

# INDEX OF UNPUBLISHED DECISIONS OF THE BOARD OF IMMIGRATION APPEALS

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BY BEN WINOGRAD



2020 EDITION

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A PUBLICATION OF THE  
IMMIGRANT & REFUGEE APPELLATE CENTER, LLC

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## ABOUT THE AUTHOR

Ben Winograd is an attorney at the Immigrant & Refugee Appellate Center, LLC. He specializes in removal defense before the Board of Immigration Appeals and federal circuit courts. Ben received his J.D. *cum laude* from Georgetown Law in 2010, where he was an editor of the Georgetown Immigration Law Journal. He previously worked at the American Immigration Council. Ben received the 2017 Joseph Minsky Award from the American Immigration Lawyers Association for outstanding contributions made as a young lawyer in the field of immigration and nationality law.

## FREQUENTLY ASKED QUESTIONS

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## ABBREVIATIONS

BIA – Board of Immigration Appeals  
CBP – Customs and Border Protection  
CFR – Code of Federal Regulations  
CIMT – Crime Involving Moral Turpitude  
DHS – Department of Homeland Security  
EAD – Employment Authorization Document  
ICE – Immigration and Customs Enforcement  
IJ – Immigration Judge  
INA – Immigration and Nationality Act  
LPR – Lawful Permanent Resident  
NACARA – Nicaraguan Adjustment and Central American Relief Act  
NTA – Notice to Appear  
OIL – Office of Immigration Litigation  
SIJ – Special Immigrant Juvenile  
TPS – Temporary Protected Status  
USCIS – U.S. Citizenship and Immigration Service

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## I. GROUNDS OF REMOVABILITY

### Alienage at Time of Conviction

[Herman Dickens Ogoti](#), A099 235 155 (BIA June 10, 2019) (terminates proceedings under *Okpala v. Whitaker*, 908 F.3d 965 (5th Cir. 2018), because respondent was a naturalized citizen at the time of the conviction giving rise to the charge of removability) (*Adkins-Blanch*, Liebmann, Morris)

### Abandonment of LPR Status, Lack of Valid Documents—INA 212(a)(7)(A)(i)

#### Abandonment of LPR Status

[Chineye Helen Ananti](#), A061 340 835 (BIA July 11, 2019) (affirms finding that respondent did not abandon LPR status where she returned to the United States six times between 2010 and 2016, applied for visas for her children after completing her medical residency abroad, and her husband (an attorney) planned to take the New York bar) (Greer)

[Adrian Omaliki Sebastian Prass](#), A045 869 924 (BIA Feb. 6, 2019) (IJ improperly shifted burden to respondent to establish that he did not abandon LPR status) (*Kendall Clark*, Guendelsberger, Grant (dissenting))

[John Deng Wol Wol](#), A094 695 752 (BIA May 7, 2018) (vacates finding that pro se respondent conceded abandoning LPR status because he did not understand the significance of his admissions) (*Pauley*, Greer, Wendtland)

[Marie Anne Allsopp](#), A036 886 149 (BIA March 6, 2018) (reverses determination that respondent intended to abandon LPR status in light of numerous subsequent admissions in non-immigrant status, attempts to reacquire LPR status through congressman, and attempt to obtain labor certification) (Cole, Wendtland, Pauley (dissenting))

[Jin Soo Lee](#), A043 345 619 (BIA Dec. 19, 2017) (upholds finding that respondent did not abandon LPR status where IJ credited in-court testimony over purported statements in Form I-213) (Pauley)

[Amrollah Vaziri](#), A099 237 670 (BIA Oct. 27, 2017) (upholds finding that respondent did not abandon LPR status where intended to return to United States and was precluded from leaving Iran due to medical issues and family obligations) (*Greer*, *Adkins-Blanch*, Wendtland)

[Ka I Lei](#), A046 594 161 (BIA March 8, 2017) (reverses finding of abandonment following 33-month departure because DHS failed to demonstrate that respondent lacked continuous intent to return; facts of case warrant deviation from general principle that parent's intent to abandon LPR status may be imputed to unemancipated minor) (*Greer*, Wendtland, Cole (dissenting))—**KEY DECISION**

[Irene O. Atseyinku](#), A058 536 724 (BIA Oct. 25, 2016) (upholds finding that respondent abandoned LPR status based on lengthy trips abroad and insignificance of contacts in United States) (*Greer*, Pauley, Wendtland (dissenting))

[Imran Wahid](#), A047 700 704 (BIA July 1, 2015) (IJ incorrectly placed burden on respondent to demonstrate he did not intend to abandon LPR status; returning LPRs who present a valid, unexpired resident alien card are entitled to be admitted unless subject to independent ground of inadmissibility) (*Wendtland*, O'Herron, Pauley (dissenting))

[Motilall Persaud](#), A039 091 797 (BIA Feb. 6, 2015) (IJ erred in finding respondent abandoned LPR

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status by signing Form I-407 rather than considering totality of the circumstances) (Cole)

[Saleh Mohammed Otaifah](#), A055 775 988 (BIA Jan. 26, 2015) (DHS did not provide sufficient evidence to establish respondent's intent to abandon LPR while abroad from 2003 to 2010; remands to clarify date on which the respondent was released from prison in Yemen) (Guendelsberger)

[Irene O. Atseyinku](#), A058 536 724 (BIA Jan. 21, 2015) (IJ failed to consider letters indicating respondent applied for jobs in the United States while abroad and remained outside country longer than intended because of child custody dispute) (*Wendtland*, Pauley, Greer (dissenting))

[Abdul Hakeim Thabet Ahmed](#), A041 989 550 (BIA July 29, 2014) (DHS did not demonstrate that respondent intended to abandon LPR status by taking numerous lengthy trips to Yemen) (Pauley)

[Gerald Morisset Boisvert](#), A041 905 505 (BIA Jan. 29, 2014) (remands record to consider whether respondent intended to abandon LPR status by signing Form I-407) (*Wendtland*, Pauley, Cole)

[Xingchen Ye](#), A078 694 496 (BIA Nov. 8, 2013) (remands for further consideration of whether respondent abandoned LPR status where prior attorney committed ineffective assistance of counsel by failing to submit evidence of continued ties to United States) (*Mullane*, Malphrus, Mann)

[Sara Jasmin Ashtaryeh](#), A075 444 016 (BIA Oct. 31, 2013) (notes DHS withdrawal of appeal of IJ decision terminating proceedings after finding respondent's mother's decision to abandon LPR status could not be imputed) (Holmes)

[Oliver Garcia Guzman](#), A043 144 667 (BIA Aug. 20, 2013) (respondent abandoned LPR status and does not qualify for INA 211(b) waiver where he was continuously outside United States for nearly four years, continued to work in the Dominican Republic for two years after obtaining business degree, and has three children living in Dominican Republic) (Pauley)

[Ernesto Villazana-Banuelos](#), A037 837 474 (BIA June 25, 2013) (IJ erroneously placed burden on respondent to show he did not abandon LPR status and mistakenly concluded that respondent's signing of Form I-407 and admission with I-551 stamp constituted abandonment of LPR status) (*Donovan*, Pauley, *Wendtland*)—**KEY DECISION**

[Mohammad Hashemian Tabriz](#), A046 960 320 (BIA Mar. 17, 2011) (DHS bears burden of proving respondent abandoned LPR status) (*Grant*, Malphrus, Miller)

### **Lack of Valid Entry Document**

[Vicente Ortiz Orellana](#), A201 593 124 (BIA May 26, 2020) (INA 212(a)(7)(A)(i) only applicable to respondents who seek admission at a port of entry) (*Creppy*, Morris, Liebowitz)

[Callan Viannea Arends](#), A203 377 210 (BIA Dec. 12, 2019) (remands for further consideration of whether respondent who was a passenger in a car that mistakenly entered Mexico and immediately sought to reenter the United States was inadmissible as an arriving alien under section 212(a)(7)(A)(i)) (Rosen)

[William Suarez Marquez](#), A208 920 275 (BIA July 7, 2016) (orders IJ to consider whether respondent was entitled to admission as B1/B2 nonimmigrant after DHS cancelled visa and denied admission) (*Grant*, Adkins-Blanch, O'Leary)—**KEY DECISION**

[Raymond Abraham](#), A089 487 598 (BIA March 19, 2015) (upholds charge of inadmissibility because Form I-512L (Authorization for Parole of an Alien Into the United States) did not qualify as valid

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“entry document”) (*Wendtland*, Pauley, Greer (dissenting))

**Aggravated Felonies—INA 237(a)(2)(A)(iii)**

**INA 101(a)(43)(A)—murder, rape, sexual abuse of minor**

**Murder**

[Jorge Rodriguez Salazar](#), A034 287 693 (BIA Aug. 28, 2020) (voluntary manslaughter under Cal. Penal Code 192(a) does not qualify as murder because it does not require malice aforethought) (*Morris*, Liebowitz, Malphrus)

[C-S-B-](#), AXXX XXX 176 (BIA Nov. 19, 2019) (murder under Cal. Penal Code 187(a) not categorically an aggravated felony under INA 101(a)(43)(A) because it includes the unlawful killing of a fetus) (*Wilson*, Greer, Baird)

**Rape**

[Sixto Delgado](#), A075 423 408 (BIA Jan. 2, 2015) (sexual misconduct under Ky. Rev. Stat. 510.140 not an aggravated felony because it does not satisfy common law definition of rape) (*Adkins-Blanch*, Guendelsberger, Hoffman) (Note: the Board subsequently [denied](#) a motion to reconsider filed by DHS)

**Sexual Abuse of a Minor**

[Santiago Gonzalez Alonso](#), A077 898 496 (BIA Aug. 20, 2020) (conviction for committing a crime against nature under La. Stat. 14:89 not sexual abuse of a minor because the subsections under which the respondent could have been convicted did not require a victim under 16 or a special relationship of trust with the defendant) (*Pepper*, Donovan, O'Connor (concurring))

[Benjie Mark Valencia Carpio](#), A062 864 448 (BIA Nov. 26, 2019) (remands for further consideration of whether lewdness with a child under Nev. Rev. Stat. 201.230 qualifies as sexual abuse of a minor given that it applies to minors under 16 rather than under 14) (*Liebowitz*, Baird, Creppy)

[Renald Mesidor](#), A098 129 087 (BIA Aug. 8, 2019) (traveling to seduce/solicit/entice a child to commit a sex act under Fla. Stat. 847.0135(4)(a) not sexual abuse of a minor because it applies to victims aged 16 and older) (*Baird*, O'Connor, Donovan)

[C-A-G-](#), AXXX XXX 119 (BIA June 13, 2019) (indecenty with a child by exposure under Texas Penal Code Ann. 21.11(a)(2)(B) not sexual abuse of a minor because it applies to acts with 16-year-old victims) (*Liebowitz*, Creppy, Malphrus)

[Jesus Rodriguez-Danu](#), A095 538 919 (BIA Jan. 11, 2019) (traveling to meet a minor under Fla. Stat. 847.0135(4)(a) not sexual abuse of a minor because it applies to victims aged 16 and over) (*Adkins-Blanch*, Crossett, Guendelsberger)

[Evgeni Alekseevich Safanov](#), A098 317 070 (BIA Dec. 18, 2018) (lewdness involving a child under Utah Code Ann. 76-9-702.5 not sexual abuse of a minor because it applies to the mere exposure of one's buttocks in the presence of a child and defendants need not act with the intent to arouse or gratify anyone's sexual desire) (Crossett)

[Anish Dave](#), A038 166 579 (BIA Nov. 29, 2018) (aggravated criminal sexual abuse under 720 Ill. Comp. Stat. Ann. 5/12-16(d) no longer sexual abuse of a minor under *Esquivel-Quintana v. Sessions*,

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137 S. Ct. 1562 (2017)) (*Wendtland*, Cole, Greer (dissenting))

[Seyi Muviwa Adeeko](#), A204 401 058 (BIA Aug. 14, 2018) (online solicitation of a minor under Tex. Penal Code 33.021 is not aggravated felony sexual abuse of a minor because it does not require the minor to be under 16 years of age) (*Geller*, Creppy, Liebowitz)

[Jose Ramiro Figueroa Rivera](#), A078 966 986 (BIA Aug. 1, 2018) (indecentcy with a child under Texas Penal Code section 21.11(a)(1) is not aggravated felony sexual abuse of a minor because it applies to minors who are 16 years of age) (*Hunsucker*, Liebowitz, Malphrus)

[Jesus M. Nieves](#), A097 246 059 (BIA May 3, 2018) (lewdness involving a child under Utah Code Ann. 76-9-702.5 not sexual abuse of a minor because it does not require an intent to arouse or gratify the sexual desire of any person) (*Mullane*, Hunsucker, Malphrus)

[Miguel Angel Peralta-Colin](#), A092 482 648 (BIA April 16, 2018) (indecentcy with a child by contact under Tex. Penal Code 21.11(a)(1) not sexual abuse of a minor because victim need not be under 16 and statute does not require special relationship of trust with perpetrator) (*Guendelsberger*)

[C-M-O-G-](#), AXXX XXX 275 (BIA July 31, 2017) (indecentcy with a child under Tex. Penal Code 21.11(a)(1) not sexual abuse of a minor under *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017) because it criminalizes sexual contact with 16-year-old victims) (*Pauley*, *Wendtland*, O'Connor)—**KEY DECISION**

[J-M-C-M-](#), AXXX XXX 706 (BIA July 21, 2017) (holds that Fifth Circuit test for determining whether offense qualifies as sexual abuse of a minor effectively abrogated by *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017)) (*Greer*)

[W-P-M-](#), AXXX XXX 160 (BIA July 18, 2017) (assault with intent to commit criminal sexual conduct under Mich. Comp. Laws. 750.520g(1) not sexual abuse of a minor because age of the victim is not element of offense) (*Mullane*, Malphrus, Liebowitz)

[Lusca Petitdor](#), A024 667 417 (BIA April 24, 2017) (aggravated child abuse under Fla. Stat. 827.03 not sexual abuse of a minor because each subsection applies to conduct that is not sexual in nature) (*Wendtland*, Greer, Pauley)

[Sixto Delgado](#), A075 423 408 (BIA March 27, 2017) (sexual misconduct under Kent. Rev. Stat. 510.140 was not aggravated felony sexual abuse of a minor because the statute could be used to punish sexual misconduct with adults) (*Pauley*, Mullane, Malphrus)

[Deivis Rene Aguilar](#), A055 815 373 (BIA Jan. 30, 2017) (D.C. Code 22-3010.01(a) not categorically sexual abuse of a minor because it encompasses sexual conduct between 18-year-old and 17-year-old) (*Pauley*, Guendelsberger, Malphrus)

[Victor Manuel Lopez-Lopez](#), A042 916 662 (Dec. 21, 2016) (third degree sexual offense under Md. Code Ann., Crim. Law 3-307(a)(3), not sexual abuse of a minor in light of *Larios-Reyes v. Lynch*, 843 F.3d 146 (4th Cir. 2016)) (*Pauley*, Guendelsberger, Geller)

[W-K-H-](#), AXXX XXX 710 (BIA Nov. 22, 2016) (online solicitation under subsection (C) and (E) of Va. Code 18.2-374.3 not sexual abuse of a minor because statute applies to solicitation of adults posing as minors) (*Pauley*, Creppy, Greer)—**KEY DECISION**

[Jonathan Jemenez Nuezca](#), A087 714 293 (BIA Oct. 31, 2016) (sexual assault in third degree under Haw. Rev. Stat. 707-732(1)(b) not sexual abuse of a minor because it criminalizes touching through

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the clothing rather than skin-to-skin contact) (Pauley)

[Jonathan Enrique Silva](#), A036 404 266 (BIA July 14, 2015) (orders further analysis of whether unlawful contact with a minor under 18 Pa. Cons. Stat 6318(a)(4) qualifies as sexual abuse of a minor and whether statute is divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (Grant)

[Pedro Adalberto Portillo Portillo](#), A094 474 552 (BIA Jan. 30, 2015) (DHS concedes that sexual battery under N.C. Gen. Stat. 14-27.5A is not sexual abuse of a minor) (*Malphrus*, Mann Mullane)

[J-E-C-](#), AXXX XXX 940 (BIA Aug. 21, 2014) (attempted third degree child molestation in violation of Wash. Rev. Code 9A.44.089(1) not “sexual abuse of a minor” under *Estrada-Espinoza v. Mukasey*, 546 F.3d 114 (9th Cir. 2008) (en banc)) (*Pauley*, Greer, Wendtland)

[Lorenzo Martinez-Delgado](#), A074 103 780 (BIA Mar. 11, 2014) (third degree sexual assault under Wis. Stat. 939.2 not a categorical aggravated felony relating to sexual abuse of a minor) (*Pauley*, Malphrus, Guendelsberger)—**KEY DECISION**

[Salvador Espinoza Gonzalez](#), A021 576 036 (BIA Dec. 13, 2013) (Arizona sexual abuse not categorical aggravated felony; modified categorical approach cannot be employed under *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (*Holmes*)

**INA 101(a)(43)(B)—trafficking in controlled substances**

**No Federally Controlled Substance Required**

[Letzer Mauricio Salguero Paiz](#), A047 829 855 (BIA Sept. 3, 2019) (convictions involving methamphetamine under California Health & Safety Code 11378 and 11379(a) not an aggravated felony under *Lorenzo v. Whitaker*, 752 F. App’x 482 (9th Cir. 2019)) (*Cole*, Wendtland, Greer (dissenting))

[Devon Adam Mullings-Reeves](#), A044 860 313 (BIA Aug. 30, 2019) (conspiracy to sale of narcotics under Conn. Gen. Stat. 21a-277(a) not an aggravated felony because Connecticut controlled substance schedules includes drugs not included in federal schedules and identity of substance not an element of the offense) (Guendelsberger)

[Aristotle Jake Paggabao Albano](#), A096 748 125 (BIA Aug. 23, 2018) (possession of narcotic drugs for sale under Ariz. Rev. Stat. 13-3408(A)(2) not an aggravated felony because state schedule includes several substances not on federal schedule and the statute is not divisible) (*Crossett*, Cole, Wendtland)

[J-M-H-](#), AXXX XXX 997 (BIA March 14, 2018) (possession with intent to deliver cocaine under Iowa Code Ann. 124.401(1)(c)(2)(b) not an aggravated felony because it applies to simulated or imitation cocaine) (*Cole*, Greer, Crossett)—**KEY DECISION**

[Ariel Jonathan Diaz Vargas](#), A044 480 297 (BIA Sept. 29, 2017) (criminal sale of controlled substance in the fifth degree under N.Y.P.L 220.31 not an aggravated felony drug trafficking crime under *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)) (Guendelsberger)

[Bertha A. Lopez-Tovar](#), A071 904 519 (BIA Dec. 12, 2016) (attempted possession of dangerous drug for sale under Ariz. Rev. Stat. 13-3407 not an aggravated felony because Arizona’s drug schedule is broader than federal schedule and jurors not required to make finding of fact regarding specific substance at issue) (*Pauley*, Guendelsberger, Geller)—**KEY DECISION**



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[Gurvinder Kaur](#), A201 143 721 (BIA May 28, 2015) (conspiracy to transfer controlled substance (ephedrine) under Miss. Code Ann. 41-29-139 not an aggravated felony because federal law treats ephedrine as a “listed chemical” rather than a controlled substance and statute contains no requirement that defendants possess ephedrine with intent or knowledge that it will be used to manufacture a federally controlled substance) (*Wendtland*, Cole, Pauley)—**KEY DECISION**

[Gurpreet Singh](#), A060 605 541 (BIA Dec. 12, 2014) (remands for consideration of evidence that respondent pleaded guilty to the delivery of an unidentified counterfeit substance when convicted of conspiracy to possess with intent to distribute a counterfeit substance in violation of 18 Pa. Stat. 903(a)(1) and possession with intent to distribute a counterfeit substance in violation of 35 Pa. Stat. 780-113(a)(3)) (*Mullane*, Mann, Malphrus)

### **No Trading or Dealing Required**

[S-P-R-H](#), AXXX XXX 572 (BIA Aug. 17, 2020) (trafficking in methamphetamine under Cal. Health and Safety Code 11379 not an aggravated felony because it applies to solicitation offenses) (*Goodwin*, Pepper, Donovan)

[J-L](#), AXXX XXX 280 (BIA June 9, 2020) (delivery of cocaine under Fla. Stat. 893.13(1)(a)(1) not an aggravated felony under *Gordon v. U.S. Att’y Gen.*, 861 F.3d 1314, 1319 (11th Cir. 2017)) (*Liebowitz*, Gemoets, Creppy)

[L-M-P-F](#), AXXX XXX 027 (BIA May 22, 2020) (delivery of heroin under Or. Rev. Stat. 475.850 not an aggravated felony because it does not involve a commercial element) (*Morris*, Creppy, Gemoets)

[G-J-T](#), AXXX XXX 612 (BIA Nov. 14, 2019) (dealing in cocaine and attempting to export cocaine under sections 8A and 13(5) of the Jamaican Dangerous Drugs Act are not categorically aggravated felonies) (*Greer*, Wilson, Rosen)

[Jean Manoly Joseph](#), A044 598 839 (BIA March 7, 2019) (possession of more than 50 pounds of marijuana under Texas Health & Safety Code 481.121 not an aggravated felony because it does not require distribution and could be punished as a misdemeanor under federal law) (*Adkins-Blanch*, Mann, Kelly)

[J-G-R](#), AXXX XXX 742 (BIA June 14, 2019) (manufacturing/delivering a controlled substance under Texas Health & Safety Code 481.112(c) not an aggravated felony drug trafficking crime) (*Wendtland*, Greer, Rosen)

[Cristian Escobar](#), A096 629 697 (BIA May 7, 2019) (offering to transport cocaine under Cal. Health & Safety Code 11352(a) not an aggravated felony because solicitation offenses are not punishable under the Controlled Substances Act) (*Donovan*, Wendtland, Rosen)

[Pui Sun Ho](#), A044 190 476 (BIA April 9, 2019) (reopens and terminates proceedings sua sponte in light of intervening decision rendering conviction for delivery of cocaine under Ore. Rev. Stat. 475.880 no longer an aggravated felony) (*Guendelsberger*, Adkins-Blanch, Kelly)

[H-A-M-C](#), AXXX XXX 033 (BIA March 11, 2019) (trafficking between 4 grams and 30 kilograms in heroin, opium, or a derivative under Fla. Stat. 893.135(1)(c)1 not an aggravated felony under *Cintron v. U.S. Att’y Gen.*, 882 F.3d 1380 (11th Cir. 2018)) (Donovan)

[K-R-G](#), AXXX XXX 380 (BIA Feb. 7, 2019) (possession of marijuana under Texas Health and Safety Code 481.121(b)(5) not an aggravated felony under *Arce-Vences v. Mukasey*, 512 F.3d 167 (5th Cir.



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2007)) (*Kendall Clark*, Guendelsberger, Grant)

[J-A-M-](#), XXXX XXX 385 (BIA Jan. 31, 2019) (possession with intent to deliver/manufacture/deliver a controlled substance under Tex. Health and Safety Code 481.112(d) not an aggravated felony because “delivering” includes offering to sell and does not require an actual, constructive, or attempted transfer of a controlled substance) (*Adkins-Blanch*, Kelly, Mullane)

[Momodu Lamine Bah](#), A094 647 221 (BIA Jan. 31, 2019) (sale of a controlled substance under N.H. Rev. Stat. 318-8:26 not an aggravated felony because it applies to gifting or offering a controlled substance) (*Adkins-Blanch*, Donovan, Kelly)

[A-A-A-](#), XXXX XXX 727 (BIA Jan. 4, 2019) (third degree controlled substance offense under Minn. Stat. 152.023, subd.1(1) not an aggravated felony because it applies to offers to sell or give away substance and defendant need not be in actual possession of the substance) (*Kendall Clark*, Adkins-Blanch, Kelly)

[Filiberto Rosales Gonzalez](#), A041 276 712 (BIA Aug. 14, 2017) (possession of cocaine with intent to distribute under 63 Okla. Stat. 2-401-2-420 not an aggravated felony because it requires neither unlawful trading or dealing nor knowledge of illicit nature of substance) (*Pauley*, Kendall Clark, Guendelsberger)—**KEY DECISION**

[Moses Adams Brewster](#), A024 023 175 (BIA June 27, 2017) (finds possession of controlled substance with intent to distribute within 1,000 feet of school property under N.J.S.A. 2C:35-7 not a drug trafficking crime, citing *Chang-Cruz v. Att’y Gen. of U.S.*, 659 F. App’x 114 (3d Cir. Aug. 24, 2016) (*Pauley*, O’Connor, Greer)

[Semsair Paul](#), A098 508 518 (BIA May 30, 2017) (maintaining common nuisance under Ind. Code 35-48-4-13(b)(1) not aggravated felony because statute applies to simple possession of marijuana in a vehicle and does not require intent) (*Pauley*, Malphrus (concurring), Mullane (dissenting))

[German Gallo-Orozco](#), A091 922 980 (BIA April 28, 2017) (sale or transport of controlled substance under Cal. Health & Safety Code 11352(a) not an aggravated felony because it criminalizes the mere solicitation of, offer to sell, or importation of a controlled substance from another state) (*Guendelsberger*, Kendall Clark, Liebowitz)

[Devon Christie](#), A042 259 741 (BIA April 26, 2017) (possession of cocaine with intent to manufacture or deliver under Fla. Stat. 893.13 not an aggravated felony illicit trafficking offense because neither offense requires unlawful trading or dealing) (*Pauley*, Mann, Kelly)—**KEY DECISION**

[C-E-L-](#), XXXX XXX 304 (BIA Jan. 12, 2017) (possession of a controlled dangerous substance with intent to distribute within 1,000 feet of school property under NJSA 2C:35-7 not an aggravated felony because statute encompasses dispensing in addition to distribution) (*Pauley*, Greer, Mullane)

[V-M-B-B-](#), XXXX XXX 723 (BIA March 27, 2015) (trafficking in cocaine under N.C.G.S. 90-95(h)(3) is not an aggravated felony and DHS did not demonstrate that statute was divisible for purposes of the modified categorical approach) (*Greer*, Guendelsberger, Pauley)—**KEY DECISION**

[M-B-](#), XXXX XXX 672 (BIA Sept. 25, 2014) (possession of cocaine with intent to sell or deliver under Fla. Stat. 893.13(1)(a)(1) not an aggravated felony under the illicit trafficking clause because the statute does not require a completed commercial transaction) (*Pauley*, Donovan, Greer)—**KEY DECISION**

[Luis Alberto Rivas-Camader](#), A040 111 602 (BIA Feb. 7, 2014) (Fla. Stat. 893.135(1)(c)(1)(c) not an

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aggravated felony because state law defines “trafficking” to encompass simple possession and does not proscribe conduct that is a felony under federal drug laws) (*Pauley*, Greer, Guendelsberger)—**KEY DECISION**

[Juan Quiroga-Briones](#), A028 323 575 (BIA Dec. 3, 2013) (Texas Health and Safety Code 481.112(d) not categorical drug trafficking aggravated felony) (*Pauley*)

[Edgar Castruita-Almaraz](#), A043 779 581 (BIA Jan. 18, 2012) (reopens proceedings sua sponte upon finding conviction for possession of controlled substance not a drug trafficking aggravated felony under *Lopez v. Gonzales*, 549 U.S. 47 (2006)) (*Miller*)

### **Small Amount of Marijuana for No Remuneration**

[Tadesse Negatu Shiferaw](#), A028 205 485 (BIA Aug. 7, 2020) (possessing marijuana with intent to deliver or manufacture under 35 Pa. Cons. Stat. Ann. 780-113(a)(30) not an aggravated felony because it need not involve a commercial transaction and covers distribution of a small amount of marijuana for no remuneration) (*Greer*, Goodwin, Donovan)

[J-M-G-S-](#), AXXX XXX 843 (BIA Feb. 27, 2020) (possession with intent to deliver a controlled substance in violation of 35 Pa. Cons. Stat. 780-113(a)(30) not an aggravated felony because it could be applied to the distribution of a small amount of marijuana) (*Hunsucker*, Malphrus, Gemoets)

