



**National Immigration Litigation Alliance**  
*Immigrant justice through the courts*

## **Courts of Appeals Immigration-Specific Rules Governing Judicial Motions to Stay Removal**

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### **First Circuit**

- [Local Rule 18.0](#)
- Applies to immigration Petitions for Review (PFR) and appeals of immigration-related habeas petitions.
- If removal is scheduled, the Office of Immigration Litigation (OIL) must file notice of earliest removal date on the later of either one day after PFR/appeal is docketed or as soon as removal is scheduled.
- At that point, the litigant is on notice of deportation and may file a stay motion within 2 business days of receiving notice.
- When a first stay motion is *timely* filed (i.e., either with the PFR or within 2 business days of notice), the Clerk will automatically enter an order administratively staying removal for 10 business days, and OIL must respond by the later of either 2 business days after the litigant filed the stay motion or 10 business days prior to the earliest date of removal.
- In pro se cases, the deadline for filing a stay motion within 2 business days of notice of the removal date does not apply but a stay motion should be filed as expeditiously as possible.

### **Second Circuit**

- No *formal* rule; see [In the Matter of Immigration Petitions for Review](#)
- Formal and recognized assurance from OIL to the Second Circuit (described as the “forbearance policy”).
- Upon the filing of a PFR *and* stay motion, the government will refrain from removing the petitioner until the Court decides the stay motion or the mandate issues.
- OIL will *not* follow this policy in the “rare” instance in which the absence of jurisdiction is very clear (e.g., a PFR challenging the BIA’s denial of a stay) or, in exceptional circumstances, after providing notice to the Court.

### **Third Circuit**

- [Third Circuit Standing Order Regarding Immigration Cases](#)
- Provides that, upon filing of PFR *and* stay motion, Clerk will automatically administratively stay removal until stay motion is decided.
- Venue must be proper, order challenged must be “arguably final,” and court must have “authority to review the challenged order.”
- Remains in effect until Court decides stay motion or otherwise vacates administrative stay.

#### **Fourth Circuit**

- [Fourth Circuit Standing Order 19-01](#)
- Provides that, upon the filing of an initial stay motion, the Clerk will automatically stay removal for 14 days to allow OIL to respond.
- The automatic stay may be vacated or extended by order of the Court.

#### **Ninth Circuit**

- [Ninth Circuit General Orders 6.4\(c\)](#), *DeLeon v. INS*, 115 F.3d 643 (9th Cir. 1997)
- Provides that an order of removal is automatically, temporarily stayed upon either a request for stay of removal in a PFR *or* the filing of an initial stay motion.
- The temporary stay lasts until further order of the Court.
- If the initial stay motion does not address likelihood of success on the merits of the PFR or the irreparable harm caused by deportation, the petitioner may supplement the motion within 14 days from the filing of the initial motion. The Court generally does not issue orders directing the party to supplement the motion.
- OIL's response to a stay motion is due within 21 days from the date the administrative record is filed with the Court. OIL must file any dispositive motion at the same time.
- Petitioner may file a reply to OIL's response to a stay motion within 7 days from service of the response.
- If OIL does not oppose the stay motion or does not file a response to it, the temporary stay will continue during the pendency of the PFR absent further order from the Court.