Motion to Reopen an *In Absentia* Order

Example Packet

This resource is for asylum seekers who missed their U.S. immigration court hearings, received *in absentia* deportation orders, and now seek to reopen their cases.

Find a blank motion to fill out and learn how to submit the motion at: asaptogether.org/in-absentia

A Motion to Reopen an In Absentia Order packet includes:

1. Cover page.
2. If a fee is needed: a receipt for payment of the fee, or a fee waiver request.
3. Change of Address Form (Form EOIR-33) – this must be included even if you have not moved.
4. Motion to Reopen.
5. Evidence about why you could not go to your hearing.
6. Proposed order of the immigration judge.
7. Certificate of service.

Things to know:

- Your Motion to Reopen packet must be in English.
- Review your completed packet to make sure all information is accurate.
- Make sure to add your signature and date.
- The completed packet must be submitted both to the immigration court and the government lawyer (OPLA).
- Find more important information at asaptogether.org/in-absentia

This resource was prepared by expert attorneys at the Asylum Seeker Advocacy Project (ASAP). ASAP aims to provide factual information for asylum seekers. This information is not legal advice. To search for a lawyer, visit asaptogether.org/find-help

Note: This is the cover page.

Your Name: Write your full name here

Your Address: Write your address here

UNITED STATES DEPARTMENT OF JUSTICE

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

IMMIGRATION COURT

City and State: Write the city and state of your immigration court here

In the Matter(s) of:

Write your full name here
(Your Name)

A Write your A Number here
(Your A number)

Write your spouse or child's name here
(Name of any spouse or child included in your case)

A Write your child or spouse's A Number here
(A number)

Write your spouse or child's name here
(Name of any spouse or child included in your case)

A Write your child or spouse's A Number here
(A number)

Only include this part if you have a spouse or children included in your immigration court case

PRO SE

MOTION TO REOPEN & RESCIND AN *IN ABSENTIA* ORDER OF REMOVAL

AUTOMATIC STAY OF REMOVAL IN PLACE
PURSUANT TO INA § 240(b)(5)(C)

Removal Proceedings **Immigration Judge:** Write the name of your immigration judge here

IF A FEE IS NEEDED: ATTACH A FEE RECEIPT or A FEE WAIVER REQUEST.

IF NO FEE IS NEEDED: WRITE "NO FEE NEEDED" ON THE FIRST PAGE.

- Whether you need to pay a fee depends on your reason for missing the hearing.
- There is no fee if you missed your hearing because you did not receive notice of the hearing, or because you were in federal or state custody (for example: jail, prison, or detention center). In this case, write "NO FEE NEEDED" at the bottom of the cover page.
- If you could not go to your hearing due to "exceptional circumstances," you must pay the fee and include the receipt, or include a fee waiver request.
- Find more information about how much the fee is, how to pay it, and how to request a fee on our website: **asaptogether.org/in-absentia**

Note: A Change of Address Form is required even if your address has not changed. If your address has not changed, you can write the same address for both the former and current address sections. You can download the latest version of the form here: www.justice.gov/eoir/update-respondent-or-alien-information

U.S. Department of Justice

Executive Office for Immigration Review

Change of Address/Contact Information Form
Immigration Court

Instructions: To complete this form, fill out all blanks below, including proof of service, which certifies that you will provide a copy of this form to the Department of Homeland Security (DHS). After filling in the blanks and signing both the declaration and proof of service, you must submit the form electronically, in person, or by mail. If submitting electronically, file in Respondent Portal at https://respondentaccess.eoir.justice.gov. Attorneys and fully accredited representatives submitting this form electronically must file in Case Portal at https://portal.eoir.justice.gov. If submitting by mail, follow the mailing instructions on Page 2. You must submit a separate copy of this form for each individual who has a case pending in immigration court and whom the change of information affects.

You must file this form with the immigration court within five working days of the change to your contact information, or your receipt of a charging document (e.g., a Notice to Appear) with incorrect contact information. The immigration court will send all official correspondence (e.g., notices, decisions) to the address you provide. The immigration court will only make any change(s) to your contact information in EOIR's records upon receipt of this form; the immigration court will not change your contact information based on different information on pleadings, motions, or other communications with the court.

If you fail to appear at any hearing before an immigration judge when notice of that hearing or other official correspondence was served on you or sent to the address you provided, DHS may take you into custody. In addition, the immigration court may conduct your hearing in your absence and enter an order of removal, deportation, or exclusion against you. If the court enters such an order, you may be ineligible for certain forms of relief from removal under the Immigration and Nationality Act as follows:

- If you are in *removal* proceedings: You will be subject to an order of removal for a period of ten years after the date of entry of the final order. You may also become ineligible for voluntary departure, cancellation of removal, and adjustment of status or change of status.
- If you are in *deportation* proceedings: You will be subject to an order of deportation for a period of five years after the date of the entry of the final order. You may also become ineligible for voluntary departure, suspension of deportation or voluntary departure, and adjustment of status or change of status.
- If you are in *exclusion* proceedings: Your application for admission to the United States may be considered withdrawn.