[Juan Vega](#), A090 280 576 (BIA July 15, 2019) (possession of marijuana with the intent to deliver under 35 Pa. Cons. Stat. 780-113(a)(30) not an aggravated felony because the statute is indivisible as to the quantity of marijuana involved) (*Malphrus*, Creppy, Liebowitz)

[S-L-B-](#), AXXX XXX 398 (BIA May 10, 2019) (possession with intent to deliver under Del. Code Ann. tit. 16 § 4752 not an aggravated felony because it does not require consideration as part of the transfer of the controlled substance and the offense has been prosecuted when a small amount of marijuana is involved) (*Malphrus*, Creppy, Mullane)

[Linton Wayne Watkins](#), A203 305 377 (BIA Nov. 8, 2018) (possession of marijuana with intent to manufacture or deliver under 35 Pa. Cons. Stat. 780-113(a)(30) not an aggravated felony because the statute is overbroad and indivisible as to the quantity involved) (*Greer*)

[J-F-B-](#), AXX XXX 977 (BIA Sept. 13, 2018) (possession of marijuana with intent to distribute under Md. Code Ann., Crim. Law 5-602 is not an aggravated felony) (*Wendtland*, Greer, Crossett)

[Al S. Watkins](#), A047 928 924 (BIA June 9, 2017) (reopens proceedings following submission of unpublished decision finding 35 Pa. Cons. Stat. 78-1 13(a)(30) not a drug trafficking crime) (*Guendelsberger*)

[Richard Ricardo Stewart](#), A047 169 818 (BIA June 30, 2016) (DHS concedes that possession of marijuana with intent to deliver under 35 Pa. Cons. Stat. 780-113(a)(30) is not an aggravated felony under *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013)) (*Guendelsberger*)

[Francisco Rodriguez-Trinidad](#), A044 892 640 (BIA Feb. 24, 2016) (possession of marijuana with intent to distribute under 35 Pa. Cons. Stat. 780-113(a)(30) is not an aggravated felony despite existence of separate statute specifically criminalizing distribution of a small amount of marijuana for no remuneration) (*Pauley*, Greer, Malphrus)—**KEY DECISION** (Note: the BIA subsequently [denied](#) a DHS motion to reconsider)

[Angel Luna Aguirre](#), A091 802 632 (BIA July 7, 2015) (possession of marijuana with intent to

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manufacture, sell, or deliver under N.C.G.S. 90-95(a)(1) is not an aggravated felony) (*Pauley, Greer, Geller*)—**KEY DECISION**

[Miguel Garcia Olvera](#), A091 983 344 (BIA March 25, 2015) (possession of marijuana with intent to manufacture, sell, or deliver under N.C.G.S. 90-95(a)(1) categorically not an aggravated felony because it criminalizes the transfer of as little as 5 grams of marijuana for no remuneration and statute is not divisible) (*Pauley, Greer, Geller*)—**KEY DECISION**

[Dale Anderson Telesford](#), A079 020 706 (BIA May 27, 2014) (delivery of marijuana under Iowa Code 124.401(1)(d) not a drug trafficking aggravated felony) (Wendtland)

[Patrick Uriah Thaxter](#), A078 494 561 (BIA May 2, 2014) (possession with intent to deliver marijuana under 35 Pa. Stat. Ann 780-113(a)(30) not a drug trafficking aggravated felony because it could be used to prosecute the distribution of a small amount of marijuana for no remuneration) (*Pauley, Greer, Guendelsberger*)

[Hoai Ich Pham](#), A043 007 964 (BIA Mar. 11, 2014) (remands for further consideration of whether delivery of tetrahydrocannabinols (i.e. marijuana) under Wis. Stat. 961.41(1)(h)1 is aggravated felony; cites *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), for proposition that “the actual language of the offense for which the respondent was convicted must indicate that the offense involved either remuneration or more than a small amount of marijuana.”) (Manuel)

[Jorge Alberto Contreras](#), A044 176 076 (BIA Jan. 14, 2014) (cites *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013), for proposition that “if an alien’s conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration or more than a small amount of marijuana, it is not an aggravated felony under the Act”) (Guendelsberger)

[Calfus Wentworth Drummond](#), A075 443 280 (BIA Nov. 22, 2013) (possession of marijuana with intent to sell under Fla. Stat. 893.13(1)(a)(2) not categorical drug trafficking aggravated felony under *Donawa v. U.S. Attorney General*, 735 F.3d 1275 (Nov. 7, 2013); respondent eligible to apply for cancellation) (Guendelsberger)—**KEY DECISION**

[Sergio Gonzalez-Manjarrez](#), A093 108 092 (BIA May 22, 2013) (unlawful possession of a controlled dangerous substance with intent to distribute under 63 Okl. St. Ann. 2-401 not drug trafficking aggravated felony) (Pauley)

### **Miscellaneous**

[Jan Wladyslaw Matusiak](#), A093 374 939 (BIA May 18, 2020) (distributing, dispensing or possessing a controlled dangerous substance or controlled substance analog within 1,000 feet of school property or a bus under NJSA § 2C:35-7 not an aggravated felony under *Rosa v. Att’y Gen.*, 950 F.3d 67 (3d Cir. 2020)) (*Wilson, Greer, Goodwin*)

[Servando Alonso Flores](#), A048 137 953 (BIA Dec. 19, 2018) (possession with intent to deliver methamphetamine under Wash. Rev. Code 69.50.401(2)(b) not an aggravated felony under *United States v. Valdivia-Flores*, 876 F.3d 1201 (9th Cir. 2017)) (Morris)

[Mario Ponce-Zacarias](#), A093 205 719 (BIA Sept. 16, 2016) (conviction under Ca. Health and Safety Code 11379(a) not an aggravated felony because complaint only recited language of statute, respondent did not plead guilty “as charged,” and plea was entered pursuant to *People v. West*, 477 P.2d 409 (1970)) (Pauley)

[Bryan Sanchez-Vazquez](#), A205 213 774 (BIA Aug. 30, 2013) (maintaining place for controlled

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substances under N.C.G.S. 90-108(a)(7) not drug trafficking aggravated felony because defendants may be convicted for acting knowingly but not intentionally) (Mullane)—**KEY DECISION**

### **INA 101(a)(43)(C)—trafficking in firearms**

[H-A-T-M-](#), AXXX XXX 332 (BIA Dec. 6, 2019) (criminal sale of a firearm under N.Y.P.L. 265.11(1) not an aggravated felony under INA 101(a)(43)(C) because it applies to loaded antique firearms) (*Noferi*, Greer, Rosen)

[Eric Omari Thorpe](#), A047 924 686 (BIA Sept. 29, 2017) (carrying a weapon in a motor vehicle under Conn. Gen. Stat. 29-38 not an aggravated felony relating to trafficking in firearms) (*Kelly*, Greer, Kendall Clark)

### **INA 101(a)(43)(D)—money laundering**

[Yackie Diaz](#), A042 891 214 (BIA April 26, 2019) (finds amount of funds laundered was less than \$10,000 in light of order retroactively issued by state court following conviction and despite assertion in complaint that respondent laundered \$28,000) (*Mann*, Kelly, Liebmann)

[M-A-F-](#), AXXX XXX 925 (BIA March 26, 2019) (attempted money laundering may only qualify as an aggravated felony under INA 101(a)(43)(U) and not under INA 101(a)(43)(D)) (Malphrus)

[Arizmendy Ramirez](#), A097 243 468 (BIA June 18, 2018) (first degree money laundering under N.Y.P.L. 470.20(1) is not an aggravated felony because state drug schedule is broader than federal drug schedule) (*Mullane*, Malphrus, Hunsucker)

[Monica Lemus](#), A089 392 828 (BIA March 9, 2017) (IJ improperly equated amount of forfeiture with amount of funds involved in the laundering) (*Pauley*, Guendelsberger, Malphrus)

### **INA 101(a)(43)(E)—firearms and explosives offenses**

[Jens Peter Englund](#), A200 360 767 (BIA Feb. 27, 2020) (possession of a firearm under 18 Pa. Const. Stat. 6105(a)(1) not an aggravated felony because state definition encompasses some antique firearms) (*Wilson*, Greer, Wendtland)

[Shanta Dargbeh](#), A078 778 371 (BIA Sept. 11, 2019) (arson under N.J. Stat. 2C:17-1(b)(1) and (2) not an aggravated felony under INA 101(a)(43)(E) because it does not require the use of fire in the commission of a felony) (*Wendtland*, Baird, O'Connor (concurring))

[Orlando Espinosa-Alvarez](#), A077 618 576 (BIA Oct. 30, 2018) (theft by receiving stolen property under Geo. Code Ann. 16-8-7 not an aggravated felony relating to unlawful possession of a firearm because it applies to all stolen property) (*Greer*, Donovan, Wendtland)

[Juan Ramon Belliard Tejada](#), A044 824 573 (BIA Dec. 13, 2012) (unlawful possession of firearm in violation of 18 Pa. Cons. Stat. 6105(a)(1) an aggravated felony despite having no nexus to interstate commerce, per *Matter of Vasquez-Muniz*, 23 I&N Dec. 207 (BIA 2002)) (Pauley)

### **INA 101(a)(43)(F)—crimes of violence**

[G-L-R-R-](#), AXXX XXX 519 (BIA March 27, 2018) (Maryland common law battery not a crime of violence under *United States v. Royal*, 731 F.3d 333 (4th Cir. 2013)) (*Mullane*, Malphrus, Creppy)

[Sindy Romero](#), A072 244 653 (BIA Jan. 10, 2018) (robbery under Cal. Penal Code 211 not a crime of

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violence because statute can be violated by accidental conduct) (*Malphrus*, Cole, Liebowitz)

[Armando Fernandes-Lopes](#), A036 784 465 (BIA Nov. 30, 2017) (assault under Mass. Gen. Laws Ann. ch. 265, § 13D not a crime of violence) (Grant)

[R-D-R-P-](#), AXXX XXX 486 (BIA Nov. 13, 2017) (assault on a child under age 12 under N.C. Gen. Stat. 14-33(b)(3) not a crime of violence because it only requires mental state of recklessness and does not require violent force) (*Adkins-Blanch*, Kelly, Pauley)

[J-G-R-I-](#), AXXX XXX 711 (BIA Oct. 25, 2017) (criminal domestic violence under South Carolina Code 16-25-20(A) is not a crime of violence) (*O'Connor*, Wendtland, Pauley (dissenting))

[J-S-R-](#), AXXX XXX 154 (BIA Oct. 18, 2017) (battery domestic violence under Nev. Rev. Stat. 200.485.1(a) not a crime of violence) (*Pauley*, Greer, Wendtland)

[Axel Kotowski](#), A017 799 451 (BIA July 27, 2017) (arson under Fla. Stat. 806.01(2) not a crime of violence because it prohibits causing of fire or explosion against one's own property) (*Kelly*, Grant, Pauley)

[A-A-](#), AXXX XXX 407 (BIA May 12, 2017) (affirms IJ decision finding simple assault under N.D. Cent. Code 12.1-17-01 not a crime of violence) (*Pauley*, Kendall Clark, Guendelsberger)

[F-S-](#), AXXX XXX 285 (BIA April 28, 2017) (simple assault domestic violence under N.D. Cent. Code 12.1-17.01(2)(b) not a crime of violence because infliction of pain not necessary to prove bodily injury) (Pauley)

[Alfredo Hilario Alvarado-Gonzalez](#), A090 853 184 (BIA March 30, 2017) (voluntary manslaughter under Calif. Penal Code § 192(a) not a crime of violence because conviction can be based upon reckless conduct) (Pauley)

[Francisco Zanabria Arteaga](#), A075 844 244 (BIA March 21, 2017) (unlawful wounding under Va. Code 18.2-51 not a crime of violence under 18 U.S.C. 16(a) but is a crime of violence under 18 U.S.C. 16(b)) (*Greer*, Pauley, Cole (dissenting))

[Sean Terry Darwin Haynes](#), A036 574 645 (BIA Dec. 2, 2016) (attempted second degree assault under N.Y.P.L. 120.05 not a crime of violence because it is "legally impossible") (*Pauley*, Geller, Greer)

[Howard Anthony Johnson](#), A055 559 497 (BIA Oct. 17, 2016) (first degree felony aggravated assault under 18 Pa. Const. Stat. 2702(a) not a crime of violence under categorical approach; remands record because record did not reflect subsection(s) to which respondent pleaded guilty) (*Pauley*, Geller, Guendelsberger)

[Amabel Amado Alcivar Salavarría](#), A043 910 846 (BIA Jan. 19, 2016) (attempted battery with substantial bodily harm in violation of Nev. Rev. Stat. 200.481 is not a crime of violence) (Miller)—**KEY DECISION**

[Kevin Patricio-Damian](#), A061 342 980 (BIA Oct. 27, 2015) (battery under Nev. Rev. Stat. 200.485.1(a) not a crime of violence because statute encompasses slight unwanted force and is not divisible) (*Pauley*, Greer, Geller)—**KEY DECISION**

[Ravi Satulo Laicer](#), A096 675 284 (BIA Oct. 15, 2015) (aggravated battery under Kan. Stat. 21-3414(a)(2)(A) is not a crime of violence because it encompasses reckless conduct) (*Geller*, Cole,



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Malphrus)—**KEY DECISION**

**18 USC 16(a)—use of force clause**

[A-D-](#), AXXX XXX 348 (BIA March 4, 2020) (robbery under Ohio Rev. Code 2911.02(A)(3) not a crime of violence because it requires only a minimal level of force) (*Greer*, Wilson, Donovan)

[Tevin Rashaun Campbell](#), A055 570 414 (BIA Feb. 19, 2020) (aggravated battery under Fla. Stat. 784.045(b) does not require the use of force because it encompasses simple battery against a pregnant victim) (*Greer*, Wendtland, Donovan)

[Daniel Andrew Hall](#), A099 425 032 (BIA Dec. 16, 2019) (second degree assault under N.Y.P.L. 120.05(4) not a crime of violence because it can be committed with a mens rea of recklessness) (*Wendtland*, Noferi, Greer)

[E-E-M-](#), AXXX XXX 012 (BIA Oct. 23, 2019) (simple battery under Geo. Code Ann. 16-5-23(a)(1) does not require use of force) (*Cole*, Greer, Wendtland)

[V-B-M-](#), AXXX XXX 035 (BIA Oct. 3, 2019) (assault under Fla. Stat. 784.03(1)(a)(2) does not require use of force) (*Liebmann*, Kelly, Adkins-Blanch)

[Guillermo Becerril-Gudarrama](#), A077 271 900 (BIA May 8, 2019) (felony coercion under Nev. Rev. Stat. 207-190 not a crime of violence under *United States v. Edling*, 895 F.3d 1153 (9th Cir. 2018)) (*Greer*, Donovan, Rosen)

[R-D-](#), AXXX XXX 123 (BIA March 8, 2019) (unlawful sexual contact under Colo. Rev. Stat. 18-3-404(1)(a) does not require sufficient force to qualify as a crime of violence) (*Wendtland*, O'Connor, Donovan)

[Wenston Emmanuel Fray](#), A042 259 146 (BIA Feb. 27, 2019) (simple battery under Fla. Stat. 784.03(1) not a crime of violence because it does not require use of physical force) (*Grant*, Guendelsberger, Kendall Clark)

[J-V-L-](#), AXXX XXX 646 (BIA Nov. 7, 2018) (aggravated battery under former 33 L.P.R.A. 4032 is not a crime of violence because predicate offense of simple battery does not require use of force) (*Mullane*, Creppy, Liebowitz)

[Juan Manuel Bravo](#), A078 846 441 (BIA Nov. 2, 2018) (aggravated assault under 18 Pa. Cons. Stat. 2702(a)(1) not a crime of violence under *United States v. Mayo*, 901 F.3d 218 (3d Cir. 2018)) (*Guendelsberger*, Grant, Kendall Clark)

[J-P-](#), AXXX XXX 007 (BIA Nov. 5, 2018) (battery under Fla. Rev. Stat. 784.03 not a crime of violence because it does not require as an element physical force or violence against an individual) (*Liebowitz*, Mullane, Morris)

[Omar Meza-Salazar](#), A045 135 575 (BIA Nov. 2, 2018) (sexually motivated coercion in Nevada is not a crime of violence under *United States v. Edling*, 895 F.3d 1153 (9th Cir. 2018), because it does not require use of force) (*Mullane*, Creppy, Malphrus)

[C-O-P-](#), AXXX XXX 082 (BIA Sept. 4, 2018) (simple battery under Ga. Code Ann. 16-5-23(a)(1) is not a crime of violence under 18 U.S.C. 16(a) because physical harm or injury is not necessary to violate the statute and it is not limited to contact that causes substantial or visible harm) (Creppy, Mullane, Malphrus)

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[Rafael Perez-Herrera](#), A044 341 518 (BIA Aug. 20, 2018) (simple assault under 18 Pa. Cons. Stat. Ann. 2301(a)(1) is not divisible and thus categorically not a crime of violence) (Cole)

[Abdirazaq Ahmed Ibrahim](#), A079 832 756 (BIA Aug. 7, 2018) (reopens and terminates proceedings sua sponte in light of intervening decision in *United States v. Robinson*, 869 F.3d 933 (9th Cir. 2017), rendering conviction for assault under Wash. Rev. Stat. 9A.36.021 no longer a crime of violence) (*Grant*, Guendelsberger, Kendall Clark)

[Jose Victor Rodriguez-Figueroa](#), A055 267 385 (BIA July 12, 2018) (sexually motivated coercion under Nev. Rev. Stat. 207.190 is not a crime of violence under 18 U.S.C. 16(a) because physical force under Nevada law can include nonviolent *de minimis* force) (*Adkins-Blanch*, Kelly, Geller)

[Mustapha Bayoh](#), A062 500 716 (BIA June 29, 2018) (simple assault under 18 Pa. Cons. Stat. Ann. 2701(a)(1) is not divisible and thus not a crime of violence) (Guendelsberger)

[Aguinaldo Lopes Barros Fernandes](#), A036 784 467 (BIA June 29, 2018) (reopens and terminates proceedings sua sponte in light of intervening caselaw rendering assault on a police officer under Mass. Gen. Laws Ann. ch. 265, § 13D no longer a crime of violence under 18 U.S.C. 16(a)) (*Grant*, Kendall Clark, Guendelsberger)

[J-F-V-R.](#), AXXX XXX 388 (BIA June 25, 2018) (false imprisonment under Cal. Penal Code 237 is not divisible and thus never an aggravated felony crime of violence) (*Pauley*, Adkins-Blanch, Snow)

[Edgar Lopez-Martin](#), A076 615 668 (BIA April 30, 2018) (simple battery under Geo. Code 16-5-23(a)(1) not a crime of violence because it requires only insulting contact with the victim) (*Geller*, Liebowitz, Mullane)

[S-S-P.](#), AXXX XXX 854 (BIA Aug. 4, 2017) (assault under Mich. Comp. Laws 750.81(4) not a crime of violence because it does not require actual touching or victim to suffer injury or pain) (*Wendtland*, Greer, Pauley)

[D-E-C.](#), AXXX XXX 856 (BIA March 10, 2017) (criminal domestic violence under S.C. Code Ann. 16-25-20(A) does not require force as an element) (*Wendtland*, Cole, Greer)

[Fernando Cardeas Cazares](#), A014 273 381 (BIA Jan. 27, 2017) (battery domestic violence under Nev. Rev. Stat. 200.485.1(a) categorically not a crime of violence because offenders may use nonviolent force; respondent not bound by attorney's prior contrary admission because of intervening case law making clear statute is not divisible) (*Guendelsberger*, Cole, Liebowitz)

[Azmat Ali Khattak](#), A044 904 454 (BIA Jan. 11, 2017) (unlawful wounding under Va. Code 18.2-51 does not require use of force because statute has been used to convict defendants for poisoning and child neglect; remands for consideration under 18 U.S.C. 16(b)) (*Guendelsberger*, Pauley, Malphrus (dissenting))

[Mohammad Babul Islam](#), A045 052 167 (BIA Oct. 14, 2016) (unlawful wounding under Va. Code 18.2-51 does not require use of force because statute has been used to convict defendants for poisoning and child neglect; remands for consideration under 18 U.S.C. 16(b)) (Pauley, Wendtland, Cole (dissenting))

[Juan Padilla Lambert](#), A055 860 485 (BIA Aug. 23, 2016) (unlawful wounding under Va. Code 18.2-51 does not require use of force because statute has been used to convict defendants for poisoning and child neglect; remands for consideration under 18 U.S.C. 16(b)) (Pauley, Wendtland, Cole

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(dissenting))—**KEY DECISION**

[Ramon Jasso-Arangure](#), A056 333 337 (BIA March 15, 2016) (orders further consideration of whether first degree home invasion under Mich. Penal Code 750.110a(2) is a crime of violence under 18 U.S.C. 16(a)) (*Guendelsberger*, Adkins-Blanch, Grant)

[Victor Manuel Santamaria](#), A089 713 036 (BIA Dec. 30, 2015) (misdemeanor domestic violence assault under Minn. Stat. 609.2242 subdiv. 1(1) not a crime of violence because statute covers minimal harms caused by nonviolent means, such as spitting onto the victim) (*Wendtland*, Pauley, Greer)

[Sixto Delgado](#), A075 423 408 (BIA Jan. 2, 2015) (sexual misconduct under Ky. Rev. Stat. 510.140 not crime of violence because force is not an element of the offense) (*Adkins-Blanch*, Guendelsberger, Hoffman) (Note: the Board subsequently [denied](#) a motion to reconsider filed by DHS)

[Arnold Manuel Warmels](#), A055 195 818 (BIA Dec. 23, 2014) (fourth degree assault under Ky. Rev. Stat. 508.030(1)(a) not a crime of violence where statute covers reckless conduct) (Holmes)

[Ravi Satulo Laicer](#), A096 675 284 (BIA Jan. 15, 2014) (reckless causing of great bodily harm or disfigurement under Kan. Stat. Ann. 21-3414(a)(2)(A) a crime of violence under 18 USC 16(a)) (Mullane)

[Jose Mauricio Diaz](#), A029 012 746 (BIA Nov. 19, 2013) (remands to consider whether second degree assault under Md. Code Ann., Crim. Law 3-203, is crime of violence in light of intervening decisions in *Karimi v. Holder*, 715 F.3d 561 (4th Cir. 2013), and *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (Kendall-Clark)

[Victor Enrique Tally-Barrios](#), A041 736 376 (BIA Oct. 8, 2013) (fourth degree sexual offense under former Md. Code Ann. Art. 27, § 464C, not crime of violence under 18 USC 16(a) because statute does not require use of force) (*Adkins-Blanch*, Greer, Miller)—**KEY DECISION**

[Bitar Turou](#), A205 829 460 (BIA Oct. 4, 2013) (second degree assault under Del. Code. Ann. Tit. 11, § 612(a)(2) not crime of violence) (Adkins-Blanch)

[Phillip Andrew Murray](#), A055 213 731 (BIA Sept. 20, 2013) (remands for reconsideration of whether second degree assault under Md. Code Ann. Crim. Law 3-203 is a crime of violence in light of the respondent's argument that statute is not divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Karimi v. Holder*, 715 F.3d 561 (4th Cir. 2013)) (*Mann*, Mullane, Creppy)

[Gzim Imeri](#), A091 298 819 (BIA July 31, 2013) (assault by use or display of dangerous weapon under Iowa Code 708.1 and 708.2(3) not crime of violence under 18 USC 16(a)) (*Pauley*, Guendelsberger, Greer)

[Agostino Accardo](#), A035 089 741 (BIA Mar. 15, 2012) (extortionate extension of credit in violation of 18 U.S.C. 892(a) not a crime of violence) (*Guendelsberger*, Liebowitz, Malphrus)

[Ruben Montenegro-Ruiz](#), A041 095 571 (BIA May 31, 2011) (battery constituting domestic violence under Nev. Rev. Stat. §§ 33.018, 200.481(1)(a) and 200.485 not crime of violence) (Pauley)

[Jose Manuel Silva](#), A019 321 130 (BIA Nov. 30, 2011) (attempted arson under Mass. Gen. Law ch. 266 § 5A not crime of violence because it could apply to burning of one's own property) (*Pauley*, Greer, Wendtland)—**KEY DECISION**



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[Luis Rueda-Perez](#), A098 241 147 (BIA Nov. 17, 2011) (simple assault under N.H. Rev. Stat 631:2-a not crime of violence) (*Pauley*, Malphrus, Mullane)—**KEY DECISION**

**18 USC 16(b)—residual clause**

NOTE: In [Sessions v. Dimaya](#), 138 S. Ct. 1204 (2018), the Supreme Court held that the definition of “crime of violence” in 18 U.S.C. 16(b) is unconstitutionally vague.

