**UNITED STATES COURT OF APPEALS**

**FOR THE EIGHTH CIRCUIT**

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| **John Smith**,  Petitioner,  v.  **Merrick B. Garland**,  U.S. Attorney General,  Respondent | **No. 22-1234**  Immigration File No.  A012-345-678  [Non-Detained/Removed]  Petition for Review  from the Decision of the  Board of Immigration Appeals |

**PETITIONER’S UNOPPOSED MOTION TO HOLD CASE IN ABEYANCE**

Petitioner, John Smith, through undersigned counsel, moves the Court to hold his pending petition for review in abeyance. Mr. Smith has a pending motion to reconsider his removal order pending before the BIA. *See* Exhibit A. The undersigned counsel has conferred with counsel for Respondent, Nelle Seymour, who does not oppose this motion.

Mr. Smith was granted deferral of removal under the Convention Against Torture by an Immigration Judge on March 19, 2021. The Department of Homeland Security appealed that decision, and, on December 3, 2021, the Board of Immigration Appeals (“BIA”) reversed the grant of deferral of removal and issued an administratively final order of removal against Mr. Smith. On January 3, 2022, after filing the instant petition for review, Mr. Smith timely filed a motion to reconsider at the BIA; that motion is still pending. Mr. Smith was removed from the United States to Mexico on January 26, 2022.

The BIA will likely issue its decision on the motion to reconsider prior to this Court’s resolution of the instant petition for review. A decision by the BIA granting reconsideration would result in the reversal of the administratively final order of removal and elimination of the agency decision that serves as the basis for this Court’s jurisdiction. 8 U.S.C. § 1252(a)(1); *Kucana v. Holder*, 558 U.S. 223 (2010) (finding denials of motions to reopen to be subject to judicial review). Alternatively, if the BIA denies reconsideration, 8 U.S.C. § 1252(b)(6) would require this Court to consolidate the instant petition with the subsequent petition for review of that denial, which Mr. Smith would likely file. In either event, holding briefing in abeyance while the BIA adjudicates this motion would serve the interests of judicial economy and conserve the resources of the parties, and allow the BIA the opportunity to review its own decision for error.

For the foregoing reasons, Petitioner requests that his unopposed motion to hold the case in abeyance be granted.

Dated: January 28, 2022 Respectfully submitted,

s/ John Bruning

John Bruning (MN 0399174)

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***Attorney for Petitioner***

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 28, 2022, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and will be served by the CM/ECF system.

Dated: January 28, 2022 s/ John Bruning

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**CERTIFICATE OF COMPLIANCE**

Pursuant to Fed. R. App. P. 32(g), I hereby certify that the foregoing has been prepared in a proportionally spaced typeface of 14-point or more, and contains 323 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

Pursuant to Eighth Cir. R. 28A(h), I certify that the foregoing Petitioner’s Opening Brief has been scanned for viruses and is virus-free.

Dated: January 28, 2022 s/ John Bruning

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