torture pursuant to 8 C.F.R. § 208.16(c) and has a strong likelihood of being granted this relief.

B. Denial of CLIENT’s Motion for a Stay Pending Adjudication of His Motion to Reopen Would Cause Irreparable Harm to Him.

According to the Supreme Court, “[t]he authority to grant stays has historically been justified by the perceived need ‘to prevent irreparable injury to the parties or to the public’ pending review.” *Nken*, 129 S. Ct. at 1760. CLIENT submits that the facts of his case strongly support his argument that he would be irreparably injured were he to be “wrongfully removed . . . to a countr[y] where [he] is likely to face substantial harm” while his case is pending. *Id.* at 1762. The irreparable injury CLIENT would face in Iraq unmistakably exceeds “the burden of removal alone” and goes beyond a mere “possibility” of harm. *Id.* at 1761. Indeed, there can simply be no doubt on the facts that CLIENT faces a severe and unavoidable threat of grave harm—possibly death—if he is removed to Iraq. A summary of Iraqi country conditions highlights the magnitude of the danger. In a travel warning updated June 14, 2017, the State Department explained that Iraq is “very dangerous” and that ISIS is very active. Ex. W. ISIS is effectively the government in large portions of Iraq—it took control of Iraq’s second largest city, Mosul, in June 2014. *See supra*, § III, Statement of Country Conditions. ISIS has murdered or forced the religious conversion or flight of thousands of Christians. *Id.* Indeed, ISIS targets anyone who does not espouse its extremist Islamist ideology. *Id.*

C. The Harm in Granting CLIENT’s Motion to Reopen is Minimal, and Granting CLIENT’s Stay is in the Public Interest.

After assessing whether the applicant is likely to succeed on the merits and whether the applicant will suffer irreparable harm if the stay is not granted, the stay inquiry “calls for

assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party.” *Nken*, 129 S. Ct. at 1762.

The Supreme Court noted in *Nken* that the first two factors of the stay inquiry (likelihood of success and irreparable harm) are the “most critical”. *Id.* at 1761. While there is “always a public interest in the prompt execution of removal orders,” this interest is outweighed given that “of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.” *Id.* at 1762.

The public interest in efficient execution of removal orders cannot trump the critical inquiry into the irreparable harm CLIENT would suffer should this stay be denied. The Supreme Court noted circumstances where the “interest in prompt removal may be heightened” is the alien has “substantially prolonged his stay by abusing the processes provided to him.” *Id.* This does not apply to CLIENT as he seeks relief under the Convention Against Torture due to the likelihood of harm and torture that he faces in Iraq. In contrast to the irreparable injury—persecution, torture, potentially death—facing CLIENT, little harm will accrue to the government from a brief pause while the Court adjudicates CLIENT’s full motion.

Additionally, the public interest also strongly favors a stay, because the public benefits from a fair immigration system, which means an immigration system that does not send people to their potential death without giving them a chance to explain the danger they face and why it entitles them to immigration relief.

CONCLUSION

WHEREFORE, CLIENT urges this Honorable Court GRANT the motion to reopen proceedings in his case by exercising its authority under 8 CFR § 1003.23(b)(4)(i) “based on changed country conditions arising in the country of nationality or the country to which removal has been ordered” or in the alternative, CLIENT asks this court to exercise its authority to reopen his case *sua sponte* pursuant to 8 CFR § 1003.23(b)(1) to afford him an opportunity to apply for relief under the Convention Against Torture.

Additionally, CLIENT asks this Court to GRANT his Request for an Emergency Stay of Removal pending resolution of his Motion to Reopen.

Respectfully submitted,

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