[Mario Orlando Paulino-Carcamo](#), A029 952 088 (BIA June 14, 2018) (terminates proceedings against respondent in light of *Sessions v. Dimaya*, 138 S. Ct 1204 (2018), where sole charge of removability was that he was convicted of a crime of violence under 18 U.S.C. 16(b)) (Grant)

[Rosier Louissant](#), A074 624 853 (BIA April 30, 2018) (terminates proceedings in light of *Dimaya* where DHS had not argued that respondent was convicted of a crime of violence under 18 U.S.C. 16(a) or was otherwise removable) (*Pauley*)

[J-K-O-](#), AXXX XXX 418 (BIA May 10, 2017) (injury to a child, elderly individual, or disabled individual under Tex. Pen. Code 22.04(a) not crime of violence under 18 USC 16(b) because it criminalizes omissions rather than intentional use of force) (Kelly)

[H-M-F-](#), AXXX XXX 345 (BIA March 29, 2017) (statutory burglary under Va. Code Ann. 18.2-91 not a crime of violence because statute is not divisible and applies to lawful entries into stores with intent to commit crime) (*Creppy*, Malphrus, Mullane)—**KEY DECISION**

[Lennox Anthony Joseph](#), A072 033 408 (BIA Feb. 7, 2017) (manslaughter under Fla. Stat. 782.07(1) not a crime of violence under 18 U.S.C. 16(b) because the offense does not ordinarily involve substantial risk that perpetrator will use force) (*Pauley*, Guendelsberger, Malphrus (dissenting))—**KEY DECISION**

[Eder Lopez-Moncada](#), A046 081 498 (BIA Nov. 17, 2016) (dismissed DHS appeal of decision finding second degree assault under Del. Code Ann., tit. 11, § 612 not a crime of violence in light of the intervening ruling in *Baptiste v. Att’y Gen.*, 841 F.3d 601 (3d Cir. 2016), finding § 16(b) unconstitutionally vague) (*Pauley*)

[Roberto Javier Blanco-Perez](#), A092 981 108 (BIA May 14, 2015) (notes DHS did not contest determination that attempted kidnapping under Cal. Penal Code 664/207(a) is not a crime of violence) (*Greer*, Wendtland, O’Herron)

[N-V-](#), AXXX XXX 550 (BIA Nov. 18, 2014) (misdemeanor assault under A.R.S. 13-1203(a)(1) not crime of violence under INA 237(a)(2)(E) because the Ninth Circuit has held that it is not a crime of violence under 18 U.S.C. 16(b)) (*Pauley*)

[Luis Manuel Pacheco Da Costa](#), A036 049 783 (BIA June 4, 2014) (assault with a dangerous weapon under Mass Gen. Law ch. 265 15A(b) is not a crime of violence under *United States v. Fish*, – F.3d – (1st Cir. 2014)) (Holmes)

[Paul Kibua Wanyoike](#), A078 496 780 (BIA Jan. 24, 2014) (voluntary manslaughter under Pa. Const. Stat. Ann. 2503 is crime of violence) (Grant)

[Bitar Turou](#), A205 829 460 (BIA Oct. 4, 2013) (second degree assault under Del. Code. Ann. Tit. 11, § 612(a)(2) not crime of violence) (Adkins-Blanch)

[Upinderjit Singh](#), A048 029 730 (BIA Sept. 27, 2013) (remands for further consideration of

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determination in *Matter of U. Singh*, 25 I&N Dec. 670 (BIA 2012), that stalking under Cal. Penal Code 646.9(a) is crime of violence) (*Pauley*, Mullane, Guendelsberger)—**KEY DECISION**

[Ireneusz Fraczek](#), A030 973 737 (BIA May 9, 2013) (third degree burglary under Conn. Gen. Stat. 53A-103 not crime of violence because respondent entered “*Alford* plea” without admitting facts required to support a finding that he burglarized a dwelling) (*Pauley*, Greer, Guendelsberger) (Note: Under the Supreme Court’s intervening decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), the statute of conviction would likely be found not to be divisible)—**KEY DECISION**

[Michael Zacky Dean](#), A031 314 515 (BIA Jan. 12, 2012) (first degree manslaughter in violation of Okla. Stat. 21, § 711(2) is crime of violence) (*Pauley*, Greer, Mullane)

[Christopher Charles Kerr](#), A044 857 956 (BIA Dec. 15, 2011) (false imprisonment under Fla. Stat. 787.02 not crime of violence) (*Cole*, Greer, Pauley (dissenting))

[Jose Manuel Silva](#), A019 321 130 (BIA Nov. 30, 2011) (attempted arson under Mass. Gen. Law ch. 266 § 5A not crime of violence because it could include the burning of one’s own property) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

[Luis Rueda-Perez](#), A098 241 147 (BIA Nov. 17, 2011) (simple assault under N.H. Rev. Stat 631:2-a not crime of violence because maximum term of imprisonment is one year, 18 USC 3559(a)(5) defines “felony” for federal purposes as offenses punishable by term of imprisonment of more than one year) (*Pauley*, Malphrus, Mullane)—**KEY DECISION**

[Terrance Daniel Bailey](#), A089 101 106 (BIA Sept. 14, 2011) (second degree assault under N.Y.P.L. 120.05(8) is crime of violence) (*Pauley*)

[Ashot Zhorahikovic Ovsepyan](#), A045 201 416 (BIA Feb. 17, 2011) (conviction for making criminal threats in violation of Cal. Penal Code 422 not crime of violence because provision is “wobbler” statute and charge was amended felony to misdemeanor) (*Filppu*, Cole, Pauley)

### **INA 101(a)(43)(G)—theft/burglary offenses**

#### **Theft/Receipt of Stolen Property**

[Guerline Joseph](#), A074 926 647 (BIA March 10, 2020) (exploitation of an elderly person under Fla. Stat. 825.103(1) not an aggravated felony theft offense because it does not include lack of consent as an element) (*Morris*, Liebowitz, Gemoets)

[C-P-M-](#), AXXX XXX 955 (BIA Dec. 16, 2019) (theft under Iowa Code 714.1 not an aggravated felony because it encompasses takings of property with consent that was fraudulently obtained) (*Creppy*, Malphrus, Baird)

[Alfredo Carrillo-Gomez](#), A047 284 048 (BIA Nov. 13, 2019) (carjacking under Cal. Pen. Code 215(a) not an aggravated felony theft offense because it permits a taking from a passenger rather than the owner of the car) (*Cole*, Greer, Wilson)

[Archeley Ricardy Sylpha](#), A044 604 854 (BIA Oct. 11, 2019) (stealing a firearm under Conn. Gen. Stat. 53a-212 not an aggravated felony theft offense because it does not require the lack of consent of the owner) (*Cole*, Wendtland, Noferi)

[Herve Guy Ngouyombo](#), A070 460 027 (BIA June 26, 2019) (reopens proceedings sua sponte where respondent’s Nevada conviction for receipt of stolen property was no longer an aggravated felony

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under *Matter of Sierra*, 26 I&N Dec. 288 (BIA 2014)) (Grant)

[S-O-](#), XXXX XXX 232 (BIA June 13, 2019) (fourth degree larceny under Conn. Gen. Stat. 15a-125 not an aggravated felony theft offense because it encompasses fraud and is not divisible) (*Baird*, Wendtland, Greer)

[Onesta Reyes](#), A031 123 346 (BIA April 24, 2019) (second degree grand larceny under N.Y.P.L. 155.40(1) not an aggravated felony theft offense because it includes fraudulent takings) (Greer, Wendtland, O'Connor (dissenting))

[Arisnely Joselin Luna](#), A042 600 602 (BIA April 24, 2019) (Conn. Gen. Stat. 53a-119 not an aggravated felony theft offense in light of Second Circuit statement that prior contrary case law is not controlling) (*Malphrus*, Liebowitz, Noferi)

[V-C-M-](#), XXXX XXX 614 (BIA Feb. 1, 2019) (first-degree larceny under Conn. Gen. Stat. 53a-122 not an aggravated felony theft offense because it involves takings with consent that was fraudulently obtained and is not divisible) (*Malphrus*, Mullane, Morris)

[M-G-R-](#), XXXX XXX 115 (BIA Jan. 3, 2019) (identity theft under 720 Ill. Comp. Stat. 5/16G-15(a)(1) not an aggravated felony theft offense because it does not require a lack of consent from the victim and the statute is not divisible) (*Kelly*, Kendall Clark, Grant)

[Fabiola Elena Ibarra Juarez](#), A070 752 508 (BIA Dec. 28, 2018) (carjacking under Cal. Pen. Code 215(a) not an aggravated felony theft offense because it does not require the taking to be committed against the owner and can be applied to a passenger or other person temporarily in possession of the vehicle) (Morris)

[B-A-D-](#), XXXX XXX 682 (BIA Dec. 6, 2018) (taking or driving a motor vehicle without the consent of the owner under Minn. Stat. 609.52, subd. 2(a)(17) not an aggravated felony theft offense because prosecutors need not prove an intent to deprive the owner of the rights and benefits of ownership) (*Grant*, Kendall Clark, Guendelsberger)

[Beverly Evadne Bent](#), A017 521 783 (BIA Nov. 13, 2018) (18 U.S.C. 641 is not categorically a theft-related aggravated felony and statute was not divisible under jury instructions in effect between 2003 and 2010) (*Kelly*, Greer, Mann (concurring))

[Orlando Espinosa-Alvarez](#), A077 618 576 (BIA Oct. 30, 2018) (theft by receiving stolen property under Geo. Code Ann. 16-8-7 not an aggravated felony of receipt of stolen property because it does not require knowledge or belief that property was stolen) (*Greer*, Donovan, Wendtland)

[Roberto Solorio-Ruiz](#), A034 223 887 (BIA Oct. 29, 2018) (carjacking under Calif. Penal Code 215(a) not an aggravated felony theft offense because it does not necessarily require an intent to deprive the owner of the rights and benefits of ownership) (*Wendtland*, Greer, Donovan)

[Laura Mabel Luzardo](#), A097 242 090 (BIA Oct. 22, 2018) (offenses incorporating definition of "larceny" in Conn. Gen. Stat. 53a-119 are not aggravated felonies because they encompass fraud-based offenses) (*Malphrus*, Mullane, Liebowitz)

[Abathar Kareem Jasim](#), A212 243 050 (BIA Oct. 9, 2018) (financial transaction card theft under Geo. Code Ann. 16-9-31(a)(1) is not an aggravated felony theft offense because it applies to fraudulent takings) (Greer)

[Miguel Angel Garay-Gomez](#), A047 021 587 (BIA Sept. 18, 2018) (theft under Colo. Rev. Stat. 18-4-

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401(1) is not an aggravated felony theft offense because it applies to the acquisition of property with consent that was obtained through deception) (Cole)

[M-V-M-](#), AXXX XXX 705 (BIA Aug. 23, 2018) (Conn. Gen. Stat. 53a-124 and 53a-125 are not aggravated felony theft offenses under *Matter of Garcia-Madruga*, 24 I&N Dec. 436 (BIA 2008)) (*Malphrus*, Liebowitz, Geller)

[Melody Angeles Ramos Panillo](#), A097 142 977 (BIA July 31, 2018) (Conn. Gen. Stat. 53a-124 is not an aggravated felony theft offense because it may be violated by the wrongful obtaining of property by fraud) (Grant)

[Javier Bastian-Mojica](#), A074 908 814 (BIA July 10, 2018) (fourth degree larceny under Conn. Gen. Stat. 53-124 is not an aggravated felony theft offense and statute is not divisible) (*Adkins-Blanch*, Snow, Kelly)

[Ortencia Gonzalez-Velasquez](#), A205 132 294 (BIA Jan. 3, 2018) (theft by shoplifting under Geo. Code Ann. 16-8-14 not an aggravated felony because it prohibits the appropriation of property for one's own use and the statute is not divisible) (*Cole*, Wendtland, Pauley (dissenting))

[G-A-A-M-](#), AXXX XXX 774 (BIA Nov. 17, 2017) (second degree burglary under N.Y.P.L. 140.25(2) not an aggravated felony burglary offense because it does not require an unlawful entry) (*O'Connor*, Greer, Adkins-Blanch)

[E-J-H-C-](#), AXXX XXX 605 (BIA Sept. 1, 2017) (unlawful taking and driving of a vehicle under Cal. Veh. Code 10851(a) not an aggravated felony theft offense because it applies to accessories after the fact in addition to principals and accomplices) (*O'Connor*, Pauley, Wendtland)

[Isai Lopez-Hernandez](#), A046 620 341 (BIA Sept. 1, 2017) (noted DHS withdrawal of appeal of decision holding that larceny under Okla. Stat. tit. 21 § 1731 is not an aggravated felony theft offense) (*O'Connor*)

[Esau Lopez-Hernandez](#), A046 620 342 (BIA July 14, 2017) (larceny from a person under Okla. Stat. tit. 21 § 1701 not an aggravated felony because it encompasses takings that were fraudulently obtained with the consent of the owner) (Cole)

[Roxine Curlene Mattis](#), A036 810 946 (BIA June 13, 2017) (reopens and terminates proceedings sua sponte upon finding embezzlement under Va. Code 18.2-111 not an aggravated felony theft offense) (Guendelsberger)

[S-D-](#), AXXX XXX 230 (BIA April 26, 2017) (grand theft by embezzlement under Cal. Penal Code 487 not an aggravated felony theft offense because it criminalizes theft of labor and services and theft by false pretenses) (*Creppy*, Liebowitz, Mullane (dissenting))

[Beverly Evadne Bent](#), A017 521 783 (BIA April 21, 2017) (18 U.S.C. 641 not categorically an aggravated felony theft offense but divisible between embezzling, stealing, purloining, or knowingly converting government property) (*Guendelsberger*, Kendall Clark, Liebowitz)

[Alejandro Pizana Madear](#), A044 566 261 (BIA April 20, 2017) (Iowa Code 714.2 not an aggravated felony theft offense because it encompasses fraudulent takings) (*Pauley*, Greer, Mullane)

[David Chavez](#), A070 911 147 (BIA April 17, 2017) (petty theft under Cal. Penal Code 484(a) and 666 not an aggravated felony theft offense) (Guendelsberger)

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[H-M-F.](#), AXXX XXX 345 (BIA March 29, 2017) (grand larceny under Va. Code Ann. 18.2-95 not an aggravated felony theft offense because statute encompasses fraudulent takings and is not divisible) (*Creppy*, Malphrus, Mullane)

[Vera Sama](#), A076 581 488 (BIA March 22, 2017) (reaffirms prior decision following remand from Attorney General that Md. Code Ann., Crim. Law 7-104 is not divisible and thus never an aggravated felony theft offense) (*Mann*, *Creppy*, Malphrus)

[Elisabete Monteiro Lopes](#), A041 958 867 (BIA Feb. 15, 2017) (third degree larceny under Conn. Gen. Stat. 53a-124 not an aggravated felony because statute is not divisible and encompasses offenses in which victim voluntarily surrenders property to another) (*Pauley*, Mullane, Malphrus)

[Vasile George Husti](#), A057 497 914 (BIA Feb. 7, 2017) (conversion of government property under 18 U.S.C. 641 not categorically an aggravated felony theft offense) (*Guendelsberger*, Mullane, Pauley)

[Ani Salesi Palau](#), A042 689 094 (BIA Feb. 2, 2017) (conviction for wrongful appropriation under Utah Code Ann. 76-6-404.5 not an aggravated felony theft offense; statute is divisible but conviction record revealed only intent to temporarily use property in question) (*Pauley*, *Guendelsberger*, Malphrus)

[Smith de Jesus Pena-Rojas](#), A041 588 479 (BIA Oct. 19, 2016) (second degree robbery under Cal. Penal Code 211 not an aggravated felony theft offense under categorical approach, remands to consider whether statute is divisible) (Pauley)—**KEY DECISION**

[Charles Borromeo Ajaelu](#), A058 739 058 (BIA Sept. 3, 2015) (Ga. Code 16-8-2 not an aggravated felony because it encompasses theft by conversion, fraud, or deception, and because statute is overbroad rather than divisible) (Geller)—**KEY DECISION**

[Tyron Canute Francis](#), A047 224 961 (BIA June 10, 2015) (reopens proceedings sua sponte in light of *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2012), for further consideration of whether theft under Md. Crim. Law, Code Ann. 7-104, is an aggravated felony theft offense) (Mullane)

[Jose Guillermo Rios-Ventura](#), A090 470 341 (BIA Feb. 20, 2015) (Fla. Stat. 812.019(1) qualifies as receipt of stolen property even though defendants are only required to have reason to believe the property in question was stolen; dissenting opinion says statute must require defendant to have knowledge property was stolen to qualify as an aggravated felony) (*Mullane*, Malphrus, Pauley (dissenting))

[Clayton Hugh Anthony Stewart](#), A043 399 408 (BIA Feb. 11, 2015) (Md. Crim. Law, Code Ann. 7-104 is categorically not an aggravated felony theft offense because it encompasses fraudulent takings with the consent of the owner and statute is not divisible) (*Pauley*, Malphrus, *Guendelsberger*). See also [Vera Sama](#), A076 581 488 (BIA July 17, 2015) (same) (*Mann*, Malphrus, *Creppy*)

[Winsome Elaine Vassell](#), A091 146 392 (BIA Dec. 12, 2014) (theft under Ga. Code 16-8-2 is not an aggravated felony theft offense because it does not require prosecution to show lack of consent of the victim) (Holmes)—**KEY DECISION**

[Craig Hanush Thompson](#), A044 854 402 (BIA Oct. 1, 2014) (grand theft from person 65 years of age or older under Fla. Stat. 812.014(1) not an aggravated felony theft offense under categorical approach; IJ not permitted to consider allegations in order of restitution under modified categorical approach) (*Pauley*, Greer, *Guendelsberger*)—**KEY DECISION**

[Luis Miguel Ramirez-Moz](#), A072 377 892 (BIA Mar. 31, 2014) (Va. Code Ann. 18.2-95 not a categorical theft-related aggravated felony because statute can be applied to fraud offenses) (Cole)—



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### KEY DECISION

[Maria Regina Enriquez](#), A090 496 769 (BIA July 26, 2013) (upholds termination of proceedings where respondent withdrew plea to possession of stolen vehicle under Nev. Rev. Stat. 205.273(b)(1) and received sentence of three days with credit for time served for pleading guilty to gross misdemeanor conspiracy possession of a stolen vehicle, citing *Matter of Cota-Vargas*, 23 I&N Dec 849 (BIA 2005)) (*Cole*, Pauley, Donovan)

[Benito Pulido-Gomez](#), A019 987 183 (BIA Jun. 27, 2012) (grand theft under Cal. Vehicle Code 10851(a) not categorical aggravated felony because it encompasses “accessory after the fact” offenses and DHS did not submit judicially noticeable documents to demonstrate the factual basis for the plea) (*Pauley*, Guendelsberger, Mullane)

[Benyahia Hebbbar](#), A079 374 882 (BIA June 11, 2012) (Nev. Rev. Stat. 205.0832 not a categorical theft-related aggravated felony) (*Mullane*, Greer, Pauley)

[Michael McFarlane](#), A012 043 018 (BIA Jan. 18, 2012) (third degree robbery under N.Y.P.L. 160.05 is theft-related aggravated felony) (Guendelsberger)

[Vikramjeet Sidhu](#), A044 238 062 (BIA Nov. 30, 2011) (embezzlement under Va. Code 18.2-111 not theft-related aggravated felony) (*Guendelsberger*, Adkins-Blanch, Hoffman)—**KEY DECISION**

[Lesmany Nunez](#), A074 019 651 (BIA Feb. 9, 2011) (computer fraud under 18 U.S.C. 1030(a) not theft-related aggravated felony because it does not require the taking of property) (*Filppu*, Cole, Pauley)

### **Burglary**

[M-K-A](#), AXXX XXX 568 (BIA July 18, 2018) (third degree burglary under N.Y.P.L. 140.20 is not an aggravated felony burglary offense because it prohibits breaking into places other than buildings and structures) (*Crossett*, Wendtland, Greer)

[Mikheil Kapanadze](#), A056 502 590 (BIA Sept. 12, 2017) (third degree burglary under N.Y. Penal Law 140.20 not an aggravated felony burglary offense because it criminalizes unlawful entry into an enclosed motor vehicle and DHS did not contend statute was divisible) (*Pauley*, Guendelsberger, Malphrus (dissented))

[Kokou Jonito Doeh](#), A042 949 629 (BIA Dec. 5, 2016) (burglary under 21 Okla. Stat. 1435 is not an aggravated felony because statute is not divisible and applies to locations other than buildings or structures) (*Pauley*, Geller, Greer)

[Kwei Genego](#), A047 376 145 (BIA Oct. 2, 2014) (third degree burglary under Conn. Gen. Stat. Ann 53a-103 not an aggravated felony “burglary offense” because it encompasses burglary of vehicles) (*Wendtland*, Cole, Pauley (concurring))—**KEY DECISION**

[Ireneusz Fraczek](#), A030 973 737 (BIA May 9, 2013) (third degree burglary under Conn. Gen. Stat. 53A-103 not theft-related aggravated felony because respondent entered “*Alford* plea” without admitting facts required to support a finding that he burglarized a dwelling) (*Pauley*, Greer, Guendelsberger) (Note: Under the Supreme Court’s intervening decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), the statute of conviction would likely be found not to be divisible)—**KEY DECISION**

[Jesus Manuel Corral-Chavira](#), A092 800 902 (BIA Feb. 1, 2011) (burglary under Nev. Rev. Stat. 205.060 not theft-related aggravated felony) (Pauley)

**INA 101(a)(43)(I)—child pornography**

[N-B.](#), AXXX XXX 877 (BIA Jan. 23, 2020) (child pornography under 18 Pa. Stat. Cons. 6312(d) not an aggravated felony because it is not limited to nudity involving genitals or the pubic area) (*Kelly*, Adkins-Blanch, Rosen)

[Arturo Mandujano-Torres](#), A091 480 873 (BIA Jan. 4, 2017) (child sexual abusive material under Mich. Comp. Laws 750.145c(4) not an aggravated felony because perpetrators need only be negligent as to the age of the victim) (*Pauley*, Greer, Guendelsberger)

[Miguel Alexander Franco-Lara](#), A039 258 474 (BIA Aug. 4, 2016) (18 USC 2252A not an aggravated felony because it encompasses possession of child pornography involving virtual rather than actual minors) (*Pauley*, Guendelsberger, Geller)—**KEY DECISION**

[Arturo Mandujano-Torres](#), A091 480 873 (BIA June 30, 2015) (remands for further analysis of whether possession of child sexually abusive material under Mich. Comp. Laws 750.145C4-A is an offense relating to child pornography) (Grant)

[Ricardo G. Calito](#), A071 583 613 (BIA May 5, 2015) (possession of child pornography under Cal. Penal Code 811.11(a) is categorically an aggravated felony) (*Pauley*, Mullane, Geller)

[Jhow Willie Calderon](#), A056 122 271 (BIA Jan. 30, 2015) (possession of child pornography under 18 Pa. Cons. Stat. 6312(d) not an aggravated felony because statute applies to possession of images that do not involve sexually explicit depictions of minors) (*Pauley*, Guendelsberger, Malphrus (dissenting))

**INA 101(a)(43)(K)—prostitution offenses**

[Ely Ramon Silva Madrigal](#), A057 921 644 (BIA Nov. 19, 2019) (pandering by procuring under Cal. Penal Code 266i(a)(1) not an aggravated felony under INA 101(a)(43)(K)) (Cassidy)

[Mohammed Nihal Patel](#), A061 332 788 (BIA July 3, 2018) (conviction under 18 U.S.C. 1952(a)(3) does not qualify as an aggravated felony because record contains stipulation of facts demonstrating that respondent's activity did not clearly relate to the ownership, control, management, or supervision of a prostitution business) (*Grant*, Guendelsberger, Kendall Clark)

[Redendo Demosthene](#), A055 744 453 (BIA June 29, 2017) (deriving support from prostitution under Fla. Stat. Ann. 796.05(1) not an aggravated felony under INA 101(a)(43)(K)(i); rejects DHS argument for use of "circumstance-specific" approach) (Pauley)—**KEY DECISION**

[Byung Kun Lee](#), A037 078 031 (BIA Sep. 6, 2011) (conviction under 18 USC 1952(a)(3) is prostitution-related aggravated felony) (Pauley)

**INA 101(a)(43)(M)—fraud and tax evasion**

**INA 101(a)(43)(M)(i)—fraud**

[Ilda Miriam Garcia](#), A096 541 504 (BIA Dec. 10, 2019) (DHS failed to establish that loss to victims was tied to conviction involving fraud or deceit as opposed to convictions for offenses not involving fraud or deceit) (Greer)

[Marie Jeannette Derozin](#), A039 047 952 (BIA Nov. 4, 2019) (loss to victim did not exceed \$10,000

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where plea agreement stated no specific amount of restitution and parties' stipulation that loss exceeded \$10,000 related to losses associated with both offenses of conviction and other relevant conduct) (*Grant*, Guendelsberger, Kendall Clark)

[Fan Wang](#), A088 152 814 (BIA July 12, 2019) (making a false report in connection with commodities transactions under 7 USC 6b(a)(1)(B) does not involve fraud or deceit) (*Donovan*, Greer, Noferi)

[Onesta Reyes](#), A031 123 346 (BIA April 24, 2019) (second degree grand larceny under N.Y.P.L. 155.40(1) not an aggravated felony fraud offense because it includes takings without the victim's consent) (Greer, Wendtland, O'Connor (dissenting))

[Juan Miguel Ruiz Otoya](#), A074 296 017 (BIA Oct. 31, 2018) (18 U.S.C. 641 not categorically an aggravated felony because it does not necessarily entail fraud or deceit and statute is not divisible) (*Malphrus*, Creppy, Mullane)

[Sung Bok Ahn](#), A038 665 355 (BIA Oct. 16, 2018) (obstructing the administration of internal revenue laws under "corrupt conduct" portion of 26 U.S.C. 7212(a) does not involve fraud or deceit because it entails acts that do not involve a misrepresentation on the part of the accused) (*Malphrus*, Mullane, Liebowitz)

[Caroline Sandra Walters](#), A036 223 342 (BIA April 26, 2018) (terminates proceedings where victim of the count to which respondent pleaded guilty was different from victim to which she was required to pay more than \$10,000 in restitution) (*Geller*, Liebowitz, Mullane (dissenting))

[Francisco Alberto Mena](#), A034 019 659 (BIA Feb. 7, 2018) (IJ erred in denying respondent opportunity to testify regarding his subjective beliefs of the monetary loss to the victims of his conviction for credit card fraud) (*Wendtland*, Crossett, Pauley)

[M-G-G-](#), AXXX XXX 686 (BIA Sept. 13, 2017) (DHS failed to establish loss to the victim exceeded \$10,000 based on order of restitution because Florida allows restitution for damage not caused by offense itself) (*Cole*, Wendtland, Greer (dissenting))—**KEY DECISION**

[Naser Noaman Mohamed Al Maotari](#), A077 251 699 (BIA June 2, 2017) (18 U.S.C. 641 not categorically an aggravated felony because it does not necessarily entail fraud or deceit) (*Guendelsberger*, Liebowitz, Malphrus)

[James Ogunyemi Friday](#), A078 510 752 (BIA Jan. 30, 2017) (DHS failed to demonstrate loss to victim of more than \$10,000; respondent assisted in filing thousands of false tax returns resulting in loss of \$1.2 million to IRS but conviction pertained to only 26 returns) (*Pauley*, Creppy, Mullane)

[Saadat Baig](#), A043 589 486 (BIA Jan. 26, 2017) (DHS failed to demonstrate conviction resulted in loss of more than \$10,000 despite forfeiture order of \$169,000 where respondent was ordered to pay only \$118.69 in restitution) (*Pauley*, Greer, Mullane (dissenting))

[Rogie Laquian Vasquez](#), A046 562 059 (BIA Jan. 19, 2017) (theft under Nev. Rev. Stat. 205.0832(1)(b) not an aggravated felony because it does not require fraud or deceit) (*Pauley*, Guendelsberger, Malphrus)

[Daniele Pazi-Alvarez](#), A047 350 423 (BIA Dec. 12, 2016) (conversion of public money under 18 U.S.C. 641 does not require fraud or deceit) (*Pauley*, Creppy, Geller)—**KEY DECISION**

[Rene Wilfredo Acevedo Solis](#), A092 920 374 (BIA May 11, 2016) (terminates proceedings where DHS failed to show amount of restitution related to offenses involving fraud or deceit as distinct from



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separate charge of grand theft) (Mullane)—**KEY DECISION**

[Juan Agripin Lecler de Jesus](#), A055 001 959 (BIA Nov. 13, 2015) (rejects DHS argument that IJ should have used amount of forfeiture to determine loss to victim) (Cole)—**KEY DECISION**

[Luzvenia Cortina](#), A046 870 073 (BIA Sept. 4, 2015) (DHS withdraws appeal of decision finding exploitation of elderly person in excess of \$100,000 under Fla. Stat. 825.103 is not an aggravated felony under INA 101(a)(43)(M)(i) because perpetrators need not use fraud or deceit) (Guendelsberger)

[Pedro Igor Duarte](#), A095 874 153 (BIA July 8, 2015) (DHS withdraws appeal of decision finding respondent was not convicted of an aggravated felony because loss to the victim arising from the counts to which he pleaded guilty was only \$9,000) (Holmes)

[Lester Emilio Garay-Garcia](#), A099 240 872 (BIA April 30, 2015) (DHS withdraws appeal of determination that conviction for theft of government property under 18 U.S.C. 641 was not an aggravated felony because only count to which respondent pleaded guilty involved loss of \$9,000) (Holmes)

[Rajesh Chitherbhai Makwana](#), A088 578 134 (BIA Jan. 5, 2015) (DHS withdraws appeal of IJ decision holding conspiracy to pay and receive health care kickbacks under 18 U.S.C. 371 and 42 U.S.C. 1320a-7b(b) not an aggravated felony fraud offense) (Holmes)

[Maria Rosario Rodriguez-Ramirez](#), A076 732 051 (BIA Aug. 7, 2014) (grand theft under Cal. Penal Code 487(b)(3) not a fraud-related aggravated felony because it does not require a taking with fraudulently obtained consent) (*Greer*, Pauley, Cole)

[Blanca Josefina Rinquillo de Corrales](#), A074 662 392 (BIA Jan. 22, 2014) (computer fraud under 18 USC 1030(a)(4) is aggravated felony; states that “the amount of restitution may not always be a reliable measure of victim loss for purposes of 101(a)(43)(M)(i)”) (Pauley)

[Hamid Choudhry](#), A073 538 314 (BIA Sept. 4, 2013) (selling contraband cigarettes in violation of 18 U.S.C. 371 not aggravated felony because fraud or deceit not necessary elements) (Pauley) —**KEY DECISION**

[Felicitas Urias-Baeza](#), A041 776 048 (BIA July 9, 2013) (wire fraud with restitution payment of \$13,500 an aggravated felony) (*Greer*)

[Tamara Jackeline Aleman](#), A073 110 365 (BIA June 18, 2013) (exploitation of elderly person or disabled adult under Fla. Stat. 825.103(1) and 825.103(2)(c) an aggravated felony, regardless of whether the loss to victim was inflicted by a co-conspirator) (Pauley)

[Eliza Valdez Bernudez Bautista](#), A035 383 901 (BIA May 22, 2013) (misuse of Social Security Number under 42 U.S.C. 408(a)(8) an aggravated felony under the modified categorical approach; states that *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), did not implicitly overrule the Board's holding in *Matter of Lanferman*, 25 I&N Dec. 721 (BIA 2012), that the modified categorical approach may be applied to all statutes regardless of structure) (Pauley) (Note: Under the Supreme Court's intervening decision in *Descamps v. United States*, 133 S. Ct. 2276 (2013), the statute of conviction would likely be found not to be divisible.)