Name – Last, First, Middle, Suffix (if applicable):	A-Number:
Write your name here (last name, first name, middled name)	Write your A Number here

My FORMER address and phone number were:	**My CURRENT address and phone number are:**
Number; Street; Apartment (if any) Write your old address here	Number; Street; Apartment (if any) Write your new address here
City, State, and ZIP code; Country (if other than U.S.) Write your old city, state, and ZIP code here	City, State, and ZIP code; Country (if other than U.S.) Write your new city, state, and ZIP code here
Phone Number (include country code if other than U.S.) Write your phone number here	Phone Number (include country code if other than U.S.) Write your phone number here
Email Address Write your email address here	Email Address Write your email address here

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that I am the person named above associated with the A-Number listed above, and that the information contained in this form is true and correct to the best of my knowledge.

SIGN HERE ➡ x Sign here
Signature

Write the date here
Date

PROOF OF SERVICE

I, Write your full name here (Name), provided a copy of this Change of Address Form on, Write the date here (date), to the to the Office of the Principal Legal Advisor for DHS Immigration and Customs Enforcement-ICE at:

Write the government lawyer's address here, and how you are going to send your document to them.

(Indicate if electronic/email service, or in-person or mail service (provide Number and Street, City, State, ZIP Code))

By signing, I agree to provide a copy of this Change of Address Form to the Office of the Principal Legal Advisor for DHS Immigration and Customs Enforcement-ICE at the location I selected above. I understand that I can provide DHS with a copy either electronically through the DHS eService portal (register at https://eserviceregistration.ice.gov), or by mail or personal delivery.

☐ No service needed. I am an ECAS-registered user who filed through the ECAS Case Portal.

SIGN HERE ➡ x Sign here
Signature

RESPONDENT'S *PRO SE* MOTION TO REOPEN & RESCIND AN *IN ABSENTIA* ORDER OF REMOVAL

My name is Write your full name here. I am the respondent in this case.

Pursuant to INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii), I respectfully request that the Immigration Judge reopen immigration proceedings and rescind the order of removal entered *in absentia*.

My failure to appear for the hearing on Write the date of the hearing you missed here was due to one or more of the following reason(s):

These are the 3 reasons that the courts allow for missing a hearing. Check the box or boxes that apply to you.

- ☐ I did not receive notice of the hearing.
- ☐ I was in federal or state custody (for example: jail, prison, or immigration detention), and the failure to appear was through no fault of my own.
- ☐ There were exceptional circumstances.

In support of this motion, I state as follows:

The immigration courts allow 3 reasons (explained below) for missing a hearing. You can include all the reasons that apply to your case. Explain in detail what happened and why it was not your fault that you missed your hearing.

1. **No notice.** You did not receive a notice of your hearing. You can explain whether the immigration court had your correct address at the time of the hearing and how you never received a notice. You can also explain if the immigration court suddenly moved your hearing to a new date or location without giving you notice.

2. **Detained.** You were in federal or state custody and it was not your fault that you missed the hearing. For example, you were detained in a jail, a prison, or an immigration detention center.

3. **Exceptional circumstances.** You had special circumstances that prevented you from going to the hearing. For example, you suffered an accident, an unexpected transportation failure, a serious illness, a crime, abuse, death of a close family member, severe weather, or another situation that stopped you from going. If you actually went to court but you were marked absent, you can explain that.

Find more information on ASAP's website: **asaptogether.org/in-absentia**

For these reasons, I respectfully ask the Judge to grant this motion so that I may pursue relief from removal, which includes, but is not limited to,

Write down the immigration status you wish to apply for (for example: asylum, withholding of removal, and protection under the Convention Against Torture (CAT)).

Pursuant to INA § 240(b)(5)(C), there is an automatic stay of removal following the filing of this motion to reopen until there is a decision on the motion and the adjudication of any properly filed administrative appeal.

Respectfully submitted,

Sign here

Your signature

Date: Write the date here

ATTACH ANY EVIDENCE.

- If possible, you should include evidence regarding why you could not go to your hearing.
- Write page numbers at the bottom of each page.
- Find more information on ASAP's website: **asaptogether.org/in-absentia**

United States Department of Justice

Executive Office for Immigration Review

Immigration Court

Write the city and state of your immigration court here

(city and state of court)

In the Matter of: Write your full name here Alien Number: Write your A Number here

Leave this part blank. The immigration court will fill it out.

ORDER OF THE IMMIGRATION JUDGE

Upon consideration of the Respondent's Motion to Reopen & Rescind an *In Absentia* Order of Removal, it is HEREBY ORDERED that the motion be □ **GRANTED** □ **DENIED** because:

□ DHS does not oppose the motion.
□ The respondent 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.
□ The motion is untimely per _____.
□ Other:

Deadlines:

□ The application(s) for relief must be filed by _____.
□ The respondent must comply with DHS biometrics instructions by _____.

_____ _____

Date Immigration Judge

Certificate of Service

This document was served by: [ ] Mail [ ] Personal Service
To: [ ] Alien [ ] Alien c/o Custodial Officer [ ] Alien's Atty/Rep [ ] DHS
Date: _____ By: Court Staff _____

Your Name: Write your full name here

Your A Number: Write your A Number here

CERTIFICATE OF SERVICE

On Write the date here, I, Write your full name here ,
(date) (your name)

served a copy of this Motion to Reopen & Rescind an *In Absentia* Order of Removal to:
the ICE Office of Chief Counsel (OPLA)

at the following address: Write the address of the government lawyer here. Find the addresses here: asaptogether.org/en/opla-contact
(address of the government attorney)

by Write how you are going to send a copy to the government lawyer. For example: online using ICE eService.
(method of service, for example: "mail" or "in-person delivery" or "ICE eService)

Sign here
(your signature)

Write the date here
(date)