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DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
BOARD OF IMMIGRATION APPEALS
ARLINGTON, VIRGINIA**

In the Matter of:)
)
)
NAME ,) File No.: AXXX-XXX-XXX
)
Respondent.)
)
In Removal Proceedings)
_____)

**MOTION TO INCREASE THE PAGE LIMIT
FOR RESPONDENT'S BRIEF ON APPEAL**

I. INTRODUCTION

Respondent, Mr. Name (“Mr. Name” or “Respondent”), hereby submits a motion to increase the page limit for his brief on appeal of the Immigration Judge’s (“IJ”) denial of his Motion to Rescind and Reopen (“MTRR”) his *in absentia* removal order that he is simultaneously filing with the Board of Immigration Appeals (“Board”).

Respondent’s underlying MTRR raised numerous issues and several alternative bases for reopening, including 1) changed country conditions in Guatemala and evidence of *prima facie* eligibility for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”); 2) exceptional circumstances (and equitable tolling of the time limit); 3) inadequate notice of the consequences of failing to appear; and 4) an alternative request for *sua sponte* reopening. In order to address the complex factual and procedural history and legal argument, Respondent filed a 59-page MTRR with the IJ, and numerous supporting exhibits.

The IJ, in denying the MTRR, made numerous errors in her decision, all of which Respondent needed to address on appeal. The IJ improperly concluded that Mr. Name had not demonstrated *prima facie* eligibility of asylum, withholding of removal, and protection under the CAT. In reaching this conclusion, the IJ applied improper legal standards, ignored evidence in the record, and engaged in speculation. Second, the IJ cited the wrong statutory standard for rescinding and reopening an *in absentia* order based on exceptional circumstances and lack of notice. Third, the IJ dismissed Mr. Name’ MTRR based on exceptional circumstances, solely declining to apply equitable tolling based on a finding Mr. Name was not diligent, despite clear evidence to the contrary. Fourth, the IJ failed to acknowledge or address any of Mr. Name’ MTRR arguments that he did not receive proper notice of the consequences of failing to appear. Fifth, the IJ summarily rejected Mr. Name’ request for *sua sponte* authority reopening, without evaluating the totality of the circumstances and without consideration of the evidence that

showed there were in fact exceptional circumstances in Mr. Name' case. The IJ also made other errors, all of which need to be addressed. As such, in order to address all of the issues, Respondent requests an increase in the 25-page limit for his brief on appeal.

II. REQUEST TO INCREASE THE PAGE LIMIT

Respondent requests an increase in the page limit for his brief due to the numerous issues on appeal. *See* Attachment 1 (Declaration of Michelle Mendez). The BIA Practice Manual Chapter 3, Sec. 3.3(c)(iii) states, “parties must limit the body of their briefs or motions to 25 pages, provided that such length can adequately dispose of the issues in the case.” The BIA Practice Manual also states that “If a party believes it cannot adequately dispose of the issues in the case within the page limit, the party may make a motion with the Board to increase the page limit.” BIA Practice Manual Chapter 3, Sec. 3.3(c)(iii). The BIA Practice Manual also indicates that “Font and type size must be easily readable. ‘Times New Roman 12 point’ font is preferred. Double-spaced text and single- spaced footnotes are also preferred.” BIA Practice Manual Chapter 3, Sec. 3.3(c)(vii).

In preparing this brief, undersigned counsel has identified multiple bases for appeal of the several different and distinct bases for reopening, and in order to adequately represent Mr. Name, must address all issues on appeal. *See* Att. 1 (Declaration of Michelle Mendez). While undersigned counsel could have manipulated the font type, font size, and spacing so that the brief was only 25 pages, counsel adhered to the BIA’s preferred font type, size, and spacing. *Id.* However, in preparing the brief and using the preferred formatting, undersigned counsel does not believe she can adequately and effectively represent Respondent if the brief is limited to only 25 pages. Accordingly, in light of the numerous issues and multiple bases for moving to reopen, Respondent requests an increase in the 25-page limit.

III. CONCLUSION

Respondent respectfully requests an increase in the 25-page limit for his brief on appeal.

Dated: July 30, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Michelle Mendez", written over a horizontal line.

Michelle N. Mendez
Pro Bono Counsel for the Respondent

DECLARATION OF MICHELLE MENDEZ

I, Michelle Mendez, hereby declare the following:

1. I am an attorney licensed to practice law by the State of Maryland. I am the Director of the Defending Vulnerable Populations Program of Catholic Legal Immigration Network, Inc. (CLINIC), a non-profit organization. My EOIR number is [REDACTED]. I am representing Mr. Name (“Mr. Name”) pro bono in his immigration matters. I make this declaration in support of Motion to Increase the Page Limit for Respondent’s Brief on Appeal.
2. In preparing this brief, undersigned counsel identified multiple bases on which to appeal, and in order to adequately represent Mr. Name, must address all issues on appeal. This appeal is of a denied Motion to Rescind and Reopen (“MTRR”) which raised four alternative bases for reopening, including 1) changed country conditions in Guatemala and evidence of *prima facie* eligibility for asylum, withholding of removal, and protection under the Convention Against Torture (“CAT”); 2) exceptional circumstances (and equitable tolling of the time limit); 3) inadequate notice of the consequences of failing to appear; and 4) an alternative request for *sua sponte* reopening. In denying the MTRR, the IJ made errors with respect to each of the separate grounds for reopening, all of which need to be addressed on appeal.
3. While I could have manipulated the font type, font size, and spacing so that the brief was only 25 pages, I adhered to the BIA’s preferred font type, size, and spacing.
4. In preparing the brief and using the preferred formatting, I do not believe I can adequately and effectively represent Respondent if the brief is limited to only 25 pages. The IJ, in denying the MTRR, made numerous errors in her decision that Respondent must address.
5. On behalf of Respondent, I am requesting an increase in the 25-page limit for his brief on appeal.

I declare under penalty of perjury that the foregoing statement is true to the best of my knowledge, information, and belief.

Dated: July 30, 2019

Respectfully submitted,



Michelle Mendez

Name

AXXX-XXX-XXX

CERTIFICATE OF SERVICE

On July 30, 2019, I, Michelle Mendez, caused to be served the within:

- Motion to Increase the Page Limit for Respondent's Brief on Appeal

On the opposing counsel, via

First Class Mail;

To the following party/parties and address(es):

Department of Homeland Security
U.S. Immigration and Customs Enforcement
Office of the Chief Counsel
Harlingen Sub-Office – Office of Chief Counsel (San Antonio)
1717 Zoy Street
Harlingen, TX 78552



Date: 7/30/2019 Signed: _____