[Javier Rios-Bustamante](#), A037 585 346 (BIA Dec. 30, 2011) (transfer of another's property under Wisc. Stat. 943.25(2)(a) not aggravated felony because value of property covered by only count under which respondent was convicted did not exceed \$10,000) (Pauley)—**KEY DECISION**

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[Ramiro Avalos Rivera](#), A041 310 671 (BIA Jan. 6, 2011) (respondent convicted of aggravated felony where loss to the victim was \$10,956, even though he was ordered to pay only \$5,167 in restitution) (Pauley)

### **INA 101(a)(43)(M)(ii)—tax evasion**

[Jesus Roberto Corral Trevizo](#), A034 979 405 (BIA June 2, 2017) (failure to collect or pay over a tax under 26 U.S.C. 7202 not an aggravated felony because statute refers only to offenses described in 26 U.S.C. 7201) (*Pauley*, *Cole*, *Wendtland*)

### **INA 101(a)(43)(R)—commercial bribery, counterfeiting, forgery**

[Alan Michel Cedano-Carrillo](#), A096 371 566 (BIA July 26, 2018) (Utah Code Ann. 76-6-502 is not an aggravated felony relating to forgery because it prohibits individuals from signing their own name in an unauthorized capacity) (*Greer*, *Cole*, *Wendtland*)

[M-F-A-](#), AXXX XXX 424 (BIA Dec. 4, 2017) (Nev. Rev. Stat. 205.110 not a forgery-related aggravated felony because it prohibits the mere destruction of documents) (*Mann*, *Kelly*, *Grant*)

[Rajesh Chitherbhai Makwana](#), A088 578 134 (BIA Jan. 5, 2015) (notes DHS withdrawal of appeal of IJ decision holding conspiracy to pay and receive health care kickbacks under 18 U.S.C. 371 and 42 U.S.C. 1320a-7b(b) not an aggravated felony commercial bribery offense) (*Holmes*)

[Juan Ignacio Ruela](#), A077 485 879 (BIA May 5, 2014) (terminates proceedings in light of order from state trial judge clarifying that entire sentence for forgery conviction under Ga. Code. 16-9-1(b) was to be served on probation) (*Greer*, *Guendelsberger*, *Pauley*)

### **INA 101(a)(43)(S)—obstruction of justice**

[Manuel Romero Canchola](#), A044 094 053 (BIA Nov. 13, 2018) (retaliation under Texas Penal Code 36.06(a) is not an aggravated felony because it applies to conduct not covered by chapter 73 of the federal criminal code and does not involve a specific intent to interfere in a pending, ongoing, or foreseeable investigation or proceeding) (*Greer*, *Donovan*, *Wendtland*)

[R-P-C-](#), AXXX XXX 469 (BIA Nov. 13, 2017) (remands for further consideration of whether flight to avoid apprehension under 18 Pa. Cons. Stat. 5126(a) was an aggravated felony relating to obstruction of justice in light of intervening decision in *Flores v. U.S. Att’y Gen.*, 856 F. 3d 280 (3d Cir. 2017)) (*Mullane*, *Liebowitz*, *Creppy*)

[Hongli Huang](#), A061 700 071 (BIA April 15, 2016) (orders further consideration of whether intimidation of witnesses and victims under Cal. Penal Code 136.1(b)(1) is an aggravated felony in light of *Valenzuela Galladardo v. Lynch*, No. 12-72326 (9th Cir. 2016)) (*Pauley*)

[Juan Gabriel Soria-Escobedo](#), A091 381 609 (BIA Dec. 1, 2015) (obstruction or retaliation under Tex. Penal Code 36.06 not an aggravated felony because neither subsection of the statute requires defendants to act with specific intent to interfere with process of justice) (*Cole*, *Guendelsberger*, *Geller*)

[Omar Alberto Cisneros-Ordaz](#), A045 124 831 (BIA May 10, 2011) (escape from custody of peace officer under New Mex. Stat. 1789 section 30-22-10 not an aggravated felony under *Matter of Espinoza-Gonzalez*, 22 I&N Dec. 889 (BIA 1999)) (*Pauley*, *Adkins-Blanch*, *Guendelsberger*)

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**INA 101(a)(43)(T)—failure to appear in court**

[M-Z](#), AXXX XXX 502 (BIA Nov. 1, 2018) (bail jumping and failure to appear under Texas Penal Code 38.10(a) is not an aggravated felony because it does not require that the failure to appear be before a court) (*Grant*, Guendelsberger, Kendall Clark)

[Tamara Jacqueline Aleman](#), A073 110 365 (BIA June 18, 2013) (failure to appear on bail under Fla. Stat. 843.15(1) an aggravated felony) (Pauley)

[Christian Cortes Duran](#), A096 587 962 (BIA Jan. 31, 2012) (failure to appear in court under Neb. Rev. Stat. 29-908 not aggravated felony) (*Pauley*, Guendelsberger, Malphrus)

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[Sandy Ivonne Sanz Perdomo](#), A020 577 863 (BIA June 13, 2019) (reverses finding that respondent's conviction for conspiracy in the fifth degree under N.Y.P.L. 105.10(1) was an aggravated felony because the record did not make clear whether the object of the conspiracy was an aggravated felony) (*Greer*, Donovan, Rosen)

[Seyi Muyiwa Adeeko](#), A204 401 058 (BIA Aug. 14, 2018) (online solicitation of a minor under Tex. Penal Code 33.021 is not aggravated felony attempted sexual abuse of a minor because even if the offense was completed it would not require the minor to be under 16 years of age) (*Geller*, Creppy, Liebowitz)

[S-A-M](#), AXXX XXX 071 (BIA Dec. 6, 2017) (conspiracy under Maryland common law not an aggravated felony because it does not require an overt act) (*Pauley*, Creppy, Mullane)

[W-K-H](#), AXXX XXX 710 (BIA Nov. 22, 2016) (online solicitation of person reasonably believed to be a minor under Va. Code 18.2-374.3 not an aggravated felony because solicitation is distinct from attempt) (*Pauley*, Creppy, Greer)—**KEY DECISION**

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[Alejandro Castillo Munoz](#), A047 284 343 (BIA April 19, 2018) (sentence of 12 months did not qualify as term of imprisonment of at least one year because Texas courts define one month as 30 days for sentencing purposes) (*Pauley*, Crossett, Wendtland)—**KEY DECISION**

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[Baljit Singh Bains](#), A061 071 300 (BIA Aug. 24, 2018) (conviction for transporting of aliens under

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INA 274 did not necessarily render respondent inadmissible for alien smuggling under INA 212(a)(6)(E)(i) (Cole)

[U-H-M-](#), AXXX XXX 584 (BIA June 13, 2018) (reverses finding of inadmissibility against respondent who provided money to mother to return to Mexico but said it would be fine if she needed to use it to return to the United States) (Snow)

[Rodolfo Quintanilla-Araniva](#), A094 436 078 (BIA March 22, 2018) (reverses finding of inadmissibility based solely on allegation that respondent knew his wife hired a smuggler to bring their son into the United States) (*Pauley*, *Wendtland*, *Crossett*)

[Julian Ulises Espinoza-Ramirez](#), A058 623 622 (BIA March 20, 2018) (term “entry” retains the same meaning as before IIRIRA and thus does not apply to LPRs returning from trips abroad that are innocent, casual, and brief) (*Mullane*, *Creppy*, *Liebowitz*)—**KEY DECISION**

[Alma Nelida Martinez](#), A076 824 333 (BIA March 19, 2015) (finds respondent not removable for giving a ride to individuals encountered at a gas station in Laredo, Texas, because she did not have actual knowledge that passengers were unlawfully present) (*Pauley*, *Greer*, *Wendtland*)—**KEY DECISION**

[Guadalupe Ramirez Moran](#), A095 445 013 (BIA Dec. 18, 2014) (IJ should have afforded respondent an opportunity to rebut statements in Form I-213 that she engaged in alien smuggling) (*Malphrus*, *Mullane*, *Grant*)

[Maria Isabel Guzman-Sanchez](#), A087 118 694 (BIA Oct. 23, 2013) (terminates proceedings against accused “secondary transporter” where government evidence did not reliably establish that respondent aided unlawful crossings or was part of a pre-arranged plan to bring noncitizens into United States) (*Cole*, *Adkins-Blanch*, *Pauley* (dissenting))—**KEY DECISION**

[J-J-R-A-](#), AXXX XXX 298 (BIA July 3, 2013) (the term “entry” as used in INA 237(a)(1)(E)(i) is still controlled by *Rosenberg v. Fleuti*, 374 U.S. 449 (1963) and thus does not include returns from trips abroad that were “innocent, casual, and brief”) (*Greer*, *Pauley*, *Cole* (concurring))—**KEY DECISION**

### Child Abuse, Abandonment, and Neglect—INA 237(a)(2)(E)

[Santiago Gonzalez Alonso](#), A077 898 496 (BIA Aug. 20, 2020) (conviction for committing a crime against nature under La. Stat. 14:89 not a crime of child abuse because the subsections under which the respondent could have been convicted did not require a victim under 16 or a special relationship of trust with the defendant) (*Pepper*, *Donovan*, *O'Connor* (concurring))

[A-A-A-](#), AXXX XXX 115 (BIA July 24, 2020) (conviction under Md. Code Ann., Crim. Law 3-324 not a crime of child abuse where offense involved an undercover officer posing as a minor rather than an actual minor) (*Wilson*, *O'Connor*, *Swanwick*)

[C-Z-B-](#), AXXX XXX 789 (BIA May 18, 2020) (endangering the welfare of a child under 18 Pa. Cons. Stat. 3404(a) not a crime of child abuse because statute only requires proof of circumstances that “could threaten” child’s welfare) (*Gemoets*)

[C-E-](#), AXXX XXX 851 (BIA Dec. 31, 2019) (child abuse under Fla. Stat. Ann. 827.03 not a crime of child abuse because it criminalizes the mere encouragement of an act that could result in physical or mental injury to a child and does not require actual injury to a child) (*O'Connor*, *Wendtland*, *Greer*)

[Renald Mesidor](#), A098 129 087 (BIA Aug. 8, 2019) (traveling to seduce/solicit/entice a child to commit

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a sex act under Fla. Stat. 847.0135(4)(a) not a crime of child abuse because INA 237(a)(2)(E)(i) does not extend to “attempt” offenses) (*Baird*, O’Connor, Donovan)

[Evgeni Alekseevich Safanov](#), A098 317 070 (BIA Dec. 18, 2018) (lewdness involving a child under Utah Code Ann. 76-9-702.5 not a crime of child abuse because it applies to the mere exposure of one’s buttocks in the presence of a child and defendants need not act with the intent to arouse or gratify anyone’s sexual desire) (Crossett)

[D-D-R-L-](#), AXXX XXX 054 (BIA Jan. 19, 2018) (Cal. Penal Code 273a(b) not a crime of child abuse because it only requires placing a child in a situation where he or she may be endangered) (*Creppy*, Liebowitz, Mullane). *See also* [E-G-R-](#), AXXX XXX 784 (BIA Dec. 20, 2017).

[Sharon Khakai Luvisia](#), A099 785 387 (BIA Jan. 16, 2018) (contributing to the abuse, neglect or delinquency of a child under S.D. Codified Laws 26-9-1 not a crime of child abuse because statute covers conduct as innocuous as furnishing alcohol to a minor) (Creppy)

[Roman Kuot](#), A094 584 669 (BIA Dec. 6, 2017) (contributing to the deprivation of minor under N.D. Cent. Code 14-10-06(1) not a crime of child abuse because it prohibits behavior that does not pose sufficient risk of harm to child) (Pauley)

[C-M-O-G-](#), AXXX XXX 275 (BIA July 31, 2017) (ground of deportability does not apply to convictions entered before Sept. 30, 1996) (*Pauley*, Wendtland, O’Connor)

[B-Q-](#), AXXX XXX 485 (BIA June 20, 2017) (attempt to endanger welfare of a child under N.Y.P.L. 110.00 and 260.10 not a crime of child because INA 237(a)(2)(E)(i) only applies to completed acts of child abuse) (*Pauley*, O’Connor, Wendtland)—**KEY DECISION**

[Jose de Jesus Murillo Gutierrez](#), A207 105 449 (BIA May 12, 2017) (endangering welfare of a child under 18 Pa. Cons. Stat. 4304(a)(1) not crime of child abuse because it does not require a knowing mental state or an act creating likelihood of harm to a child) (*Malphrus*, Creppy, Liebowitz)

[Miguel Enrique Matzar Alvarado](#), A055 427 275 (BIA Feb. 3, 2017) (engaging in or conducting performance harmful to minors under Ind. Code 35-49-3(a)(5) not a crime of child abuse because offense did not require actual presence of minor or create particular likelihood of harm to a minor) (*Pauley*, Creppy, Mullane (dissenting))

[Laura Elizabeth Gracia-Cerda](#), A089 823 448 (BIA Oct. 28, 2013) (remands for further consideration of eligibility for cancellation of removal in light of *Ibarra v. Holder*, 721 F.3d 1157 (10th Cir. 2013) (finding Colorado child abuse not to be a crime of child abuse or neglect) (Holmes)

[Cesar Perez-Hernandez](#), A077 323 561 (BIA Apr. 28, 2011) (plea of nolo contendere to Cal. Penal Code 273a(b) does not establish conviction for crime of child abuse, per *Fregozo v. Holder*, 516 F.3d 1030 (9th Cir. 2009)) (*Holmes*, Guendelsberger, Kendall-Clark)

## Controlled Substance Offenses—INA 237(a)(2)(B)

### No Federally Controlled Substance Required

[Dexter Anthony Hillocks](#), A047 365 390 (BIA Sept. 16, 2020) (2002 conviction for possession of a controlled substance under 35 Pa. Const. 780-113(a)(16) not a controlled substance offense because state schedule was overbroad and indivisible) (*Wilson*, Goodwin, Baird)

[Kevin Mark Holod](#), A040 218 117 (BIA July 9, 2020) (unlawful possession of a controlled substance



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(methamphetamine) under Colo. Rev. Stat. 18-18-403.5 not a controlled substance offense under reasoning of *Arellano v. Barr*, 784 F. App'x 609 (10th Cir. 2019)) (Greer)

[Cong Van Nguyen](#), A071 427 810 (BIA July 9, 2020) (selling a precursor substance (pseudoephedrine) under Okla. Stat. 2-328 was not a controlled substance offense under *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (*Wilson*, Goodwin, Monsky)

[Conrado Arellano-Cases](#), A078 898 817 (BIA March 17, 2020) (Colorado definition of marijuana broader than federal definition because it includes marijuana stalks) (Creppy)

[M-G-C-Z.](#), AXXX XXX 971 (BIA March 13, 2020) (respondent not precluded from applying for non-LPR cancellation based on conviction under Cal. Health & Safety Code 11377(a) because record did not reflect controlled substance) (*Goodwin*, Wilson, Swanwick)

[Erick Gomez Caraveo](#), A087 295 078 (BIA March 13, 2020) (Nebraska definition of tetrahydrocannabinol (THC) became broader than federal definition following passage of Agriculture Improvement Act of 2018 on December 20, 2018) (*Goodwin*, Greer, Donovan)

[J-B.](#), AXXX XXX 131 (BIA March 10, 2020) (remands for further consideration of whether unlawful possession under Colo. Rev. Stat. 18-18-403.5(2)(a) is a controlled substance offense in light of intervening decision in *Arellano v. Barr*, 784 F. App'x 609 (10th Cir. 2019), and notwithstanding prior concession of removability) (*O'Connor*, Wilson, Greer)

[Julio Cesar Najera-Rodriguez](#), A060 280 595 (BIA Dec. 9, 2019) (terminates proceedings following decision in *Najera-Rodriguez v. Barr*, 926 F.3d 373 (7th Cir. 2019), holding that possession of a controlled substance under 720 ILCS 570/402(c) is not categorically a controlled substance offense) (Guendelsberger)

[Elvin M. Minaya Rodriguez](#), A207 359 653 (BIA Dec. 6, 2019) (remands for further consideration of whether criminal possession of a controlled substance in the third degree under N.Y.P.L. 220.16(12) is a controlled substance offense) (Malphrus)

[Alejandro Duran-Flores](#), A076 743 649 (BIA Oct. 30, 2019) (solicitation to possess a controlled substance under Ariz. Rev. Stat. 13-3407 is overbroad on its face because it includes positional and geometric isomers of methamphetamine) (Baird)

[Letzer Mauricio Salguero Paiz](#), A047 829 855 (BIA Sept. 3, 2019) (convictions involving methamphetamine under California Health & Safety Code 11378 and 11379(a) not a controlled substance offense under *Lorenzo v. Whitaker*, 752 F. App'x 482 (9th Cir. 2019)) (*Cole*, Wendtland, Greer (dissenting))

[Devon Adam Mullings-Reeves](#), A044 860 313 (BIA Aug. 30, 2019) (conspiracy to sale of narcotics under Conn. Gen. Stat. 21a-277(a) not a controlled substance offense because Connecticut controlled substance schedules includes drugs not included in federal schedules and identity of substance not an element of the offense) (Guendelsberger)

[Elisio Atenia Lorenzo](#), A038 467 916 (BIA Aug. 19, 2019) (terminates proceedings following remand in *Lorenzo v. Whitaker*, 752 F. App'x 482 (9th Cir. 2019), in light of argument that California definition of methamphetamine was overbroad as it included geometric isomers) (*Liebowitz*, Baird, Malphrus)

[J-A-H-C.](#), AXXX XXX 212 (BIA July 15, 2019) (remands for further consideration of whether possession of a controlled substance without a prescription under Calif. Business and Professions

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Code 4060 is divisible as to the controlled substance involved) (*Wendtland*, Cole, Greer)

[Manuel Salvador Juarez Camacho](#), A095 724 002 (BIA July 3, 2019) (remands for further consideration of respondent's removability because *Lorenzo v. Whitaker*, No. 15-70814, 752 F. App'x 482 (9th Cir. Jan. 17, 2019), left open whether geometric isomers of methamphetamine exist) (Guendelsberger)

[Jorge Luis Arrendondo-Avendano](#), A034 507 033 (BIA June 28, 2019) (attempted possession of narcotic drugs for sale under Ariz. Rev. Stat. Ann. 13-3408(A)(2) not a controlled substance offense because state drug schedule is overbroad and Ninth Circuit does not require examples of actual prosecutions to satisfy realistic probability requirement) (*Donovan*, Noferi, Greer)

[Manuel Lopez Ventura](#), A059 320 837 (BIA June 27, 2019) (terminates proceedings because conviction records failed to establish by clear and convincing evidence that respondent's conviction was for marijuana rather than AB-CHMINACA, which was not a federally controlled substance at the time of his conviction) (*Wendtland*, Donovan, Rosen)

[Mykola Hnatyuk](#), A055 034 818 (BIA June 24, 2019) (terminates proceedings following conclusion by Second Circuit that respondent's conviction under Conn. Gen. Stat. 21-a-279(a) was not categorically related to a controlled substance) (*Creppy*, Liebowitz, Baird)

[Ricardo Francisco Moya Savinon](#), A034 457 852 (BIA May 3, 2019) (reopens and terminates proceedings sua sponte in light of intervening decision in *Harbin v. Sessions*, 860 F.3d 58 (2d 2017), which held that N.Y. Penal Law 220.31 is categorically overbroad relative to INA 237(a)(2)(B)(i)) (Liebmann)

[P-S-R-](#), AXXX XXX 946 (BIA April 12, 2019) (remands for further consideration of whether Texas Health & Safety Code 481.112 is a controlled substance offense where respondent was unrepresented when he conceded the charge of removability and DHS failed to submit conviction records) (*Greer*, Cole, Donovan)

[Carlos Ferreira Avalos](#), A044 763 098 (BIA Feb. 11, 2019) (remands record to consider whether Arizona definition of methamphetamine is divisible between optical and geometric isomers) (Guendelsberger)

[Jermaine Sanjay Ross](#), A044 860 019 (BIA Dec. 28, 2018) (possession of a narcotic substance under Conn. Gen. Stat. 21a-279(a) not a controlled substance offense because state drug schedule contains substances not listed on federal schedule) (*Liebowitz*, Creppy, Mullane)

[Carlos Javier Sepulveda-Araujo](#), A091 528 983 (BIA Nov. 30, 2018) (attempted possession of narcotic drugs for sale under Ariz. Rev. Stat. 13-3408 is not a controlled substance offense because statute is not divisible with respect to the drug at issue) (Kelly)

[Jose Juan Rodriguez Garcia](#), A044 581 069 (BIA Oct. 19, 2018) (possession of methamphetamine under Calif. Health & Safety Code 11377(a) is not a controlled substance offense under *Lorenzo v. Sessions*, 902 F.3d 930 (9th Cir. 2018)) (*Greer*, Cole, Crossett)

[Arnulfo Pantaleon-Hernandez](#), A044 542 038 (BIA Oct. 4, 2018) (Arizona's definition of methamphetamine is overbroad and indivisible with respect to federal definition of methamphetamine under *Lorenzo v. Sessions*, 902 F.3d 930 (9th Cir. 2018)) (*Crossett*, Greer, O'Connor)

[J-A-F-T-](#), AXXX XXX 564 (BIA Aug. 23, 2018) (Nev. Rev. Stat. 454.351 is not a controlled substance

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[Pablo David Castillo Gomez](#), A030 968 558 (BIA July 12, 2018) (grants motion to reconsider and holds that criminal possession of a controlled substance in the seventh degree under N.Y.P.L. 220.03 is not a controlled substance offense under *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)) (*Grant*, Guendelsberger, Kendall Clark)

[Jose Ramon Abreu](#), A090 679 919 (BIA May 21, 2018) (reopens and terminates proceedings sua sponte for respondent convicted under N.Y.P.L. §§ 220.03 and 220.06(5) in light of intervening decision in *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)) (Guendelsberger)

[J-M-H-](#), AXXX XXX 997 (BIA March 14, 2018) (possession with intent to deliver cocaine under Iowa Code Ann. 124.401(1)(c)(2)(b) not a controlled substance offense because it applies to simulated or imitation cocaine) (*Cole*, Greer, Crossett)—**KEY DECISION**

[Jaime Moreno-Gallegos](#), A078 334 242 (BIA Dec. 29, 2017) (possession of controlled substance under Iowa Code 124.401(5) not a controlled substance offense because Iowa's drug schedules are overbroad and the identity of the controlled substance is not an element of the offense) (Malphrus)—**KEY DECISION**

[Iankel Ortega](#), A041 595 509 (BIA Dec. 1, 2017) (criminal possession of a controlled substance in the seventh degree under N.Y.P.L. 220.03 not a controlled substances offense under *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)) (*Liebowitz*, Malphrus, Mullane)

[Ariel Jonathan Diaz Vargas](#), A044 480 297 (BIA Sept. 29, 2017) (criminal sale of controlled substance in the fifth degree under N.Y.P.L. 220.31 not a controlled substance offense under *Harbin v. Sessions*, 860 F.3d 58 (2d Cir. 2017)) (Guendelsberger)

[Luis Fernando Armas-Villacis](#), A204 660 398 (BIA May 4, 2017) (dismisses DHS bond appeal in light of IJ finding that respondent was not deportable based on conviction for possession of alprazolam under Minn. Stat. § 152.025, subd. 2(a)(1)) (Greer)

[Roberto Lopez Valencia](#), A090 797 248 (BIA Dec. 27, 2016) (conviction under Cal. Health & Safety Code 11550(a) did not render respondent removable under INA 237(a)(2)(B)(i) because record of conviction referred only to "stimulants" and California prohibits use of a stimulant (Khat) that is not a federally controlled substance) (*Guendelsberger*, Pauley, Geller)

[Bertha A. Lopez-Tovar](#), A071 904 519 (BIA Dec. 12, 2016) (attempted possession of dangerous drug for sale under Ariz. Rev. Stat. 13-3407 not a controlled substance offense because Arizona's drug schedule is broader than federal schedule and jurors not required to make finding of fact regarding specific substance at issue) (*Pauley*, Guendelsberger, Geller)—**KEY DECISION**

[Akim Joseph Trivus Charles](#), A040 166 697 (BIA Jan. 3, 2017) (reopens proceedings sua sponte following vacatur of conviction for third degree criminal sale of a controlled substance under N.Y.P.L. 220.39(1), and re-plea to fourth degree criminal possession of a controlled substance under N.Y.P.L. 220.09(1)) (Guendelsberger)

[So Hee Lee](#), A044 726 322 (BIA Sept. 30, 2016) (possession of controlled substance under Va. Code 18.2-250 and distribution of controlled substance under Va. Code 18.2-248D not removable offenses under categorical approach because state drug schedule contains substances not listed on the federal schedule; remands to consider whether statutes are divisible) (Pauley)



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[Marco Antonio Cruz-Martinez](#), A070 726 184 (BIA April 21, 2015) (remands for consideration of whether realistic probability exists that Nev. Rev. Stat. 454.351 would be applied to controlled substances not on federal drug schedules) (*Cole*, Geller, Malphrus)

### **Paraphernalia**

[Jorge Adrian Gonzalez](#), A089 466 492 (BIA July 1, 2019) (possession of drug paraphernalia under Utah Code Ann. 58-37A-5(1)(a) not a controlled substance offense because Utah schedule includes substances not found in federal schedules and statute is indivisible) (*Kelly*, Morris, Liebmann)

[Ariel Alejandro Lopez-Morales](#), A207 621 286 (BIA Feb. 13, 2019) (Utah conviction for possession of drug paraphernalia not a controlled substance offense because record of conviction does not identify substance involved) (*Mann*, Kelly, Adkins-Blanch)

[Dzianis Drobysh](#), A055 034 890 (BIA Nov. 29, 2018) (possession of drug paraphernalia under Ariz. Rev. Stat. 13-3415(A) is not a controlled substance offense because state schedule is overbroad and identity of drug is not an element of the offense) (Crossett). *See also* [Luis Antonio Varela Mendoza](#), A088 531 194 (BIA Nov. 19, 2018); [Eriel De Jesus Arreaza-Oliva](#), A042 174 443 (BIA Feb. 28, 2018); [R-R-N-](#), AXXX XXX 268 (BIA Jan. 12, 2018); [Ernesto Rodrigo Lopez-Clemente](#), A078 686 322 (BIA June 16, 2017); [Jose Luis Pimber-Cirerol](#), A019 117 585 (BIA Feb. 15, 2017).

[Alexy Nahum Silva Maradiaga](#), A206 481 827 (BIA Aug. 8, 2016) (IJ failed to consider *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015), in assessing whether conviction for possession of drug paraphernalia rendered respondent removable) (Pauley)

[Miguel Hugo Vallejo](#), A096 201 718 (BIA Jan. 6, 2016) (remands for further consideration of eligibility to adjust status in light of *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (O'Herron)

[Moones Mellouli](#), A087 317 931 (BIA Nov. 13, 2015) (grants joint motion to terminate with prejudice in light of *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (Holmes)

[Wayne Linton Morris](#), A074 303 761 (BIA July 23, 2015) (terminates proceedings with prejudice against respondent convicted of possession with intent to use drug paraphernalia under N.C.G.S. 90-113.22 in light of *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (*Pauley*, Guendelsberger, Mullane)

[Ramiro Enrique Rojas](#), A056 123 018 (BIA Jan. 17, 2012) (conviction for Use/Possession of Drug Paraphernalia under 35 Pa. Stat. Ann. § 780-113(a)(32) “relates to” controlled substance) (Pauley)

### **Personal Use of Marijuana Exception**

[Albeiro Herrera](#), A038 768 362 (BIA March 27, 2019) (reopens and terminates proceedings following the vacatur of one of two convictions for possession of 20 grams or less of marijuana, leaving the remaining conviction subject to the personal use exception in INA 237(a)(2)(B)(i)) (Guendelsberger)

[Jose Andres Obando-Segura](#), A205 118 486 (BIA Oct. 4, 2018) (remands for further consideration of respondent's removability based on conviction under Cal. Health & Safety Code 11360(a) given that statute could apply to transportation of less than 30 grams of marijuana for one's own use) (*Liebowitz*, Malphrus, Mullane)

[Jonathan Nustes Parra](#), A207 612 117 (BIA Sept. 26, 2018) (admitted alien not subject to mandatory detention based on marijuana conviction that would qualify for personal use exception) (*Hunsucker*, Creppy, Liebowitz)

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[Saldin Cumorovic](#), A078 786 648 (BIA Sept. 5, 2018) (grants joint motion to terminate in light of parties' agreement that possession of drug paraphernalia under 35 Penn. Stat. 780-113(a)(32) qualifies for personal use of marijuana exception) (Hunsucker)

[Kevin George Marsh](#), A086 946 931 (BIA March 14, 2017) (DHS did not meet burden of proving respondent possessed more than 30 grams marijuana where only evidence relating to amount of marijuana was respondent's own testimony estimating the amount of physical space the marijuana occupied) (*Grant*, Adkins-Blanch, Pauley)

[Marcin Merchelski](#), A043 700 889 (BIA Apr. 9, 2015) (upholds termination of proceedings against respondent convicted of intentional possession of a controlled substance under 35 P.S. 780-113(a)(16) because DHS did not establish that respondent personally possessed more than 30 of the 110 grams of marijuana jointly controlled with co-defendant) (Cole)—**KEY DECISION**

[Lorenzo Perez Flores](#), A095 419 451 (BIA July 28, 2014) (respondent not removable because DHS did not demonstrate that conviction fell outside possession of marijuana for personal use exception) (*Grant*)

[Jose Manuel Barrios Rojas](#), A090 145 871 (BIA Feb. 7, 2014) (counsel provided ineffective assistance by failing to contest removability where records of conviction did not establish controlled substance involved in one drug offense or that respondent possessed more than 30 grams of marijuana for other drug offense) (Miller)

[Salvador Vaca-Bueno](#), A072 956 700 (BIA Dec. 5, 2013) (IJ failed to consider personal use of marijuana exception for respondent convicted under Cal. Health & Safety Code 11364.1(a)) (Pauley)

[Juan Rafael Santos](#), A074 191 655 (BIA Nov. 13, 2013) (maintaining a vehicle/dwelling/place for marijuana under N.C.G.S. 90-108(a)(7) relates to controlled substance; IJ was permitted to consult conviction documents under *Matter of Davey*, 26 I&N Dec. 37 (BIA 2012), in finding respondent did not qualify for personal use exception) (Guendelsberger)

[Salomon Martinez-Banuelos](#), A044 343 239 (BIA Aug. 22, 2013) (IJ provided no analysis regarding possession of marijuana for personal use exception) (*Pauley*, Guendelsberger, Greer)—**KEY DECISION**

### Miscellaneous

[Javier Cabadas-Esquivel](#), A037 727 114 (BIA May 13, 2020) (conviction vacated under state rehabilitative statute not valid for immigration purposes under *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), notwithstanding three-year probationary sentence) (*Gemoets*, Morris, Malphrus)

[Tingzhou Liang](#), A058 877 668 (BIA Oct. 30, 2018) (plea to accessory after the fact under Calif. Penal Code 32 following vacatur of conviction for possession of marijuana for sale not a controlled substance offense because underlying felony not material to the conviction) (*Grant*)

[Augusto Prado](#), A088 473 514 (BIA June 16, 2017) (finds respondent no longer inadmissible following vacatur of 2007 conviction under Cal. Penal Code 1203.4 despite three-year period of probation because *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000), applied at time of conviction) (*Wendtland*, Greer, Pauley)

[Ramon Garcia-Fonseca](#), A075 535 094 (BIA June 5, 2014) (respondent not inadmissible for having "admitted" violating a law related to a controlled substance based on guilty plea to methamphetamine possession that resulted in his placement in a California drug diversion program,

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per *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000)) (*Pauley*, Wendtland, Cole)

[Francisco Zendejas-Sanchez](#), A036 176 508 (BIA Mar. 8, 2011) (proceedings terminated where respondent entered plea pursuant to *People v. West*, 477 P.2d 409 (Cal. 1970), and conviction documents did not incorporate allegations from the charging documents regarding type of controlled substance) (*Wendtland*, Greer, Pauley (dissenting))—**KEY DECISION**

[Federico Contreras-Torres](#), A036 157 819 (BIA Jan. 20, 2012) (conviction documents submitted by DHS not sufficient to establish that respondent was convicted of offense relating to a controlled substance) (*Hoffman*)

[Jesus Enrique Mendoza-Benitez](#), A092 161 477 (BIA Jan. 18, 2011) (proceedings terminated where respondent entered guilty plea pursuant to *People v. West*, 477 P.2d 409 (Cal. 1970), and record did not establish controlled substance that formed basis for conviction) (*Cole*, Greer, Pauley)

### Controlled Substance Traffickers—INA 212(a)(2)(C)

[Regine Angela Michaud](#), A037 986 431 (BIA Nov. 21, 2019) (denies DHS motion to reconsider decision holding that returning LPR whose conviction had been vacated could not be charged with inadmissibility under INA 212(a)(2)(C) as a suspected drug trafficker) (*Guendelsberger*)

[R-A-S-](#), AXXX XXX 835 (BIA July 9, 2018) (conviction under California Health and Safety Code 11352(a) did not itself render respondent inadmissible under INA 212(a)(2)(C) because statute prohibits transportation of a controlled substance for personal use) (*Adkins-Blanch*, Snow, Kelly)

[Jennifer Adassa Davey](#), A087 248 748 (BIA Jan. 9, 2018) (reverses finding of inadmissibility where respondent was only convicted of simple possession of marijuana and authorities did not pursue other charges after large quantities of marijuana were found inside her and her husband's home) (*Cole*, Wendtland, Pauley (dissenting))

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[Candido Noyola-Montalvo](#), A23 006 885 (BIA Dec. 5, 2005) (respondent not inadmissible under INA 212(a)(2)(C) for having been arrested for growing 15 marijuana plants on his property, as no evidence in the record suggested his conduct was commercial in nature) (*Pauley*, Filppu, Osuna)

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[Jose Manuel Isabel Diaz](#), A205 500 422 (BIA Dec. 30, 2013) (“reason to believe” is akin to “probable cause”; respondent properly deemed inadmissible based on allegations of involvement in drug transaction and invocation of Fifth Amendment) (*Grant*)

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[G-K-G-](#), AXXX XXX 918 (BIA Dec. 26, 2019) (simple assault under 18 Pa. Cons. Stat. 2701(a)(1) is not divisible and thus never a CIMT) (*Noferi*, Greer, O'Connor)

[Leighton Wayne Brissett](#), A027 890 889 (BIA Sept. 20, 2019) (simple assault under 18 Pa. Cons. Stat. 2701(a)(3) not a CIMT because it only requires specific intent to place another in fear of imminent serious bodily injury, not specific intent to place another in actual imminent danger) (Greer)

[Herson Ulises Peraza Aguilar](#), A063 144 392 (BIA April 30, 2019) (unlawful restraint under 720 Ill. Comp. Stat. 5/10-3 not a CIMT because there is no minimum amount of time for which the victim must be restrained) (*Creppy*, Liebowitz, Malphrus)

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[Mirza Miguel Ramirez-Cortez](#), A208 837 298 (BIA March 19, 2019) (assault against cohabitant under Cal. Penal Code 273.5(a) not a CIMT) (*Creppy*, Morris, Malphrus)

[Wenston Emmanuel Fray](#), A042 259 146 (BIA Feb. 27, 2019) (resisting arrest without violence under Fla. Stat. 843.02 not a CIMT because it reaches conduct that would cover simple assault) (*Grant*, Guendelsberger, Kendall Clark)

[O-D-F-P-](#), AXXX XXX 070 (BIA Feb. 7, 2019) (fourth degree assault under Mo. Stat. Ann. 565.056(1) not a CIMT because it requires only a mental state of recklessness and victims need only suffer physical injury rather than serious physical injury) (*Cole*, Donovan, Greer)

[J-L-C-](#), AXXX XXX 485 (BIA Oct. 12, 2018) (assault and battery with a dangerous weapon under Mass. Gen. Laws, ch. 265, § 15A(b) is not a CIMT because it applies to defendants who acted negligently and were unaware of the risk caused by their behavior) (*Wendtland*, Greer, Crossett (dissenting))

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[Rafael Perez-Herrera](#), A044 341 518 (BIA Aug. 20, 2018) (resisting arrest under 18 Pa. Cons. Stat. Ann. 5104 is not divisible and thus categorically not a CIMT) (Cole)

[Arkin Dos Santos Baptista](#), A060 027 041 (BIA July 30, 2018) (simple assault under 18 Pa. Cons. Stat. 2701(a)(1) is not divisible and thus not a CIMT) (Malphrus)

[Mustapha Bayoh](#), A062 500 716 (BIA June 29, 2018) (simple assault under 18 Pa. Cons. Stat. Ann. 2701(a)(1) is not divisible and thus not a CIMT) (Guendelsberger)

[K-M-A-](#), AXXX XXX 388 (BIA June 19, 2018) (conviction for attempted third degree assault under N.Y.P.L. 120.00 not a CIMT because statute is divisible and conviction records did not specify subsection to which respondent pleaded guilty) (*Crossett*, Wendtland, Pauley (dissenting))

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[R-L-J-](#), AXXX XXX 436 (BIA Jan. 16, 2018) (battery under Aurora (Colo.) Municipal Code 94-37 not a CIMT because it does not require specific intent to injure or an aggravating factor setting it apart from traditional assault and battery) (*Wendtland*, Cole, Pauley). *See also* [P-M-L-](#), AXXX XXX 127 (BIA Dec. 18, 2017).

[J-S-C-](#), AXXX XXX 869 (BIA Nov. 6, 2017) (orders further consideration of whether infliction of corporal injury under Calif. Penal Code 273.5(a) is a CIMT) (*Malphrus*)

[I-D-R-C-](#), AXXX XXX 214 (BIA Oct. 27, 2017) (domestic assault under Tenn. Code Ann. 39-13-111 not a CIMT) (*Pauley*, Greer, Wendtland)

[Ayaz Khan](#), A071 801 450 (BIA Oct 12, 2017) (misdemeanor assault and battery under Va. Code 18.2-57 and misdemeanor assault on a family member under Va. Code 18.2-57.2 are not CIMTs) (*O'Connor*, Wendtland, Cole)

[Ronal Antonio Dominguez](#), A040 541 465 (BIA Oct. 3, 2017) (assault and battery upon police officer under Mass. Gen. Laws Ann. ch. 265, § 13D not a CIMT because it applies to offensive but non-injurious batteries) (*Pauley*). *See also* [B-V-N-](#), AXXX XXX 060 (BIA Oct. 6, 2017).

[J-R-M-](#), AXXX XXX 954 (BIA June 16, 2017) (assault under Texas Penal Code 22.01(a)(1) not a CIMT because it encompasses reckless conduct and finding of family violence made by judge rather than jury) (*Cole*, O'Connor, Pauley)

[F-S-](#), AXXX XXX 285 (BIA April 28, 2017) (simple assault domestic violence under N.D. Cent. Code 12.1-17.01(2)(b) not a CIMT because it encompasses slight physical impairment without pain infliction) (*Pauley*)

[John Nyakundi Omari](#), A028 989 663 (BIA April 28, 2017) (fifth degree domestic assault under Minn. Stat. 609.2242, subd.1(2) not a CIMT) (*Pauley*, Kelly, Mann)

[Sixto Delgado](#), A075 423 408 (BIA March 27, 2017) (second degree unlawful imprisonment under Kent. Rev. Stat. 509.030 not a CIMT) (*Pauley*, Mullane, Malphrus)

[Tu Kim Le](#), A063 261 404 (BIA March 10, 2017) (notes withdrawal of DHS appeal of decision holding third degree assault under RCW 9A.36.031(1)(f) with sentencing enhancement for acting with sexual motivation not a CIMT) (*Guendelsberger*)

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[S-B-D-](#), AXXX XXX 274 (BIA Jan. 11, 2017) (reopens proceedings sua sponte in light of arguments that third degree assault under Colo. Rev. Stat. 18-3-204 is categorically not a CIMT and statute is not divisible) (*Kendall-Clark*)

[Luis Angel Cruz Torres](#), A204 840 095 (BIA Jan. 6, 2017) (battery under Cal. Penal Code 242 not a CIMT because it requires neither force capable of hurting or causing injury nor violence) (*Malphrus*)

[Gerardo Perez Alonzo](#), A046 629 923 (BIA Dec. 22, 2016) (domestic abuse assault under Iowa Code 708.2A(4) not a CIMT because statute criminalizes any physical contact that is insulting or offensive



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and statute is not divisible) (*Cole*, Guendelsberger, Malphrus)

[Sean Terry Darwin Haynes](#), A036 574 645 (BIA Dec. 2, 2016) (attempted second degree assault under N.Y.P.L. 120.05 not a crime of violence because it is “legally impossible”) (*Pauley*, Geller, Greer)

[F-E-H-](#), AXXX XXX 193 (BIA Sept. 2, 2016) (resisting an executive officer under Okla. Stat. Ann. Tit 21, § 268 not a CIMT because it does not require use of deadly weapon, actual or intended infliction of injury, or wanton or willful disregard for lives or property of others) (*Pauley*, Wendtland, Cole (dissenting))—**KEY DECISION**

[Rodrigo Vasquez-Lopez](#), A048 138 084 (BIA March 10, 2015) (recklessly endangering another person under 18 Pa. Cons. Stat. Ann. 2705 not a CIMT under intervening decision in *Mahn v. U.S. Att’y Gen.*, 767 F.3d 170 (3d Cir. 2014)) (Guendelsberger)

[Binh Ngoc Trinh](#), A041 556 896 (BIA Feb. 19, 2015) (fourth degree assault under Kent. Rev. Stat. 508.030(1)(a) not a CIMT because statute applies to persons who “wantonly” cause injury to another and is not accompanied by aggravating factors) (*Cole*, Wendtland, Pauley)—**KEY DECISION**

[Chhrey Chea](#), A027 321 642 (BIA Dec. 22, 2014) (simple assault under 18 Pa. Cons. Stat. 2701(a)(1) not a CIMT because statute applies to reckless conduct and does not require infliction of serious bodily injury) (Mann)—**KEY DECISION**

[Juan Carlos Clase](#), A043 986 617 (BIA Apr. 25, 2014) (attempted second degree gang assault under N.Y.P.L. 110.00-120.06 not a CIMT because it imposes strict liability for unintended results and thus is “legally impossible” for trial purposes) (*Pauley*, Greer, Malphrus)—**KEY DECISION**

[Eduardo Gomez Juardo](#), A090 764 102 (BIA Mar. 28, 2014) (assault on a female under N.C. Stat. 14-33(c)(2) not a CIMT) (Pauley)

[Manuel Jesus Olivas-Motta](#), A021 179 705 (BIA Feb. 21, 2014) (reckless endangerment under Ariz. Rev. Stat. 13-1201 is categorical CIMT under *Matter of Leal*, 26 I&N Dec. 20 (BIA 2012)) (*Malphrus*, Liebowitz, Guendelsberger)

[Rodrigo Vasquez-Lopez](#), A048 138 084 (BIA Jan. 24, 2014) (recklessly endangering another person under 18 Pa. Cons. Stat. 2705 is categorical CIMT because defendants must consciously disregard substantial risk that actions could result death or serious bodily injury) (*Liebowitz*, Guendelsberger, Kendall-Clark)

[Salvador Hernandez-Garcia](#), A097 472 829 (BIA Sept. 20, 2013) (resisting arrest under Cal. Penal Code 69 not categorical CIMT and statute not divisible under *Descamps v. United States*, 133 S.Ct. 2276 (2013), because neither the threat of use of deadly force nor injury to the victim is an element of the offense) (*Pauley*, Greer, Malphrus (dissenting))—**KEY DECISION**

[Sangchul Lee](#), A200 298 115 (BIA July 5, 2013) (remands because IJ misinterpreted respondent’s conviction under Mich. Comp. Laws 750.81a, which criminalizes assault without a weapon, as a categorical CIMT and erroneously referred it as one for “assault with a dangerous weapon”) (Cole)

[Aaron Manuel Solis-Tadeo](#), A077 290 731 (BIA Aug. 8, 2012) (assault by means of force likely to produce great bodily injury under Cal. Penal Code 245(a)(1) not a categorical CIMT under *Uppal v. Holder*, 605 F.3d 712 (9th Cir. 2010)) (*Kendall-Clark*, Malphrus, Neal)

[Wilber Jose Chavarria](#), A029 961 066 (BIA Feb. 13, 2012) (simple assault or battery under R.I.G.L.

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11-5-3 not categorical CIMT) (Grant)

[Hugo Ivan Cardoso](#), A073 957 149 (BIA Oct. 19, 2011) (assault with a firearm under Cal. Penal Code 245(a)(2) is categorical CIMT, notwithstanding language in *Carr v. INS*, 86 F.3d 949 (9th Cir. 1996), stating that it is not) (Pauley)

[Ramiro Hernandez](#), A079 350 585 (BIA June 27, 2011) (simple assault under Ga. Code 16-5-20 not a categorical CIMT; record did not demonstrate whether respondent was convicted of specific or general intent crime or whether he admitted facts in original indictment) (*Malphrus*, Greer, Pauley)

[Daria Levasheva](#), A058 471 381 (BIA Apr. 25, 2011) (simple assault under 18 Pa. Cons. Stat. Ann. 2701(a) not categorical CIMT because record of conviction did not demonstrate part of statute under which respondent was convicted) (Greer)

[Francisco Onate-Vazquez](#), A079 362 130 (BIA Apr. 14, 2011) (battery of a spouse under Cal. Penal Code 243(e)(1) and false imprisonment under Cal. Penal Code 236 not CIMTs) (*Greer*, Cole, Pauley)

[Juan Pablo Zea-Flores](#), A041 737 150 (BIA Apr. 6, 2011) (misdemeanor false imprisonment under Cal. Penal Code 236 not a CIMT; rejects DHS argument that respondent was removable based on admission that he committed elements of felony false imprisonment) (Cole)—**KEY DECISION**

[Eddy Jose Ramirez](#), A028 859 292 (BIA Jan. 20, 2011) (battery of law enforcement officer under Fla. Stat. 784.07 not CIMT where arrest affidavit did not demonstrate that victim sustained bodily injury) (Pauley)

[Kingsley Chiagozie Ezinwa Ibeh](#), A055 574 599 (BIA Nov. 4, 2010) (battery and criminal damage to property under Kan. Stat. 21-3412 and 21-3720b(3) not CIMT) (*Grant*, Miller, Malphrus (dissenting))

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[Alejandro De Leon Gonzalez](#), A044 564 165 (BIA April 15, 2020) (burglary of building under Texas Penal Code 30.02 not a CIMT because the target offense is not an element and could include simple assault) (Morris)

[Roodjery Roger](#), A079 584 171 (BIA Nov. 5, 2019) (burglary of an unoccupied dwelling under Fla. Stat. 810.02(3)(b) not a CIMT because potential target offense of theft under Fla. Stat. 812.014(1) is not a CIMT) (*Guendelsberger*, Grant, Kendall Clark)

[Juan Benito Aguilar-Trejo](#), A209 215 828 (BIA Oct. 31, 2019) (felony criminal mischief under Fla. Stat. 806.13.1(b)(3) not a CIMT because it applies to simple destruction of property without any aggravating factors) (*Guendelsberger*, Kendall Clark, Kelly)

[Shanta Dargbeh](#), A078 778 371 (BIA Sept. 11, 2019) (second and third degree burglary under N.J. Stat. Ann. 2C:18-2 not a CIMT because statute does not require entry into a dwelling and intent to commit CIMT) (*Wendtland*, Baird, O'Connor (concurring))

[Jose Edilio Mercado](#), A087 427 546 (BIA May 24, 2019) (burglary under Tex. Pen. Code 30.02 not a CIMT because the target crime need not be a CIMT) (*Malphrus*, Liebowitz, Mullane)

[Domingo Antonio Rosa Pena](#), A030 876 255 (BIA May 10, 2019) (burning of a meeting house under Mass. Gen. Laws Ann. ch. 266 § 2 not a CIMT because it does not require evil intent and could apply to the owner of a building setting fire to its own contents) (*Kelly*, Adkins-Blanch, Mann (concurring))

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[James Dimaya Garcia](#), A043 888 256 (BIA Feb. 19, 2019) (burglary under Cal. Penal Code 459 not a CIMT because it does not require accused to enter occupied dwelling or intend to commit a CIMT) (*Greer*, Wendtland, Cole)

[Eli Salvador Minas Urbina](#), A073 704 842 (BIA Oct. 30, 2018) (burglary under Va. Code 18.2-91 is not a CIMT because it prohibits breaking into non-dwellings and the intended crime need not be turpitudinous) (*Malphrus*, Mullane, Morris)

[J-A-M-B-](#), AXXX XXX 662 (BIA July 12, 2018) (arson under Cal. Penal Code section 451(d) is not divisible and categorically not a CIMT because it is a general intent crime that does not require an intent to cause injury or damage) (*Grant*, Kendall Clark, Guendelsberger)

[D-R-O-H-](#), AXXX XXX 888 (BIA May 4, 2018) (burglary under Cal. Penal Code 459 not a CIMT) (*Mann*, Kelly, Adkins-Blanch)

[Manuel Dejuses Canales Avila](#), A090 104 314 (BIA Jan. 17, 2018) (burglary under Calif. Penal Code 459 not a CIMT) (*Grant*)

[J-G-F-](#), AXXX XXX 130 (BIA Dec. 29, 2017) (vandalism under Cal. Penal Code 594(a) not categorically a CIMT and statute is not divisible) (*Mullane*, Liebowitz, Creppy)

[Amkha Syharath](#), A071 434 940 (BIA Dec. 21, 2017) (vehicular burglary under Calif. Penal Code 459 not a CIMT) (*Guendelsberger*, Kendall Clark, Grant)

[D-C-G-](#), AXXX XXX 575 (BIA Oct. 30, 2017) (trespass of an occupied structure or conveyance under Fla. Stat. 810.08(2)(b) not a CIMT because offense need not take place in dwelling or require intent to commit crime) (*Pauley*, Kelly, Mann)

[Jose de Jesus Delgadillo Armas](#), A092 411 542 (BIA April 27, 2017) (residential burglary under Cal Pen. Code 459 not a CIMT) (*Pauley*)

[Stefan Abhishek Vincent](#), A208 357 277 (BIA April 14, 2017) (burglary of a structure under Fla. Stat. 810.02(1) and (4) not a CIMT) (*Pauley*, Mullane, Malphrus)

[Abayneh Arifcho Hegana](#), A062 520 623 (BIA Jan. 26, 2017) (third degree burglary under Md. Code Ann., Crim. Law 6-204 not a CIMT because burglars need not intend to commit CIMT inside dwelling) (*Wendtland*, Greer, Pauley (dissenting))—**KEY DECISION**

[Majok Majok](#), A094 582 812 (BIA Dec. 20, 2016) (criminal mischief under 18 Penn. Cons. Stat. 3304(a)(5) not a CIMT because prosecutors need not establish minimum level of damage to property) (*Pauley*, Greer, Geller)

[Alain Patrana](#), A025 441 027 (BIA Dec. 22, 2014) (criminal mischief under Fla. Stat. 806.13(1)(a) (1997) not a CIMT because prosecutors need not demonstrate any aggravating factors and amount of damage alone not sufficient to show moral turpitude) (*Cole*)

[Maria Jose Reyes](#), A076 916 481 (BIA July 8, 2014) (burglary under Fla. Stat. 810.02(2)(a) is not categorically a CIMT because certain subsections do not require the structure in question to be occupied at the time of the breaking) (*Mullane*)



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**Fraud and Theft-Related Crimes**

[Gregory Stephens Yrady Grant](#), A044 456 197 (BIA Aug. 31, 2020) (convictions for theft of property under Tex. Penal Code 31.03(e) prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), do not qualify as a CIMT because statute applies to non-permanent takings) (*Malphrus*, Liebowitz, Pepper)

[Raoul Garrett Willock](#), A040 166 234 (BIA June 23, 2020) (reopens and terminates proceedings sua sponte in light of intervening decision in *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018), holding that *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), does not apply retroactively) (Riley)

[Saira Persad](#), A043 832 396 (BIA May 14, 2020) (reopens proceedings sua sponte upon finding theft under Fla. Stat. 812.014 not a CIMT under *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (Grant)

[Jose Luis Diaz Ortiz](#), A042 599 083 (BIA April 13, 2020) (conviction in 2004 for third degree grand larceny under N.Y.P.L. 155.35 not a CIMT under *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018)) (O'Connor)

[Chukwuebuka Ozougwu](#), A079 003 777 (BIA April 9, 2020) (*Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), does not apply retroactively to convictions for theft under Texas Penal Code 31.03) (Donovan)

[Albert Slawecki](#), A200 384 523 (BIA March 19, 2020) (holds that Pennsylvania theft statutes incorporating definition of “deprive” qualify as CIMTs under *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), but declines to apply decision retroactively) (*Greer*, Donovan, Swanwick)

[M-E-A-](#), AXXX XXX 871 (BIA Feb. 10, 2020) (misuse of a social security number under 42 U.S.C. 408(a)(7)(8) not a CIMT because minimum conduct includes using a fictitious social security number to get a job and support one’s family) (*Greer*, Wendtland, Wilson)

[Yohandra Ramos Bauza](#), A073 774 001 (BIA Nov. 29, 2019) (theft under Fla. Stat. Ann. 812.014 not a CIMT because plain language of statute criminalizes the temporary taking of property without requiring a substantial deprivation to the owner) (Greer)

[Jorge L. Montalvan](#), A073 773 456 (BIA Oct. 16, 2019) (theft under Fla. Stat. Ann. 812.014 not a CIMT because it applies to joyriding and other *de minimis* temporary takings) (Wilson)

[Gerson Rene Gordon-Flores](#), A070 219 974 (BIA Sept. 30, 2019) (convictions for second degree theft in Oregon not a CIMT prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (Baird)

[Shanta Dargbeh](#), A078 778 371 (BIA Sept. 11, 2019) (holds that *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), cannot be applied retroactively to convictions for theft by unlawful taking under 18 Pa. Cons. Stat. 3921(a)) (*Wendtland*, Baird, O'Connor (concurring))

[A-A-D-Z-](#), AXXX XXX 819 (BIA July 26, 2019) (third degree theft of property under Ala. Code. 13A-8-2(1) not a CIMT prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (*Wendtland*, Baird, Adkins-Blanch)

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[Jesus Rafael Naranjo-Pairol](#), A076 171 941 (BIA June 13, 2019) (Oregon aggravated identity theft not a CIMA because it applies to individuals who merely provide false identification to law enforcement with the intent to evade arrest) (Cole)

[Alain Artilles Valdes](#), A096 002 002 (BIA June 4, 2019) (grand theft under Fla. Stat. 812.014 not a CIMA because it permits convictions for temporary de minimis takings, and respondents need not point to cases where Fla. Stat. 812.014 has been used to prosecute joyriding because statutory language itself creates a realistic probability of such prosecution) (Cole)

[Alfredo Quezada-Coronado](#), A070 114 543 (BIA May 2, 2019) (shoplifting conviction under Ariz. Rev. Stat. 13-1805(A)(1) not a CIMA because it was entered prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (*Mann*, Morris, Kelly)

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[A-A-R-S-](#), AXXX XXX 999 (BIA March 26, 2019) (shoplifting under Ariz. Rev. Stat. 13-1805(A) not a CIMA under *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018), for convictions arising prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (*Malphrus*, Creppy, Mullane)

[M-R-A-](#), AXXX XXX 197 (BIA March 18, 2019) (misuse of a social security number under 42 U.S.C. 408(a)(7)(B) not a CIMA under *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), unless the Ninth Circuit explicitly holds otherwise) (*Greer*, Wendtland, Donovan)

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[Cuong Quoc Vo](#), A072 595 705 (BIA Jan. 16, 2019) (theft by shoplifting under Geo. Code Ann. 16-8-14 not a CIMA because statute does not require that the owner's property rights be permanently or substantially eroded) (Wendtland)

[H-A-P-R-](#), AXXX XXX 618 (BIA Nov. 20, 2018) (convictions for theft under Ariz. Rev. Stat. 13-802 not a CIMA in light of intervening Ninth Circuit decision holding that *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), cannot be applied retroactively) (*Creppy*, Mullane, Liebowitz)

[Orlando Espinosa-Alvarez](#), A077 618 576 (BIA Oct. 30, 2018) (theft by receiving stolen property under Geo. Code Ann. 16-8-7 not a CIMA because having reason to believe property was stolen is not a sufficiently culpable mental state) (*Greer*, Donovan, Wendtland)

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[Heeja Jeong](#), A203 113 439 (BIA Oct. 5, 2018) (unauthorized use of food stamp benefits under 7 U.S.C. 2024(b) is not a CIMT in light of analysis in *Huynh v. Holder*, 321 F. App'x 649 (9th Cir. 2009)) (*Adkins-Blanch*, Mann (concurring), Snow)

[Maria Evola](#), A031 061 019 (BIA Oct. 1, 2018) (shoplifting under Ariz. Rev. Stat. Ann. 13-1805(A)(1) was not a CIMT prior to *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), because it did not require an intent to permanently deprive the owner of property) (*Malphrus*, Mullane, Geller)

[Y-F-W-](#), AXXX XXX 790 (BIA Sept. 4, 2108) (attempted trademark counterfeiting under N.Y.P.L. 165.71 is not a CIMT because it only requires an intent to evade a lawful restriction rather than an intent to defraud or deceive) (*Kelly*, *Adkins-Blanch*, Snow)

[J-A-C-](#), AXXX XXX 947 (BIA Aug. 30, 2018) (second-degree theft under Ore. Rev. Stat. 164.045 is not a CIMT in light of intervening decision in *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018)) (*Malphrus*, Creppy, Hunsucker)

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[Hector Lopez-Sanchez](#), A099 057 178 (BIA June 7, 2018) (terminates proceedings in light of decision in *Garcia-Martinez v. Sessions*, 886 F.3d 1291 (9th Cir. 2018), holding that *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), does not apply retroactively) (Pauley)

[M-S-A-](#), AXXX XXX 073 (BIA May 14, 2018) (respondent not bound by attorney's prior concession that grand theft under Fla. Stat. 812.014 is a CIMT in light of intervening case making clear that statute is not divisible) (*Pauley*, Wendtland, O'Connor (concurring))

[Vasile George Husti](#), A057 497 914 (BIA March 13, 2018) (theft of Department of Treasury funds under 18 U.S.C. 641 not a CIMT because statute does not require intent to permanently deprive owner of property or intent to defraud) (Pauley)

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[Anni Alonso](#), A096 724 265 (BIA Jan. 23, 2018) (grand theft under Fla. Stat. 812.014 not a CIMT because it criminalizes de minimis takings such as joyriding) (*Liebowitz*, Creppy, Mullane)

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[Eugene Ygene Similien](#), A059 297 675 (BIA Dec. 29, 2017) (grand theft under Fla. Stat. 812.014(2)(c)(ii) not a CIMT because it encompasses temporary takings or appropriation of property) (*Cole*, Wendtland, Pauley)

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[H-J-C-](#), AXXX XXX 416 (BIA Nov. 20, 2017) (theft by shoplifting under Geo. Code Ann. 16-8-14 not a CIME because it does not require owner's property rights to be permanently or substantially eroded and statute is not divisible) (*Cole*, Liebowitz, Malphrus)

[J-L-M-L-](#), AXXX XXX 491 (BIA Oct. 23, 2017) (offering false instrument for filing in the second degree under N.Y.P.L. 175.30 not a CIME because requires neither intent to defraud nor that false statement be material) (*Pauley*, Kelly, Adkins-Blanch)

[Aldo Reymund Razo](#), A096 620 533 (BIA Oct. 16, 2017) (orders further consideration of whether unfair or deceptive trade practices under Md. Code Ann., Crim. Law 13-303 is a CIME) (Guendelsberger)

[W-A-D-C-](#), AXXX XXX 861 (BIA Oct. 6, 2017) (theft by receiving stolen property under Ga. Code Ann. 16-8-7 not a CIME because it does not require knowledge that property in question was stolen) (*Grant*, Greer, Mullane (dissenting))

[Humberto Aristides Machado Brindis](#), A078 968 678 (BIA Oct. 3, 2017) (dealing in stolen property under Fla. Stat. 812.019(1) not a CIME because offenders need only exhibit criminal negligence by having reason to believe property was stolen) (*Pauley*, Adkins-Blanch, Mann)—**KEY DECISION**

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[Cuong Vi Ngo](#), A057 771 073 (BIA June 8, 2017) (grand theft under Fla. Stat. 812.014 not categorically a CIME because it applies even if temporary taking or appropriation of property is intended) (*Grant*, Kelly, Pauley)—**KEY DECISION** (See also [Abner Corgelas](#), A058 769 254 (BIA June 8, 2017); [Kenia Morillo Luciano](#), A060 183 622 (BIA June 8, 2017))

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[Adela Nolasco Santiago](#), A205 497 497 (BIA May 3, 2017) (immigration document fraud under 18 USC 1546(a) not a CIME) (*Pauley*, Grant, Kelly)

[Obed Arellano Aguilar](#), A205 316 952 (BIA April 28, 2017) (vehicle theft under Cal. Veh. Code 10851(a) not a CIME because statute criminalizes joyriding) (*Malphrus*, Greer, Mullane)

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[Joel Hernandez](#), A074 043 821 (BIA Dec. 27, 2016) (theft under Fla. Stat. 812.014 no longer a CIME under *Descamps v. United States*, 133 S. Ct. 2276 (2013), because statute encompasses temporary takings and is not divisible) (*Grant*, Adkins-Blanch, O'Connor)

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[Jose Lopez-Guerra](#), A205 659 456 (BIA Jan. 7, 2016) (theft under Tex. Penal Code 31.03 is categorically a CIMT) (*Pauley*, Greer, Mullane)

[Oscar Emilio Contreras-Saldana](#), A089 535 565 (BIA Aug. 25, 2015) (IJ did not meaningfully discuss whether theft of leased property under 18 Pa. Cons. Stat. 3932 is a CIMT) (Grant)

[Anthony Martinez-Lopez](#), A205 920 662 (BIA April 20, 2015) (orders further consideration of whether taking the identity of another under Ariz. Rev. Stat. 13-2008 is a CIMT in light of *Ibarra-Hernandez v. Holder*, 770 F.3d 1280 (9th Cir. 2014)) (Guendelsberger)

[Javier O. Dominguez-Parra](#), A090 109 290 (BIA Jan. 15, 2015) (shoplifting under Ariz. Rev. Stat. 13-1805 is a categorical CIMT) (*Pauley*, Guendelsberger, Mullane)

[S-G-G-](#), AXXX XXX 730 (BIA Jan. 2, 2015) (disclosure and use of another’s Social Security number under 42 U.S.C. 408(a)(8) not a CIMT because neither fraud, deceit, nor impairing government functions are inherent in statutory language) (*Adkins-Blanch*, Neal, Grant)—**KEY DECISION**

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[Karina J. Alvarez Fernandez](#), A046 941 394 (BIA Sept. 23, 2014) (third degree grand theft under Fla. Stat. 812.014 not a categorical CIMT and statute not divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (*Guendelsberger*, Cole, Liebowitz)

[Roldimy Montinar](#), A025 454 851 (BIA June 13, 2014) (neither issuing a worthless check under Fla. Stat. 832.05 nor theft under Fla. Stat. 812.014 is a CIMT) (Manuel)

[Santino Fabian Alarcon-Gomez](#), A201 227 554 (BIA Apr. 2, 2014) (bulk cash smuggling under 31 U.S.C. 5332(a) not a CIMT) (Mann)

[Octavio Ugarte Delgado](#), A205 829 687 (BIA Mar. 13, 2014) (remands to consider whether “synthetic identity deception” under Ind. Code 35-43-5-3.8(a)(3) is divisible in light of *Descamps v. United States*, 133 S.Ct. 2276 (2013)) (Pauley)

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Ann. 11.46.140(a)(1) not categorical CIMA; terminates proceedings because nothing in record of conviction established intent to permanently deprive owner of property) (Cole)

[Kwok Sum Wong](#), A036 850 251 (BIA Nov. 12, 2013) (remands to consider whether second degree forgery under N.Y.P.L. 170.10 is categorical CIMA) (Liebowitz)

[Jaime Enrique Valenzuela-Felix](#), A034 590 205 (BIA Oct. 15, 2013) (notes DHS withdrawal of appeal on remand from *Matter of Valenzuela-Felix*, 26 I&N Dec. 53 (BIA 2012), finding bulk cash smuggling under 31 U.S.C. 5332 not a CIMA) (Holmes)

[Hamid Choudhry](#), A073 538 314 (BIA Sept. 4, 2013) (selling contraband cigarettes under 18 USC 371 not a CIMA because fraud or deceit are not necessary elements) (Pauley)

[Mark L. Edmond](#), A099 116 705 (BIA July 29, 2013) (grand theft under Fla. Stat. 812.014(2)(c)(1) not categorical CIMA and conviction records did not establish intent to permanently deprive owner of property) (*Guendelsberger*, Hoffman, Manuel)—**KEY DECISION**

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[Jesus Ivan Ruiz-Estrada](#), A095 129 850 (BIA July 11, 2013) (money laundering under Ariz. Rev. Stat. 13-2317(B)(1) not CIMA) (*Greer*, Cole, Pauley)

[Ziyaad Saban](#), A070 623 999 (BIA Feb. 8, 2013) (denies motion to reconsider, notes in passing that burglary conviction under Fla. Stat. 810.02(3)(a) is categorical CIMA)

[Roberto Arellano Sarabia](#), A059 086 627 (BIA May 21, 2012) (failure to report more than \$10,000 under 31 U.S.C. 5332(a)(1) not a CIMA because it is essentially a reporting offense and does not require that the offender defraud the government) (*Greer*)—**KEY DECISION**

[Karla G. Espinoza](#), A029 184 276 (BIA Dec. 23, 2011) (unlawful use of identifying information under Cal. Penal Code 530.5(a) not CIMA) (*Guendelsberger*)

[Mykola Nykholat](#), A087 261 881 (BIA June 3, 2011) (entering without permission under Mich. Comp. Laws 750.115(1) not CIMA because statute does not require intent to commit a morally turpitudinous crime) (Pauley)

[Marco Antonio Rivera Carrillo](#), A200 607 697 (BIA Apr. 22, 2011) (intent to induce under Ariz. Rev. Stat. 13-2006(A)(3) does not establish requisite scienter for CIMA) (*Adkins-Blanch*)

[Gilberto Dominguez-Gutierrez](#), A201 021 861 (BIA Mar. 21, 2011) (taking the identity of another under Ariz. Rev. Stat. 13-2008 not CIMA under *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000); breadth of statute creates “realistic possibility” that individual might be prosecuted for non-turpitudinous conduct) (*J. King*, *Adkins-Blanch*, *Guendelsberger*)—**KEY DECISION**

[Oliver Sherman Muli Wood](#), A041 164 168 (BIA Mar. 16, 2011) (second-degree burglary under Cal. Penal Code 460(b) not CIMA under *Cuevas-Gaspar v. Gonzales*, 430 F.3d 1013 (9th Cir. 2005)) (Cole)

[Edgar Armando Valenzuela-Garcia](#), A079 651 539 (BIA Mar. 10, 2011) (false reporting to law enforcement agency under Ariz. Rev. Stat. 13-2907.1 not categorical CIMA turpitude and conviction documents did not establish an intent to defraud) (*Pauley*, Cole, Fillpu)

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[G-F-H-](#), AXXX XXX 337 (BIA Sept. 26, 2019) (Va. Code Ann. 46.2-894 not a CIMA under *Sotnikau v. Lynch*, 846 F.3d 731 (4th Cir. 2017), because it applies to drivers who negligently leave scene of an accident) (*Malphrus*, Creppy, Liebowitz); [M-O-V-](#), AXXX XXX 849 (BIA Sept. 26, 2019) (same)

[Luis Miguel Ramirez Moz](#), A072 377 892 (BIA Sept. 19, 2019) (eluding under Va. Code Ann. 46.2-817(B) not a CIMA because it only requires a mens rea of negligence) (*Cole*, Wendtland, Noferi)

[Kevin M. Alcantara](#), A078 831 388 (BIA Feb. 13, 2019) (aggravated unlicensed operation of a motor vehicle under N.Y. Veh. and Traf. Law 511.3 not a CIMA because prosecutors need not establish that defendant had actual knowledge that driving privileges had been revoked) (*Kelly*, O'Connor, Donovan)

[Jersson Adolfo Erazo-Aguirre](#), A047 830 548 (BIA Dec. 17, 2018) (vehicular eluding under Colo. Rev. Stat. 18-9-116.5 not a CIMA because it does not require perpetrators to drive recklessly or create a risk of bodily injury to another person) (*Crossett*, Wendtland, O'Connor)

[Alejandro Barragan](#), A024 184 433 (BIA Nov. 15, 2018) (reopens and terminates proceedings sua sponte in light of intervening decision in *Almanza-Arenas v. Lynch*, 815 F.3d 469 (9th Cir. 2015) (en banc) holding that the unlawful taking of a vehicle under Cal. Penal Code 10851(a) is not a CIMA) (*Grant*, Guendelsberger, Kendall Clark)

[A-A-](#), AXXX XXX 632 (BIA Oct. 25, 2018) (fleeing or attempting to elude a law enforcement officer under Fla. Stat. 316.1935(1) is not a CIMA because interference with a law enforcement officer is not inherently reprehensible and defendants need not drive in manner indicating a disregard for the lives or property of others) (*Guendelsberger*, Grant, Kendall Clark)

[F-N-G-](#), AXXX XXX 810 (BIA Aug. 21, 2018) (Va. Code Ann. 46.2-894 not a CIMA because it covers the failure to comply with administrative reporting requirements following accident that only caused damage to attended property) (*Crossett*, Greer, Cole)

[Edgar William Perez Ayala](#), A029 308 742 (BIA June 29, 2018) (burglary of a vehicle under Tex. Penal Code 30.04(a) with intent to commit theft or any felony is not a CIMA) (*Wendtland*, O'Connor, Pauley (dissenting))

[Emmanuel Pourmand](#), A212 062 570 (BIA June 18, 2018) (vehicular manslaughter with gross negligence under Calif. Penal Code 192(c)(1) is not a CIMA because it does not require a sufficiently culpable mental state) (Pauley)

[Jose Luis Sifuentes Reyna](#), A205 655 011 (BIA June 15, 2018) (Va. Code Ann. 46.2-894 not a CIMA because it does not require drivers to leave the scene of the accident or realize that the accident resulted in injury or property damage) (*Grant*, Guendelsberger, Kendall Clark)—**KEY DECISION**

[M-M-V-](#), AXXX XXX 518 (BIA March 30, 2018) (failing to stop or return to scene of vehicle accident under Geo. Code Ann. 40-6-270(a) not a CIMA because it applies to defendants who were merely negligent as to whether the accident resulted in injury or property damage) (*Pauley*, Greer, Crossett)—**KEY DECISION**

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[M-R-Q-](#), AXXX XXX 330 (BIA Feb. 20, 2018) (aggravated driving or actual physical control under the influence under Ariz. Rev. Stat. Ann. 28-1383(A)(l) not a CIMT because actual physical control prong does not involve moral turpitude and statute is not divisible) (*Greer*, *Wendtland*, *Pauley*)

[Marcos Antonio Acosta Quirch](#), A044 971 669 (BIA Dec. 1, 2017) (simple vehicle flight under Fla. Stat. Ann. 316.1935(2) not a CIMT because statute does not require accused to endanger others or drive recklessly) (*Pauley*)

[N-M-H-V-](#), AXXX XXX 873 (BIA Nov. 22, 2017) (driving with suspended or revoked license after prior DUI under Cal. Veh. Code 14601.2(a) not a CIMT) (*Grant*, *Kelly*, *Pauley*)—**KEY DECISION**. See also [F-A-M-](#), AXXX XXX 992 (BIA Jan. 26, 2017) (same)

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[Gregoria Saucedo](#), A201 216 144 (BIA May 8, 2017) (driving without valid driver's license resulting in death or serious bodily injury under Fla. Stat. 322.34(6) not a CIMT) (*O'Connor*, *Pauley*, *Wendtland*)

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[Nasir Ali Khan](#), A059 549 769 (BIA April 26, 2017) (leaving the scene of an accident under Cal. Veh. Code 20001(a) not a CIMT) (*Pauley*, *Kelly*, *Grant*)

[Ivan Garcia Reyes](#), A200 156 257 (BIA April 20, 2017) (altering or forging a vehicle document, license, or license plate under Cal. Veh. Code 4463(a)(1) not a CIMT) (*Creppy*, *Malphrus*, *Mullane*)

[Minh Phan](#), A025 085 074 (BIA Dec. 30, 2016) (fleeing or eluding peace officer under Cal. Veh. Code 2800.2 not a CIMT) (*Adkins-Blanch*)

[Luis Alfredo Davila-Barrera](#), A074 583 018 (BIA Nov. 23, 2016) (burglary of a vehicle under Tex. Penal Code 30.04 not a CIMT because it includes intent to commit non-turpitudinous felony) (*Geller*)—**KEY DECISION**

[A-C-D-](#), AXXX XXX 646 (BIA Dec. 11, 2015) (operating a motor vehicle during a period of license suspension under N.J. Stat. 2C:40-26(a) is not a CIMT) (*Guendelsberger*, *Malphrus*, *Geller*)

[Adonay Villatorto](#), A094 085 163 (BIA Nov. 27, 2015) (Iowa Code 714.8(11) not a CIMT because it requires neither intent to defraud nor making of false statements to obtain something tangible) (*Pauley*)—**KEY DECISION**

[Carlos David Meza](#), A092 470 765 (BIA June 9, 2014) (notes DHS withdrawal of appeal of IJ decision finding burglary of a vehicle under Calif. Penal Code 459 is not a CIMT) (*Holmes*)

[Raul Sainz-Rivera](#), A091 684 104 (BIA Mar. 10, 2014) (driving under the influence on suspended license under Ariz. Rev. Stat. 28-1383(A)(1) not a CIMT in the Ninth Circuit) (*Pauley*, *Guendelsberger*, *Greer*)—**KEY DECISION**



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[Pablo Quintero-Madrigal](#), A090 394 871 (BIA Oct. 4, 2013) (being a habitual violator under O.C.G.A. 40-5-58 not CIMA because defendants need not receive actual notice that license was revoked and state has prosecuted defendants entitled to affirmative defenses) (Creppy)—**KEY DECISION**

### Sex-Related Crimes

[J-A-P-](#), AXXX XXX 370 (BIA July 30, 2020) (sexual assault of a child under Tex. Penal Code 22.011(a)(2) not a CIMA because victims may be 16 years of age and no culpable mental state is required regarding the age of the victim) (*Monsky*, Donovan, O'Connor)

[R-Z-P-](#), AXXX XXX 090 (BIA March 12, 2020) (declines to apply *Matter of Jimenez-Cedillo*, 27 I&N Dec. 782 (BIA 2020), retroactively in Ninth Circuit given its departure from prior requirement of a culpable mental statute for an offense to be a CIMA) (*Mann*, Kelly, Liebmann)

[Junior Austin Kahn](#), A094 642 783 (BIA Feb. 28, 2020) (prior attorney provided ineffective assistance of counsel by failing to argue that indecent exposure under Iowa Code 709.9 was not a CIMA) (*Wendtland*, Donovan, Swanwick)

[Jorge Rosas-Garcia](#), A063 799 691 (BIA Jan. 31, 2020) (carnal knowledge of a juvenile under La. Rev. Stat. Ann. 14:80(A)(2) not a CIMA because it does not require a sufficiently significant age difference between the victim and perpetrator) (O'Connor, Wendtland, Greer)

[Trokon Ikimi Karnga](#), A062 029 909 (BIA Dec. 13, 2019) (child enticement under Wis. Stat. 948.07 not a CIMA because it does not require defendants to know the victim was a minor) (Wilson)

[Hector Reymundo Henriquez Dimas](#), A061 729 721 (BIA Oct. 17, 2019) (fourth-degree sexual offense under Md. Code Ann., Crim. Law 3-308(b)(1) not a CIMA because required mental state may include negligence) (*Liebowitz*, Creppy, Malphrus)

[David Alejandro Castellar-Londono](#), A058 506 216 (BIA July 29, 2019) (sexual battery under Utah Code 76-9-702.1 not a CIMA because it is a general intent crime and has no aggravated factors distinguishing it from simple assault or battery other than the area of the body touched) (Creppy)

[Shu Yan Wang](#), A057 597 884 (BIA June 21, 2018) (disorderly conduct under Calif. Penal Code 647(a) is not a CIMA because it does not require lewd or specific intent to offend others and can be committed even if the defendant is unaware of the presence of others) (Guendelsberger, Liebowitz, Malphrus (dissenting))

[Donovan Saint Patrick Gayle](#), A037 825 618 (BIA May 31, 2018) (failure to register as sex offender under New York Correction Law § 168-t not a CIMA because there is no mens rea requirement with respect to the failure to register) (*Mullane*, Liebowitz, Creppy)

[V-C-](#), AXXX XXX 281 (BIA Jan. 24, 2018) (sexual battery under Utah Code 76-9-702(3) not a CIMA because it is a general intent offense for which no harm or evil intent is required) (*Pauley*, Wendtland, Greer)

[Mauro Jesus Paez Juarez](#), A075 575 447 (BIA Jan. 5, 2018) (failing to comply with sexual registration requirements under Tex. Code Crim. Proc. 62.102 not a CIMA because defendants need only act in reckless manner and state need not inform defendants of requirements) (*Mann*, Adkins-Blanch, Kelly)

[Noel Lewin Neufville](#), A030 198 748 (BIA Dec. 7, 2017) (attempted failure of sex offender to report change in address under 730 Ill. Comp. Stat. 50/6 not a CIMA as a strict liability offense) (Pauley)

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[Eh Moo](#), A212 085 801 (BIA Dec. 6, 2017) (sentencing enhancement for sexual motivation did not render third degree assault under Rev. Code Wash. 9A-36.031(1)(f) a CIMT because underlying offense was still based upon criminal negligence) (Pauley)

[Jacek Kaminski](#), A044 014 301 (BIA May 11, 2017) (denies DHS motion to reconsider decision holding that public lewdness under NYPL 245.00 not a CIMT) (Guendelsberger)

[Jonathan Jemenez Nuezca](#), A087 714 293 (BIA Oct. 31, 2016) (sexual assault in third degree under Haw. Rev. Stat. 707-732(1)(b) not a CIMT because it does not require knowledge that victim is a minor) (Pauley)

[S-P-B-](#), AXXX XXX 947 (BIA Oct. 20, 2015) (second degree criminal sexual act under N.Y.P.L. 110-130.45 not a CIMT because statute lacks scienter requirement with regard to age of the victim) (*Pauley*, Geller, Guendelsberger)—**KEY DECISION**

[Sixto Delgado](#), A075 423 408 (BIA Jan. 2, 2015) (sexual misconduct under Ky. Rev. Stat. 510.140 not a CIMT because it can be applied to voluntary sexual intercourse between non-adults who are close in age) (*Adkins-Blanch*, Guendelsberger, Hoffman) (Note: the Board subsequently [denied](#) a motion to reconsider filed by DHS)

[C-A-E-L-](#), AXX XXX 485 (BIA July 3, 2014) (statutory rape under Cal. Penal Code 261.5(d) not a CIMT because perpetrators are not required to engage in intentional sexual conduct with someone he or she knew or should have known to be a child) (Pauley)

[Armando Parra Reyes](#), A091 156 708 (BIA Nov. 27, 2013) (solicitation of sodomy under Ga. Code 16-6-15(a) and public indecency under Ga. Code 16-6-8(a)(3) not CIMTs) (Wendtland)—**KEY DECISION**

[Samuel Velazquez-Arizaga](#), A089 004 472 (BIA Jan. 19, 2011) (indecent exposure under Cal. Penal Code 314 not CIMT per *Nunez v. Holder*, 594 F.3d 1124 (9th Cir. 2010)) (*Miller*, Malphrus, Mullane)

[Daniel Bea Cordoba](#), A092 312 277 (BIA Jan. 25, 2011) (solicitation of prostitute under Cal. Penal Code 647(b) is categorical CIMT) (*Malphrus*, Miller, Mullane)

### Miscellaneous Crimes

[Francisco Rivero Valeron](#), A074 074 216 (BIA Oct. 2, 2020) (ownership, lease, rental, or possession for trafficking in or manufacturing a controlled substance under Fla. Stat. 893.1351(1) not a CIMT because it encompasses mere possession) (Pepper)

[Raul Alberto Mendoza-Lopez](#), A072 067 090 (BIA July 22, 2020) (intimidation of a witness under Mass. Gen. Laws ch. 268, § 13B not a CIMT because it can be committed recklessly) (Monsky)

[Maria Salome Tejeda](#), A029 378 545 (BIA May 28, 2020) (receipt of remuneration under 42 U.S.C. 1320a-7b(b)(1) not a CIMT because it does not require any loss or harm to a person) (*Morris*, Creppy, Liebowitz)

[Devon Adam Mullings-Reeves](#), A044 860 313 (BIA Aug. 30, 2019) (threatening in the second degree under Conn. Gen. Stat. 53a-62(2)(B) not a CIMT because it does not require an aggravating factor in combination with a reckless mens rea) (Guendelsberger)

[Samatar Sirad Osman](#), A075 315 807 (BIA May 7, 2019) (threats of violence under Minn. Stat.

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609.713, subd. 1 not a CIMT in light of state court cases cited in *Avendano v. Holder*, 770 F.3d 731 (8th Cir. 2014)) (Cole)

[Victor Manuel De Frias De Sousa](#), A019 180 918 (BIA May 2, 2019) (possession of prohibited substance or alcohol in prison setting under Cal. Penal Code 4573.6(a) not a CIMT because it applies to non-narcotic pain relievers and antibiotics) (*Malphrus*, Baird, Mullane)

[Wenston Emmanuel Fray](#), A042 259 146 (BIA Feb. 27, 2019) (disorderly conduct under Fla. Stat. 877.03 not a CIMT because “affecting the peace and quiet of witnesses” involves neither reprehensible conduct nor a culpable mental state) (*Grant*, Guendelsberger, Kendall Clark)

[C-E-P-G-](#), AXXX XXX (Dec. 18, 2018) (preventing or dissuading a victim from reporting a crime to the police under Cal. Penal Code 136.1(b)(1) is not a CIMT and statute is not divisible) (*Mann*, Creppy, Mullane)

[J-A-C-](#), AXXX XXX 252 (BIA Nov. 14, 2018) (false imprisonment under Fla. Stat. 787.02(1)(a) is not a CIMT because the force used to restrain the victim need not be substantial and may be completed by the momentary grasp of another person) (*Malphrus*, Creppy, Liebowitz)

[Manuel Romero Canchola](#), A044 094 053 (BIA Nov. 13, 2018) (retaliation under Texas Penal Code 36.06(a) is not a CIMT because it may involve threats to property rather than persons) (*Greer*, Donovan, Wendtland)

[Ibrahima Sall](#), A076 151 548 (BIA Nov. 2, 2018) (enterprise corruption under N.Y.P.L. 460.20(1)(a) not a CIMT because the specific crimes giving rise to the charge need not involve moral turpitude) (Wendtland)

[S-K-](#), AXXX XXX 148 (BIA Sept. 14, 2018) (attempted unlawful restraint under Tex. Penal Code 20.02(c)(1) is not categorically a CIMT because a person could be convicted for intending to assume lawful control of his or her own child with the acquiescence of the victim) (*Crossett*, Greer, Hunsucker (dissenting))

[Kumar Kamal Rai](#), A212 467 680 (BIA July 5, 2018) (denies DHS motion to reconsider decision holding that Minn. Stat. 609.713, subd. 1 is not a CIMT) (Grant)

[E-C-S-](#), AXXX XXX 502 (BIA May 30, 2018) (identity deception under Ind. Code 35-43-5-3.5 not a CIMT and statute is not divisible) (*Grant*, Pauley, Kelly)

[Oscar Herrera-Ruiz](#), A048 139 800 (BIA May 3, 2018) (luring children under Nev. Rev. Stat. 201.560(5)(c) not a CIMT because it could be violated by individuals the child would voluntarily accompany and requires no intent to harm the child or seek a ransom for release) (*Guendelsberger*, Cole, Liebowitz)

[Daria Shaban](#), A036 553 979 (BIA May 1, 2018) (stalking under Minn. Stat. 609.749.4(a) not a CIMT because it does not require an intent to instill fear in the victim) (Pauley)

[Adan Rodriguez Solano](#), A205 904 821 (BIA April 16, 2018) (making threats of violence under Minn. Stat. 609.713, subd. 1, not a CIMT because statute had been applied to vague hand gestures and flippant remarks) (Pauley)

[K-K-R-](#), AXXX XXX 680 (BIA March 9, 2018) (making threats of violence under Minn. Stat. 609.713, subd. 1 not a CIMT because it criminalizes jokes and flippant remarks and does not require any individual to actually feel terrorized) (Pauley)

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[E-M-B-](#), AXXX XXX 784 (BIA March 7, 2018) (false imprisonment under Fla. Stat. 787.02(a)(1) not a CIMT because it prohibits momentarily grasping another person) (*Mullane*, Malphurs, Creppy)

[Jose Jesus Alcala Torres](#), A087 193 598 (BIA Feb. 22, 2018) (child abuse under Cal. Penal Code 273a(a) not a CIMT because statute only requires mens rea of negligence and can be violated by passive conduct taken in good faith but unreasonable belief that conduct is in child's best interest) (*Liebowitz*, Creppy, Mullane (dissenting))

[P-T-H-](#), AXXX XXX 406 (BIA Feb. 22, 2018) (aggravated interference with parental custody Kan. Stat. Ann 21-3422a not a CIMT because defendants need not use force or deception and offense can be committed by one parent removing a child from the custody of the other) (*Cole*, Greer, Pauley (dissenting))

[Ernest Delma](#), A077 477 297 (BIA Jan. 31, 2018) (resisting arrest by physical force or violence under N.J. Stat. Ann. 2C:12-13 and throwing a bodily fluid at a Department of Corrections employee under N.J. Stat. Ann. 2C:29-2A(3)(a) are not CIMTs) (*Kelly*, Adkins-Blanch, Grant)

[Ertý Eidaro](#), A212 999 774 (BIA Jan. 19, 2018) (terrorizing under Guam Code Ann. 19.60(a) not a CIMT because victim need not actually experience fear) (*Pauley*, Greer, Mullane)

[N-A-V-](#), AXXX XXX 545 (BIA Jan. 18, 2018) (knowingly making false statement to city personnel under Aurora (Colo.) Municipal Code 94-381 not a CIMT because defendants need not intend to commit fraud, cause harm to the government, or obtain a benefit) (*Pauley*, Adkins-Blanch, Grant)

[Sharon Khakai Luvisia](#), A099 785 387 (BIA Jan. 16, 2018) (contributing to the abuse, neglect or delinquency of a child under S.D. Codified Laws 26-9-1 not a CIMT because statute covers conduct as innocuous as furnishing alcohol to a minor) (Creppy)

[I-A-](#), AXXX XXX 243 (BIA Jan. 9, 2018) (child endangerment under Cal. Penal Code 273a(b) not a CIMT because only negligence is required) (*Creppy*, Liebowitz, Mullane)

[M-O-F-P-](#), AXXX XXX 141 (BIA Nov. 3, 2017) (felony false imprisonment under Calif. Penal Code 237 not a CIMT) (*Guendelsberger*, Cole, Liebowitz)

[N-D-E-](#), AXXX XXX 335 (BIA Oct. 30, 2017) (intimidation of witnesses and victims under Cal. Penal Code 136.1(a) not a CIMT) (Cole)

[E-C-N-](#), AXXX XXX 788 (BIA Oct. 13, 2017) (providing false information during investigation under Denver Municipal Code 38-40 not a CIMT under *Flores-Molina v. Sessions*, 850 F.3d 1150 (10th Cir. 2017)) (Cole)

[Elvis Tahirovic](#), A078 477 069 (BIA Sept. 13, 2017) (unlawful transaction with a minor under Kent. Rev. Stat. 530.065 not a CIMT) (Pauley)

[Livinus Ndubisi Ezeobi](#), A061 561 711 (BIA Aug. 17, 2017) (making terroristic threats under Minn. Stat. § 609.713, subd. 1 not a CIMT notwithstanding decision in *Avendano v. Holder*, 770 F.3d 731 (8th Cir. 2014)) (Pauley)

[Julio Ledesma Moreno](#), A206 738 790 (BIA Nov. 28, 2016) (obstructing official business under Ohio Rev. Code 2921.31(A) categorically not a CIMT) (*Pauley*, Geller, Guendelsberger)

[Antonio Ruiz-Avalos](#), A077 170 048 (BIA Apr. 2, 2015) (DHS withdraws appeal of decision holding

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possession of dirk or dagger in connection with criminal street gang activity is not a CIMT) (Holmes)

[Rajendrasinh Babubhai Makwana](#), A088 143 880 (BIA Nov. 26, 2014) (computer intrusion under 18 U.S.C. 1030(a)(5)(A)(i) and (B)(i) not a CIMT) (*Malphrus*, Cole, Leibowitz)

[B-G-](#), AXXX XXX 481 (BIA Nov. 25, 2014) (misdemeanor false imprisonment under Cal. Penal Code 236 is not a CIMT) (Cole)

[Camilo Ernesto Sanchez Fajardo](#), A077 675 707 (BIA June 27, 2014) (false imprisonment under Fla. Stat. 787.02(1) is not a CIMT) (*Liebowitz*, Malphrus, Mullane (dissenting))

[Eduardo Gomez Juardo](#), A090 764 102 (BIA Mar. 28, 2014) (cyberstalking under N.C. Stat. 14-196.3 not a CIMT) (Pauley)

[Barbara Gibek](#), A073 150 567 (BIA Apr. 29, 2011) (failure to control or report a dangerous fire under N.J. Stat. Ann. 2C:17-1(c) not categorical CIMT because it does not require evil intent or conscious disregard for safety of others) (Pauley)

**Within Five Years of “Date of Admission”**

[Caterina Gustke](#), A089 203 196 (BIA Dec. 14, 2017) (LPR did not acquire new “date of admission” by reentering the country because she was not regarded as applicant for admission under INA 101(a)(13)(C)) (*Pauley*, Malphrus, Mullane)

[Roberto Javier Blanco-Perez](#), A092 981 108 (BIA May 14, 2015) (IJ erroneously found adjustment of status did not qualify as “admission” for respondent who previously entered country without inspection) (*Greer*, Wendtland, O’Herron)

[Lorenzo Martinez-Delgado](#), A074 103 780 (BIA Mar. 11, 2014) (dismisses charge of removability because offense was committed before rather than after respondent’s admission) (*Pauley*, Malphrus, Guendelsberger)

[Trinath Chigurupati](#), A095 576 649 (BIA Oct. 26, 2011) (date of adjustment qualifies as date of “admission” under *Matter of Alyazji*, 25 I&N 397 (BIA 2011), because respondent departed and re-entered on advance parole while adjustment application was pending) (Pauley) (Note: The outcome of this decision may be affected by the subsequent decision in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012))

[Mykola Shchupak](#), A076 577 376 (BIA Nov. 7, 2012) (CIMT charge not sustained where overt act in furtherance of conspiracy not committed within five years of admission) (Grant)

**Matter of Silva-Trevino**

[Eduardo Enriquez-Alvarez](#), A070 731 338 (BIA Sept. 22, 2014) (IJ erred by considering allegations in complaint regarding offense of which respondent was not ultimately convicted) (*Malphrus*, Greer, Pauley)—**KEY DECISION**

[Santino Fabian Alarcon-Gomez](#), A201 227 554 (BIA Apr. 2, 2014) (cannot proceed past first step of *Matter of Silva-Trevino* if offense does not include required element of moral turpitude) (*Mullane*, Creppy, Mann)—**KEY DECISION**

[Tameka Lorraine Butler](#), A097 998 935 (BIA July 26, 2013) (grand theft under Fla. Stat. 812.014 not crime involving moral turpitude because statute is divisible and record of conviction did not establish



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an attempt to permanently deprive owner of property; cannot proceed to third step of *Matter of Silva-Trevino* under *Fajardo v. U.S. Att’y. Gen.*, 659 F.3d 1303 (11th Cir. 2011)) (Manuel)—**KEY DECISION**

[Ruben Dario Sanchez Esquivel](#), A035 727 884 (BIA July 19, 2013) (denies DHS appeal, upholds termination of proceedings where Board could not look outside the record of conviction to determine whether conviction for aggravated DUI under Ariz. Rev. Stat. 28-1383(A)(1) qualified as CIMT under *Olivas-Motta v. Holder*, 716 F.3d 1199 (9th Cir. 2013) (Pauley).

[Noe Cesar Hernandez-Avila](#), A079 531 484 (BIA Jan. 18, 2013) (denies DHS motion to reconsider [prior decision](#) finding police report insufficient to establish removability under third step of *Matter of Silva-Trevino*, 24 I&N Dec. 687 (AG 2008); states that “arrest reports are one-sided recitations of events aimed at establishing probable cause or reasonable suspicion in criminal proceedings”) (Cole)—**KEY DECISION**

[Noe Cesar Hernandez-Avila](#), A079 531 484 (BIA Aug. 30, 2012) (failure to disclose origin of recording or video work under Cal. Penal Code 653w(a)(1) not a CIMT; police report was not sufficiently reliable and DHS did not call the preparer of the report to testify; *see also* [subsequent denial](#) of a DHS motion to reconsider) (Cole)—**KEY DECISION**

[Eduardo Yanez](#), A076 593 027 (BIA Oct. 18, 2012) (remands to consider whether failure to stop in the event of an accident under Va. Code Ann. 46.2-894 is CIMT in light of *Prudencio v. Holder*, 669 F.3d 472 (4th Cir. 2012), which found *Matter of Silva-Trevino* wrongly decided) (Malphrus)

[Juan Pablo Garcia Garcia](#), A087 940 270 (BIA Mar. 4, 2011) (remands for further consideration of respondent’s eligibility for mandatory detention where IJ did not address contention that conviction was for simple assault or apply steps of *Matter of Silva-Trevino*) (Pauley)

[Manuel Jesus Olivas-Matta](#), A021 179 705 (BIA Aug. 9, 2010) (conviction for endangerment under Ariz. Rev. Stat. 13-1201 is CIMT under third step of *Matter of Silva-Trevino*, 24 I&N Dec. 687 (A.G. 2008), because the police report indicated that respondent shot his wife in the stomach with a hunting rifle during the course of an argument) (Mullane) (Note: This decision was subsequently overturned by *Olivas-Matta v. Holder*, 716 F.3d 1199 (9th Cir. May 17, 2013)

### **Juvenile Offender Exception—INA 212(a)(2)(A)(ii)(I)**

[Juan Carlos Clase](#), A043 986 617 (BIA Oct. 31, 2013) (in determining whether offense was committed before respondent turned 18, statement in criminal indictment saying offense occurred “on or about” a particular date does not constitute clear and convincing evidence that offense actually occurred on that date) (Guendelsberger)—**KEY DECISION**

### **Multiple CIMTs—INA 237(a)(2)(A)(ii)**

[A-S-Z-](#), AXXX XXX 796 (BIA April 12, 2019) (multiple counts of aggravated vehicular homicide under Ohio Rev. Code 2903.06(A)(2)(a) arose from single scheme of criminal misconduct because both victims died as a result of the same accident) (*Greer*, *Wendtland*, *Donovan*)

[L-N-D-](#), AXXX XXX 093 (BIA May 31, 2018) (holds that respondent was not convicted of multiple CIMTs because she pleaded guilty to a single count indictment charging her with conspiracy under 18 U.S.C. 371) (*Crossett*, *Pauley*, *Wendtland*)

[Deborah Ann Romero](#), A017 176 264 (BIA June 10, 2014) (charge of deportability under INA 237(a)(2)(A)(ii) based on convictions for two CIMTs cannot be sustained if 212(c) waiver was

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previously granted with respect to one of the convictions, distinguishing *Matter of Balderas*, 20 I&N Dec. 389 (BIA 1991)) (Guendelsberger)

#### **Petty Offense Exception—INA 212(a)(2)(A)(ii)(II)**

[Luis Jose Tipaz Poncio](#), A201 069 002 (BIA Mar. 19, 2014) (Texas conviction for “Class A” assault with family violence subject to petty offense exception) (*Hoffman*, Guendelsberger, Manuel)

[Noe Cuevas-Beltran](#), A205 153 916 (BIA Aug. 15, 2013) (reduction of sentence to six months rendered respondent eligible for petty offense exception) (Guendelsberger)

[Vera Schubler](#), A018 402 949 (BIA Dec. 16, 2010) (respondent not eligible for petty offense exception because maximum possible sentence was five years, even though she herself could not be imprisoned for more than one year under federal sentencing guidelines) (Malphrus)

[Juan Manuel Llamas-Lopez](#), A24 101 784 (BIA Feb. 16, 2007) (respondent subject to petty offense exception existing prior to passage of Immigration Act of 1990 because he entered the country prior to June 1991) (*Pauley*, Cole, O’Leary)

#### **Sentence of One Year or Longer**

[Donald Josue Bone Manzanares](#), A047 542 190 (BIA Dec. 9, 2015) (remands for consideration of whether respondent was convicted of offense punishable by one year or longer in light of an order modifying conviction from felony to misdemeanor) (Pauley)

[Juan Emigdio Giron](#), A060 304 016 (BIA Sept. 14, 2015) (offense not punishable by one year or longer because respondent faced sentence of only seven months under state sentencing guidelines) (Pauley)—**KEY DECISION**

[Olumide Goodness Adeyinka](#), A099 182 755 (BIA Apr. 15, 2011) (crimes punishable by up to 12 months do not trigger removability under INA 237(a)(2)(A)(i) because a sentence of more than one year may not be imposed) (*Miller*, Holmes, Kendall-Clark)—**KEY DECISION**

#### **Crimes of Domestic Violence—INA 237(a)(2)(E)**

[Edwin Esnit Umanzor Cabrera](#), A036 411 408 (BIA Dec. 11, 2014) (remands for further consideration removability under INA 237(a)(2)(E)(ii) where IJ did not determine whether protective order was issued for purposes of preventing domestic violence) (Holmes)

[Eduardo Gomez Juardo](#), A090 764 102 (BIA Mar. 28, 2014) (assault on a female under N.C. Stat. 14-33(c)(2) not a crime of domestic violence) (Pauley)

[Dhyana Aderne Goltz](#), A045 296 896 (BIA June 12, 2012) (upholds termination of proceedings where record of conviction did not demonstrate that respondent was convicted of a domestic violence crime in violation of sections 200.481 and 200.485 of the Nevada Revised Statutes) (Cole) (Note: The Board subsequently [denied](#) DHS’ motion to reconsider)

[Ruben Montenegro-Ruiz](#), A041 095 571 (BIA May 31, 2011) (battery constituting domestic violence under Nev. Rev. Stat. 33.018, 200.481(1)(a), and 200.485 is not crime of violence because statute does not require use of force) (Pauley)

## Firearm Offenses—INA 237(a)(2)(C)

[Steven Vazquez Martinez](#), A045 236 330 (BIA Sept. 10, 2020) (conviction for illegally carrying a weapon under 25 L.P.R.A. 458c not a firearms offense because version of charging document submitted by DHS listed both a pneumatic weapon and a firearm) (*Wilson*, Greer, O'Connor)

[Patrick Theo Shavar Johnson](#), A061 849 878 (BIA July 23, 2020) (criminal possession of a weapon in the second degree under N.Y.P.L. 265.03(3) not a firearms offense because it applies to loaded antique firearms) (*Grant*, Mullane, Mann)

[Erinero Rosario Disla](#), A061 626 590 (BIA June 26, 2020) (criminal possession of a weapon in the second degree under N.Y.P.L. 265.03(3) not a firearms offense because it applies to loaded antique firearms) (Pepper)

[Claudio Jose Santana Colon](#), A098 087 566 (BIA June 30, 2020) (carrying a firearm without a license under 18 Pa. Cons. Stat. 6106(a)(1) not a firearms offense because it applies to antique firearms that are suitable for use) (*Monsky*, Donovan, Swanwick)

[T-C-](#), AXXX XXX 430 (BIA May 15, 2020) (criminal possession of a weapon in the third degree under N.Y.P.L. 265.02(3) not a firearms offense because it could apply to loaded antique firearms) (*Morris*, Liebowitz, Malphrus)

[Jens Peter Englund](#), A200 360 767 (BIA Feb. 27, 2020) (possession of a firearm under 18 Pa. Const. Stat. 6105(a)(1) not a firearms offense because state definition encompasses some antique firearms) (*Wilson*, Greer, Wendtland)

[Ernesto Gomez](#), A090 768 487 (BIA Feb. 14, 2020) (carrying a weapon under Tex. Penal Code 46.02(a) not a firearms offense) (*Liebowitz*, Hunsucker, Noferi)

[A-L-O-](#), AXXX XXX 747 (BIA Feb. 13, 2020) (criminal possession of a weapon in the second degree under N.Y.P.L. 265.03(3) not a firearms offense because it could apply to loaded antique firearms) (*Greer*, Wendtland, O'Connor (concurring))

[N-N-R-](#), AXXX XXX 122 (BIA Jan. 24, 2020) (remands for further consideration of whether respondent was removable based on convictions for carrying a handgun under Texas Penal Code 46.02(b) and discharging a firearm under Texas Penal Code 42.12(b) because IJ sustained charge without allowing respondent to present substantive argument) (*O'Connor*, Noferi, Greer)

[M-S-L-](#), AXXX XXX 181 (BIA Dec. 13, 2019) (remands record because IJ provided no explanation for finding that attempted criminal possession of a weapon in the second degree under N.Y.P.L. 265.03(03) is a firearms offense) (*Noferi*, Creppy, Liebowitz)

[H-A-T-M-](#), AXXX XXX 332 (BIA Dec. 6, 2019) (criminal sale of a firearm under N.Y.P.L. 265.11(1) not a firearms offense because it applies to loaded antique firearms) (*Noferi*, Greer, Rosen)

[Dagoberto Rodriguez Zavala](#), A090 390 337 (BIA Nov. 15, 2019) (terminates proceedings in light of intervening decision in *Flores-Abarca v. Barr*, 937 F.3d 473 (5th Cir. 2019), holding that transporting a loaded firearm under Okla. Stat. 21 § 1289.13 is not a firearms offense) (*Wendtland*, Cole, Greer)

[Archeley Ricardy Sylpha](#), A044 604 854 (BIA Oct. 11, 2019) (stealing a firearm under Conn. Gen. Stat. 53a-212 not a firearms offense because state definition includes BB guns) (*Cole*, Wendtland, Noferi)



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[O-M-A-G-](#), AXXX XXX 644 (BIA Sept. 3, 2019) (holds criminal possession of a firearm under New York Penal Law 265.01-b not a firearms offense upon finding realistic probability statute would be applied to antique firearms) (*Malphrus*, Liebowitz, Mullane)

[Jean Junior Jeanniton](#), A062 597 967 (BIA July 19, 2019) (false statement to federally licensed firearms dealer under 18 U.S.C. 922(a)(6) not a firearms offense because it could apply to offenses involving ammunition) (*Malphrus*, Creppy, Baird)

[Junior Harry](#), A094 676 443 (BIA Jan. 11, 2019) (providing false statement in connection with acquisition of a firearm under 18 U.S.C. 924(a)(1)(A) not a firearms offense because it applies to federally-licensed firearms dealers who falsify their own records)) (Adkins-Blanch)

[Kulwant S. Gill](#), A076 679 968 (BIA Jan. 4, 2019) (aggravated assault with deadly weapon under Tex. Penal Code 22.02(a) not a firearms offense because the statute does not require use of a firearm) (*O'Connor*, Kendall Clark, Kelly)

[Esmeralda Franco Lopez](#), A047 310 529 (BIA Aug. 17, 2018) (making false statement to firearms dealer under 18 U.S.C. 924(a)(1)(A) is not a firearms offense because it has been held to apply to federally-licensed firearms dealers who falsify their own records and does not otherwise require the purchase, sale, offer for sale, exchange, use, ownership, possession, or carrying of a firearm) (Greer)

[Wayne Phillip Edwards](#), A201 081 513 (BIA June 20, 2018) (improper handling of a firearm in a motor vehicle under Ohio Rev. Code 2923.16(E)(1) is not a firearms offense because state has prosecuted persons under similar statutes for possession antique firearms) (*Wendtland*, Cole, Crossett)—**KEY DECISION**

[Tesloach Kek Yiel](#), A094 725 916 (BIA April 24, 2018) (DHS withdraws appeal of decision holding that carrying concealed weapon under Neb. Rev. Stat 28-1201 is not a firearms offense because it applies to weapons other than firearms) (Wendtland)

[Rene Michael Limas-Marin](#), A023 215 274 (BIA March 23, 2018) (Colo. Rev. Stat. 16-11-309 not a firearms offense because prosecutors need not establish that weapon used was a firearm) (*Liebowitz*, Hunsucker, Malphrus)

[R-M-D-](#), AXXX XXX 806 (BIA Jan. 8, 2018) (possession of stolen property under Nev. Rev. Stat. Ann. 205.275(1) was not a firearms offense because it does not require possession of a stolen firearm) (*Pauley*, Cole, Greer)

[Jesus Efrain Jamarillo-Guillen](#), A099 161 946 (BIA Dec. 4, 2017) (notes withdrawal of DHS appeal of decision finding that making false statement or representation with regards to firearm records under 18 U.S.C. 924(a)(1)(A) is not a firearms offense) (Kendall Clark)

[Miguel Angel Martinez-Guzman](#), A092 617 875 (BIA Nov. 13, 2017) (carrying a firearm while under the influence of alcohol under Okla. Stat. tit. 21 § 1289.9 not a firearms offense because statute contains no exception for antique firearms) (Pauley)

[J-S-O-R-](#), AXXX XXX 814 (BIA Oct. 25, 2017) (Wash. Rev. Code 9.41.270 not a firearms offense because it criminalizes the possession of non-firearms and is not divisible) (Guendelsberger)

[Pedro Daniel Ramirez Hernandez](#), A096 819 806 (BIA Oct. 12, 2017) (shooting at unoccupied vehicle under Cal. Penal Code 247(b) not a firearms offense because it lacks exception for antique firearms) (Guendelsberger)

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[Eric Omari Thorpe](#), A047 924 686 (BIA Sept. 29, 2017) (carrying a weapon in a motor vehicle under Conn. Gen. Stat. 29-38 not a firearms offense) (*Kelly*, Greer, Kendall Clark)

[Jose Cruz Belman-Cano](#), A057 433 239 (BIA Sept. 21, 2017) (providing false statement in connection with acquisition of a firearm under 18 U.S.C. 924(a)(1)(A) not firearms offense because it applies to federally-licensed firearms dealers who falsify their own records) (*Pauley*, Greer, Cole (dissenting))

[R-S-A-](#), AXXX XXX 165 (BIA July 25, 2017) (misconduct involving weapons under Ariz. Rev. Stat. 13-3102(A)(4) not a firearms-related offense because it prohibits possession of weapons that do not qualify as firearms under federal law, including knives and nunchaku) (*Pauley*, Cole, Greer)

[Arnoldo Baltazar Montes de Oca](#), A093 322 719 (BIA May 15, 2017) (misconduct involving weapons under Ariz. Rev. Stat. 13-3102(a)(1) not an offense involving firearms because it encompasses weapons other than firearms and is not divisible) (*Cole*, Malphrus, Liebowitz)

[Macario Jesus Bonilla](#), A090 170 253 (BIA March 29, 2017) (carrying concealed firearm in a vehicle under Calif. Penal Code 12025(a)(1) not a firearms offense) (Guendelsberger)

[Leon Christopher Peters](#), A046 422 396 (BIA March 15, 2017) (respondent not deportable based on conviction for criminal possession of a weapon in the fourth degree under N.Y.P.L. 265.01 where record of conviction did not specify the subsection to which the respondent pleaded guilty) (*Pauley*, Guendelsberger, Clark)

[Leon Christopher Peters](#), A046 422 396 (BIA July 16, 2015) (grants joint motion to remand to consider whether criminal possession of a weapon in the fourth degree under N.Y.P.C. 265.01 is divisible) (Malphrus)

[Gabriel Vidales-Moreno](#), A074 409 506 (BIA Nov. 4, 2014) (reopens proceedings in light of an advisory opinion from general counsel of the Tulsa County (Okla.) Sheriff's Office supporting argument that 21 O.S. 1289.13 is not a firearms offense because "transporting" a firearm is distinct from "carrying" a firearm) (Miller)

[Sergio Antonio Hernandez-Tarin](#), A075 290 282 (BIA Dec. 8, 2011) (theft of firearm under Texas Penal Code 31.03(a) is firearms offense) (*Guendelsberger*, Adkins-Blanch, Donovan)

[David Abrahamyan](#), A028 136 918 (BIA Apr. 27, 2010) (DHS need not prove respondent was not convicted of possessing antique firearm to establish removability) (*Malphrus*, Grant, Mullane) (Note: The reasoning of this decision may be invalid under *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013))

### **Fraud/Misrepresentation/False Claims of Citizenship—INA 212(a)(6)(C)**

#### **General**

[Hyung Ho Park](#), A098 702 258 (BIA Dec. 6, 2019) (respondent did not engage in material misrepresentation by signing Form I-485 accompanying fraudulent employment-based visa petition because the application did not specify that he was required to be currently employed by the petitioner) (*Liebowitz*, Creppy, Malphrus)

[Fidencio Vela Hernandez](#), A070 493 983 (BIA May 20, 2019) (DHS did not establish that respondent's failure to disclose prior arrest on adjustment application was willful given his mistaken belief that the question only related to whether he had been "locked up") (*Guendelsberger*, Adkins-Blanch, Kendall Clark)

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[P-A-D-](#), AXXX XXX 674 (BIA Aug. 24, 2018) (reverses finding that respondent was inadmissible under INA 212(a)(6)(C)(i) for failing to list period of residence in Qatar on husband's asylum application where omission was inadvertent and attorney who prepared forms was subsequently disbarred) (*Grant*, Kendall Clark, Guendelsberger)

[M-J-G-](#), AXXX XXX 861 (BIA Nov. 29, 2017) (exaggerating circumstances involving arrest in home country was not "material" misrepresentation because remaining facts were sufficient to grant asylum) (*Cole*, Wendtland, Pauley (dissenting))—**KEY DECISION**

[H-M-](#), AXXX XXX 389 (BIA Jan. 30, 2017) (vacates finding of inadmissibility where respondent was unaware marriage certificate obtained by sister in home country was fraudulent at time she submitted it with adjustment application; states that the "mere failure to adequately review a document before certifying its accuracy is not fraud") (*Pauley*, Cole, Wendtland)

[Muhamad Yusuf Luwaga](#), A097 750 414 (BIA Dec. 12, 2014) (respondent not inadmissible under INA 212(a)(6)(c)(i) for falsely claiming to have signed his adjustment application because identity of the signer was not relevant to his ultimate admissibility or eligibility for relief) (*Wendtland*, Cole, Pauley (dissenting))

[Abdul Hakeim Thabet Ahmed](#), A041 989 550 (BIA July 29, 2014) (DHS did not demonstrate that respondent deliberately misreported length of trips abroad on prior naturalization application) (Pauley)

[Theophilus Anum Sowah](#), A078 393 756 (BIA Mar. 24, 2014) (DHS did not meet burden of showing respondent obtained adjustment of status by willful misrepresentation where respondent believed he was still married to U.S. citizen wife at time of joint interview even though she finalized divorce a month before) (Adkins-Blanch)—**KEY DECISION**

[R-P-](#), AXXX XXX 024 (BIA Feb. 19, 2014) (submission of fraudulent letter not "material" misrepresentation where respondent's father testified in support of statements contained therein) (Pauley)—**KEY DECISION**

[Gabriel Octavio Arellan](#), A043 944 603 (BIA Nov. 22, 2013) (respondent not inadmissible under Section 212(a)(6)(C)(i) because evidence did not demonstrate intentional failure to disclose criminal conviction on immigrant visa petition) (Manuel)—**KEY DECISION**

### **Falsely Claiming Citizenship**

[Rodolfo Melendez Manriquez](#), A089 599 983 (BIA Nov. 25, 2016) (reverses finding of inadmissibility based on applying for New Mexico driver's license as U.S. citizen because no lawful status was required to obtain a license) (*Cole*, Pauley, Wendtland)—**KEY DECISION**

[Jose Garcia Garcia](#), A206 156 310 (BIA Sept. 17, 2015) (remands for consideration of whether respondent made timely recantation after falsely claiming U.S. citizenship) (Cole)

[Mickael Christian Martin](#), A076 549 309 (BIA Dec. 27, 2013) (respondent did not retract false claim to citizenship "voluntarily and without delay" where retraction occurred after he was confronted with evidence of French citizenship) (Pauley)

[Rut Betania Castillo de Figueroa](#), A095 982 111 (BIA Dec. 11, 2013) (respondent made false claim to citizenship by watching third party complete Form I-9 using U.S. birth certificate issued in same name used on false state identification card) (Mann)

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[Everline Gesare Nyabwari](#), A097 683 208 (BIA Sept. 26, 2013) (checking “citizen or national” box on Form I-9 not sufficient to establish removability under INA 237(a)(3)(D) where respondent did not know meaning of word national, but sufficient to trigger inadmissibility under INA 212(a)(C)(6)(ii)) (Miller) (Note: the Board subsequently [denied](#) a motion to reconsider)—**KEY DECISION**

[Raymond Dakura](#), A087 673 826 (BIA Sept. 13, 2013) (upholds denial of adjustment application where respondent checked box on Form I-9 claiming to be a U.S. citizen or national and presented no evidence in support of his assertion that he did so under duress) (Cole)

[Vicente Somera Espino III](#), A087 081 219 (BIA Aug. 5, 2013) (upholds denial of adjustment where respondent checked box on Form I-9 indicating that he was U.S. citizen or national; DHS did not cross-appeal IJ’s finding that it failed to establish removability under Section 237(a)(3)(D)) (Liebowitz)

[Maria Ireri Rivas](#), A089 573 062 (BIA June 24, 2013) (reopens proceedings where respondent’s prior counsel failed to seek review of USCIS’ denial of Form I-751, Petition to Remove the Conditions of Residence, and failed to present evidence that respondent’s citizenship claim on college application was not for any purpose or benefit under state law) (Miller)

[Keon Richmond](#), A097 519 056 (BIA Mar. 13, 2012) (claim of citizenship during interrogation by immigration officer to avoid placement in removal proceedings triggers inadmissibility under INA 212(a)(6)(C)(ii)(I)) (Pauley) (Note: The decision was subsequently vacated by the Second Circuit and remanded for consideration of whether a false claim to citizenship made to avoid placement in removal proceedings qualifies as a “purpose of benefit.”)

### Inadmissible at time of Entry/Adjustment—INA 237(a)(1)(A)

[Roger A. Salgado](#), A028 857 005 (BIA Oct. 19, 2018) (charge of deportability under INA 237(a)(1)(A) cannot be based on inadmissibility at time of adjustment of status under *Ortiz-Bouchet v. U.S. Att’y Gen.*, 714 F.3d 1353 (11th Cir. 2013)) (Morris)

[Zeberio Amwona](#), A096 129 849 (BIA Nov. 10, 2014) (remands for further consideration of removability where respondent failed to disclose children fathered with another woman on adjustment application; IJ failed to provide opportunity to demonstrate he did not commit fraud) (Pauley)

[Ruben Dario Diaz](#), A090 661 830 (BIA Aug. 14, 2013) (terminates proceedings where DHS provided no reason not to accept at face value the lawful permanent resident card respondent was granted in 1990) (*Pauley*, Greer, Cole)

[Alexander George Fernandes](#), A097 644 447 (BIA July 16, 2013) (respondent not inadmissible at time of adjustment; fact that respondent received room and board rather than salary did not affect status as an employee, letter submitted by employer with his Form I-140 was not fraudulent merely because it was backdated) (*Mann*, Liebowitz, Mullane)—**KEY DECISION**

### Marriage Fraud—INA 237(a)(1)(G)

[Vannak Sot](#), A096 718 092 (BIA Mar. 13, 2014) (DHS did not demonstrate removability where respondent’s wife refused to testify and respondent’s statement during prior interview that he entered fake marriage was unreliable) (Hoffman)—**KEY DECISION**

## Multiple Criminal Convictions—INA 212(a)(2)(B)

[Ruben Elizondo Gonzalez](#), A034 076 469 (BIA June 27, 2016) (ground of inadmissibility does not retroactively apply to convictions occurring prior to IIRIRA for returning LPRs under *Vartelas v. Holder*, 132 S. Ct. 1479 (2012)) (*Pauley*, *Wendtland*, *Cole*)—**KEY DECISION**

## Overstay—INA 237(a)(1)(B)

[Srikanth Kasim Reddy](#), A208 198 222 (BIA Nov. 18, 2016) (notes withdrawal of DHS appealing challenging decision terminating proceedings against former student at University of Northern New Jersey) (*Guendelsberger*)

[Ion Alexander Beza](#), A200 630 890 (BIA Oct. 27, 2011) (respondent could not have been readmitted as TN nonimmigrant after being terminated by his employer under 8 CFR 214.6(g), and thus may have been readmitted in B-2 status) (*Guendelsberger*)

## Present Without Admission or Parole—INA 212(a)(6)(A)(i)

[E-A-M-Z-](#), AXXX XXX 207 (BIA June 4, 2019) (respondent no longer inadmissible under INA 212(a)(6)(A)(i) following grant of T nonimmigrant status) (*Kelly*)

[Jaime Hernandez Manzo Hernandez](#), A092 425 597 (BIA Nov. 1, 2018) (termination of temporary status under 8 C.F.R. 245a.2(u)(4) did not return respondent to being present without admission or parole because he had left and reentered the country while in temporary status) (*Guendelsberger*)

[Felipe Medina-Velez](#), A200 875 826 (BIA Sept. 28, 2018) (DHS failed to establish alienage where documentation purporting to demonstrate that respondent was born in Mexico contained conflicting birthdates) (*Cole*)

[Jose Roberto Menjivar-Lopez](#), A208 181 893 (BIA Sept. 13, 2018) (remands for further consideration of whether DHS established alienage where IJ improperly construed respondent's silence in response to questions as evidence of alienage) (*Adkins-Blanch*, *Kelly*, *Snow*)

[Enriqueta Popocatl-Jimenez](#), A208 370 486 (BIA April 19, 2018) (respondent not subject to charge of inadmissibility because fraudulent entry using another person's documents qualifies as an "admission") (*Pauley*, *Wendtland*, *Crossett* (dissenting))—**KEY DECISION**

[I-M-G-](#), AXXX XXX 772 (BIA July 2, 2017) (reverses finding of inadmissibility in light of credible testimony that respondent was admitted using border crossing card) (*Pauley*, *Wendtland*, *Greer*)

[Jonathon Mora-Espinoza](#), A079 069 141 (BIA June 14, 2016) (dismisses charge against respondent who entered without inspection but was subsequently granted parole notwithstanding that parole was subsequently terminated) (*Wendtland*, *Pauley*, *Greer*)—**KEY DECISION**

[Cevada Azizyan](#), A044 428 950 (BIA May 13, 2016) (remands for further consideration of whether respondent was present pursuant to prior admission in light of discrepancy in respondent's testimony between bond and removal proceedings regarding manner of entry) (*Geller*)

[James Edison Bahamonde Michilena](#), A088 069 238 (BIA Dec. 31, 2015) (allegation in Form I-213 that respondent most recently entered without inspection did not overcome evidence of prior admissions as nonimmigrant) (*Pauley*, *Greer*, *Cole* (dissenting))

[Ramiro Torres-Godinez](#), A205 765 589 (BIA Jan. 6, 2014) (remands record after submission of



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evidence on appeal indicating that respondent was admitted on agricultural visa) (Grant)

[Jose Jaime Castro Valdez](#), A090 221 340 (BIA Aug. 13, 2012) (respondent was “in and admitted” to United States because he left and returned as temporary resident before status was revoked) (Grant)

[Lawrence Eric Downs](#), A076 916 078 (BIA Mar. 21, 2012) (terminates proceedings because DHS offered no evidence in support of assertion that respondent entered country without inspection) (*Guendelsberger*, *Adkins-Blanch*, *Hoffman*)

[Sokrat Stambolliu](#), A200 548 126 (BIA Nov. 28, 2011) (charge dismissed where respondent credibly testified to being permitted to enter the United States after presenting fraudulent passport and presented copy at hearing) (Pauley)

[Altagracia Filpo de Vasquez](#), A300 317 878 (BIA Nov. 15, 2011) (charge dismissed where respondent credibly testified to being permitted to enter the United States after presenting travel documents to immigration officer) (*Guendelsberger*)—**KEY DECISION**

[Nicasio Mendoza-Carrasco](#), A095 725 537 (BIA Sep. 8, 2011) (proceedings terminated where respondent was lawfully present pursuant to prior admission when NTA was served; DHS not entitled to amend charges after respondent overstayed period of admission pursuant to instructions from DHS) (*Guendelsberger*)—**KEY DECISION**

[Abril Carrera-Luciano](#), A088 749 575 (BIA Jan. 20, 2011) (proceedings terminated where respondent voluntarily left country during course of proceedings and no evidence was presented demonstrating an intent to circumvent the process) (*C. King*) (Note: The basis for this decision may no longer be valid under *Matter of Sanchez-Herbert*, 26 I&N Dec. 43 (BIA 2012))

### **Prostitution—INA 212(a)(2)(D)**

[W-C-G-](#), AXXX XXX 189 (BIA Oct. 25, 2018) (conviction under Calif. Penal Code 647(b) did not make respondent inadmissible under INA 212(a)(2)(D) because statute applies to crimes that do not constitute “prostitution” under federal definition) (Grant)

### **Stalking—INA 237(a)(2)(E)(i)**

[Armando Jose Muller-Martinez](#), A028 669 657 (BIA Oct. 15, 2018) (decision finding Fla. Stat. 784.048 was crime of stalking barred by *res judicata* because same charge was dismissed in prior proceeding) (*Crossett*, *Greer*, *Wendtland*)

[Daria Shaban](#), A036 553 979 (BIA May 1, 2018) (stalking under Minn. Stat. 609.749.4(a) not a crime of stalking because it does not require that the victim be placed in fear of bodily injury or death) (Pauley)

[Edgar Lopez-Martin](#), A076 615 668 (BIA April 30, 2018) (aggravated stalking under Geo. Code 16-5-91 not a crime of stalking because it does not require victim or member of immediate family to be placed in fear of bodily injury or death) (*Geller*, *Liebowitz*, *Mullane*)

[B-J-D-](#), AXXX XXX 463 (BIA Feb. 27, 2018) (Tenn. Code Ann. 39-17-315(a)(4), (b)(2) not a crime of stalking because it does not require the perpetrator to intentionally place the victim in fear of bodily injury or death) (*Pauley*, *Wendtland*, *O'Connor*)

## Unlawful Presence—INA 212(a)(9)

### Three- and Ten-Year Bars

[Jose Tapia-Cervantes](#), A208 939 645 (BIA Dec. 21, 2018) (reverses finding of inadmissibility against respondent who unlawfully reentered United States prior to expiration of three-year unlawful presence bar) (*Wendtland*, Crossett, Donovan)

[Jose Armando Cruz](#), A087 241 021 (BIA Apr. 9, 2014) (noncitizens who are subject to the unlawful presence bars in INA 212(a)(9)(B) are only inadmissible during the three- or ten-year period, even if they illegally re-entered the country prior to the expiration of the three- or ten-year period) (*Wendtland*, Greer, Pauley)—**KEY DECISION**

### Permanent Bar

[Carlos Ivan Valdivia-Muro](#), A095 494 769 (BIA Sept. 12, 2019) (remands for further consideration of inadmissibility under INA 212(a)(9)(C)(i) in light of testimony that respondent was unlawfully removed without a hearing before an immigration judge before he illegally reentered) (*Guendelsberger*)

[C-L-L-M](#), AXXX XXX 095 (BIA Feb. 8, 2019) (respondent who illegally reentered country not necessarily inadmissible under INA 212(a)(9)(C) because reopening of proceedings vacates underlying order of removal) (*Grant*, Guendelsberger, Kendall Clark)

[Gustavo Urias Aguilar](#), A203 097 416 (BIA Sept. 5, 2017) (INA 212(a)(9)(C)(i)(I) does not apply retroactively to periods of unlawful presence accrued prior to effective date of IIRIRA) (*Wendtland*, Greer, Cole (dissenting))—**KEY DECISION**

## Unlawful Voters—INA 237(a)(6)

[Sylvia Cundall](#), A075 776 185 (BIA Dec. 29, 2015) (DHS did not satisfy burden of proof because proffer submitted in criminal case did not identify the elections in which the respondent voted) (*Cole*, Greer, Pauley)—**KEY DECISION**

[Pangiotis Tsaglas](#), A097 324 516 (BIA Mar. 18, 2014) (remands record in light of intervening decision in *Keathly v. Holder*, 696 F.3d 655 (7th Cir. 2012), recognizing “official authorization” defense to unlawful voting charges; states that sending of voter registration card to respondent after he obtained driver's license would support finding that “official authorization” defense applies) (*Grant*)—**KEY DECISION**

## Termination of Conditional Resident Status—INA 237(a)(1)(D)

[Demar Lavande Clarke](#), A200 300 766 (BIA May 27, 2020) (reopens proceedings for respondent ordered deported under INA 237(a)(1)(D)(i) following DHS approval of waiver under INA 216(c)(4)) (*Foote*)

[Luis Sandoval Loayza](#), A045 629 494 (BIA Sept. 16, 2019) (terminates proceedings because respondent's subsequent adjustment of status under *Matter of Stockwell*, 20 I&N Dec. 309 (BIA 1991), cured the charge of removability under INA 237(a)(1)(D)(i) relating to the termination of conditional LPR status) (*Adkins-Blanch*, Kelly, Liebman)



## **Terrorist Activities—INA 212(a)(3)(B)**

[H-R-](#), AXXX XXX 938 (BIA June 26, 2020) (provisions of material support bar enacted by IIRIRA do not retroactively apply to previously filed asylum applications) (*Hunsucker*, Gemoets, Monsky)

[L-G-](#), AXXX XXX 547 (BIA March 26, 2019) (respondent not ineligible for cancellation of removal because military-type training he received from Palestinian Liberation Army in Lebanon in 1982 was not provided on behalf of the Palestinian Liberation Organization, which was then an undesignated terrorist organization) (*Greer*, Wendtland, Donovan)

[S-R-](#), AXX XXX 362 (BIA Aug. 29, 2018) (respondent did not provide material support by providing water from a communal well to fellow captives forced to cut wood for the Liberation Tigers of Tamil Eelam) (Wendtland)

[A-A-A-](#), AXXX XXX 258 (BIA Feb. 12, 2018) (respondent not subject to material support bar for having surrendered his livestock at gunpoint to members of Al-Shabaab because he did not commit an “act” under INA 212(a)(3)(B)(iv)(VI)) (*Wendtland*, Pauley, Cole (dissenting))—**KEY DECISION**

[M-P-](#), AXXX XXX 473 (BIA Dec. 11, 2017) (respondent not subject to material support bar because Vishva Hindu Parashad (VHP) did not engage in violence until after she left India and because she did not know or have reason to know that VHP was a terrorist organization) (Pauley)

[M-K-I-](#), AXXX XXX 691 (BIA March 9, 2017) (Bangladesh Nationalist Party (BNP) not a Tier III terrorist organization; alleged affiliation between political party and recognized terrorist organization does not make political party a Tier III terrorist organization absent significant affiliation between political party and terrorist organization) (*Pauley*, Guendelsberger, Kendall Clark)—**KEY DECISION**

[S-I-B-](#), AXXX XXX 978 (BIA Dec. 16, 2016) (Bangladesh Nationalist Party (BNP) not a “Tier III” terrorist organization because leadership has not authorized members to engage in violence and party not significantly affiliated with any recognized terrorist groups) (*Pauley*, Wendtland, O’Herron)—**KEY DECISION**

[Jose L. Zumel](#), A079 192 469 (BIA Sept. 7, 2016) (whether applicant intended to endanger other individuals under INA 212(a)(3)(B)(iii)(V)(b) is a question of fact) (Malphrus)

[Jose Luis Gonzales](#), A029 158 835 (BIA Nov. 26, 2013) (respondent did not provide “material support” to terrorists when armed militants forcibly robbed his store) (Pauley)—**KEY DECISION**

## **Violation of Protection Order—INA 237(a)(2)(E)(ii)**

[Miguel Alberto Arizaga-Vallejo](#), A078 230 633 (BIA Sept. 30, 2020) (upholds dismissal of charge under INA 237(a)(2)(E)(ii) because DHS failed to submit copy of protection order that respondent violated) (Geller)

[Abdallah Odeh Al Mhaisen](#), A044 174 438 (BIA Jan. 18, 2019) (remands record because IJ failed to conduct analysis required under *Matter of Medina-Jimenez*, 27 I&N Dec. 399 (BIA 2018), to determine whether respondent was ineligible for cancellation of removal for having been convicted of violating a protective order) (Adkins-Blanch)

[Caino Kenaris Reid](#), A204 697 163 (BIA Nov. 27, 2015) (ground of deportability relating to the violation of protective orders not subject to the categorical approach) (Pauley)

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[Caino Kenaris Reid](#), A204 697 163 (BIA Aug. 4, 2015) (orders further consideration of removability under INA 237(a)(2)(E)(ii) in light of prior OIL assertion that categorical approach should be used to determine removability) (Guendelsberger)

**Violation of Nonimmigrant Status—INA 237(a)(1)(C)**

[Prakaschandra Rameschchandra Patel](#), A200 661 745 (BIA May 8, 2015) (respondent violated nonimmigrant status by continuing to work part-time as a store clerk after his H-1B application was approved for a position as a business manager) (*Creppy*, Mann, Mullane)

[Oswen Fitzherbert Cameron](#), A088 810 944 (BIA Jan. 13, 2014) (pastor no longer employed by sponsoring church in violation of R-1 status; immaterial that former congregants planned to form own church and hire him as pastor) (Malphrus)

[Do Kyung Lee](#), A089 047 352 (BIA Nov. 5, 2013) (spouses of E-2 treaty investors not required to obtain EAD to engage in employment) (*Pauley*, Greer, Cole)—**KEY DECISION**

[Kosei Inoue](#), A089 244 823 (BIA July 9, 2013) (respondent violated E-2 nonimmigrant status when employment was terminated by petitioning employer) (Pauley)

## II. RELIEF FROM REMOVAL

### Abandonment of Applications

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[L-G-S-D-](#), AXXX XXX 739 (BIA Aug. 4, 2020) (failing to submit affidavit with Form I-589 not valid basis for deeming asylum application abandoned) (*Couch*, Kelly, Adkins-Blanch)

[F-G-V-](#), AXXX XXX 495 (BIA July 23, 2020) (remands for further consideration of asylum application that IJ deemed abandoned given DHS' failure to dispute respondent's assertion that he presented his application to the mail carrier at the detention facility 10 days before the filing deadline) (*Couch*, Adkins-Blanch, Kelly)

[Eduardo Hernandez-Gamiz](#), A202 064 528 (BIA July 9, 2020) (reverses finding that respondent abandoned application because IJ never stated in advance that application would be deemed abandoned if documents were not filed by deadline) (*Riley*)

[J-G-M-](#), AXXX XXX 339 (BIA June 5, 2020) (vacates decision denying asylum application as incomplete where respondent did not complete Part E of Form I-589 relating to preparation of form) (*Gorman*, Grant, Mullane)

[R-O-Q-M-](#), AXXX XXX 044 (BIA May 19, 2020) (asylum application erroneously deemed abandoned where application was improperly rejected for lacking respondent's A-number) (*Cassidy*)

[N-M-J-V-](#), AXXX XXX 347 (BIA April 3, 2020) (remands for respondent to pursue asylum application where IJ failed to provide advisals regarding consequences of failing to comply with filing deadline) (*Greer*)

[J-M-J-P-](#), AXXX XXX 517 (BIA March 13, 2020) (reverses finding that respondent abandoned asylum application where the final hearing was only his second master calendar hearing and the respondent had sought to have his application translated into English a week prior to the hearing) (*Rosen*, Liebmann, Kelly)

[A-A-C-](#), AXXX XXX 302 (BIA March 5, 2020) (reverses finding that pro se respondent waived opportunity to apply for asylum where she expressed fear of harm in returning to Cuba but her statements at subsequent hearing were not translated after she failed to complete application) (*Cassidy*, Couch, Kelly)

[L-P-G-](#), AXXX XXX 629 (BIA Feb. 20, 2020) (reverses finding that respondent abandoned asylum application where he filed Form I-589 but it was mistakenly not associated with his file) (*Mullane*, Mann, Grant)

[K-B-S-M-](#), AXXX XXX 166 (BIA Feb. 14, 2020) (reopens proceedings to consider respondent's asylum application because she was not told that application would be deemed abandoned if not submitted by next hearing) (*Gorman*)

[M-M-A-](#), AXXX XXX 526 (BIA Feb. 12, 2020) (vacates finding that pro se respondent abandoned asylum application that was timely filed but ultimately rejected because it was accompanied by untranslated foreign documents) (*Cassidy*, Kelly, Adkins-Blanch)

[N-A-B-G-](#), AXXX XXX 158 (BIA Feb. 3, 2020) (vacates finding that respondent abandoned

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opportunity to apply for asylum where notice of defective filing was not issued until after IJ issued order of removal) (Kelly)

[D-M-B-](#), AXXX XXX 236 (BIA Jan. 27, 2020) (reverses finding that respondent abandoned asylum application where IJ gave confusing instructions about respondent's need to find an attorney and to complete the Form I-589 himself) (Mann)

[Luis Alfonso Ramirez Guevara](#), A216 547 161 (BIA Jan. 23, 2020) (reverses finding that respondent missed deadline to file applications for relief when deadline set by IJ was one week after order of removal) (*Couch*, Liebmann, Kelly)

[N-E-M-](#), AXXX XXX 019 (BIA Dec. 30, 2019) (reverses finding that respondent abandoned asylum application because it was received at detention center in which immigration court was located prior to filing deadline set by IJ) (*Kendall Clark*, Guendelsberger, Grant)

[J-C-C-J-](#), AXXX XXX 819 (BIA Nov. 27, 2019) (respondent did not abandon asylum application where attorney mistakenly filed application with court at which the IJ normally presided rather than where the respondent was detained) (*Wendtland*, Noferi, Greer)

[R-H-](#), AXXX XXX 408 (BIA Oct. 17, 2019) (reverses finding that respondent abandoned asylum application in light of filing of notice of appeal, retaining of new counsel, and allegations of ineffective assistance against prior attorney) (*Wendtland*, Cole, Rosen)

[M-H-](#), AXXX XXX 149 (BIA June 14, 2019) (reverses finding that pro se respondent abandoned asylum application because IJ did not specifically state that he was required to file completed Form I-589 by next hearing) (*Morris*, Liebmann, Kelly)

[Aswin Bala Sathyanarayanan](#), A215 589 221 (BIA May 22, 2019) (IJ erroneously deemed application abandoned where respondent left one question blank that he was unsure how to answer) (Morris)

[G-U-A-B-](#), AXXX XXX 973 (BIA April 29, 2019) (IJ improperly deemed application for relief abandoned because he did not wait for a response after asking whether respondent understood importance of deadline) (*Kelly*, Mann, Morris)

[C-S-](#), AXXX XXX 971 (BIA April 22, 2019) (IJ violated due process by deeming respondent's asylum application abandoned without notifying him of the consequences of failing to comply with the filing deadline) (*Guendelsberger*, Grant, Kendall Clark)

[L-S-](#), AXXX XXX 284 (BIA April 5, 2019) (IJ improperly deemed asylum application abandoned despite timely filing of Form I-589 because it did not provide any substantive reasons for his fear of return) (*Wendtland*, O'Connor, Cole)

[T-M-](#), AXXX XXX 940 (BIA April 2, 2019) (vacates finding that respondent abandoned asylum application given that he was detained, was given only two weeks to complete application, diligently hired new counsel after prior attorney withdrew, and submitted completed application with appeal) (*Mann*, Liebmann, Morris)

[M-J-Z-](#), AXXX XXX 737 (March 12, 2019) (vacates finding that respondent abandoned asylum application given that he was detained, his two hearings were not translated into a language he understood, and IJ did not state that application would be deemed abandoned if not filed by the deadline) (Adkins-Blanch)

[Joaquin Adoniss Rosas-Araguz](#), A205 300 229 (BIA March 7, 2019) (vacates finding that respondent

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abandoned opportunity to pursue relief from removal by failing to file any applications when he appeared without counsel at the first master calendar hearing after proceedings were administratively closed five years earlier) (*Mann, Kelly, Adkins-Blanch*)

[Leonides Castillo Rodriguez](#), A208 908 008 (BIA Dec. 26, 2018) (reverses finding that respondent abandoned cancellation application where record reflected that application was submitted to USCIS by court-ordered deadline and respondent requested initiation of proceedings to so that she could obtain lawful status) (*Kelly, Adkins-Blanch, Geller*)

[W-E-M-B-](#), AXXX XXX 134 (BIA Dec. 10, 2018) (IJ improperly found minor respondents waived right to file own asylum applications after mother failed to file application by court-ordered deadline) (*Wendtland, Greer, Cole* (dissenting))

[Fuda Ke](#), A216 270 728 (BIA Nov. 7, 2018) (affords respondent additional opportunity to submit asylum application in light of difficulty receiving mail at detention facility, withdrawal of first attorney, and IJ's failure to advise of consequences of failing to file application) (*Adkins-Blanch, Mann, Snow*)

[A-S-C-](#), AXXX XXX 507 (BIA Nov. 9, 2018) (IJ should have accepted late-filed relief application in light of death of attorney's father) (*Mann, Kelly, Greer*)

[N-I-M-](#), AXXX XXX 918 (BIA Oct. 24, 2018) (IJ improperly deemed pro se asylum applicant to have abandoned application by bringing only one copy to court and being unable to serve DHS) (*Adkins-Blanch, Geller, Snow*)

[Kenuth Johnson](#), A055 559 496 (BIA Aug. 21, 2018) (reverses finding that respondent abandoned application for relief where handwritten note on hearing notice mistakenly listed call-up date in 2018 rather than 2017) (*Mann, Snow, Kelly*)

[Thales Alberto Duarte-Oliveria](#), A201 065 524 (BIA March 6, 2017) (IJ improperly deemed adjustment application abandoned where medical evaluation was not submitted due to miscommunication between respondent's prior and current attorneys) (*Adkins-Blanch, Grant, Pauley*)

[Mubarak O. Raifu](#), A209 171 968 (BIA Feb. 27, 2017) (IJ improperly deemed asylum application abandoned where respondent requested a continuance after recently retaining an attorney) (*Adkins-Blanch*)

[Huy Ngo](#), A042 489 147 (BIA Aug. 31, 2016) (reverses finding that respondent abandoned application by failing to submit proof of paying filing fee where he received biometrics notice and submitted proof that check accompanying application was cashed) (*Pauley, Greer, Cole*)

[Francisco Ramirez Ramos](#), A208 414 180 (BIA May 12, 2016) (remands to give respondent additional opportunity to submit EOIR-42B that prior attorney failed to file; states that IJ authority to deem applications abandoned must be balanced against due process right to full and fair hearing) (*O'Leary*)

[L-H-A-](#), AXXX XXX 320 (BIA April 29, 2016) (affords respondent who forgot to submit biometrics another opportunity to comply with instructions) (*Adkins-Blanch, O'Herron, Greer*)

[Ojambert Lamour](#), A056 495 361 (BIA April 5, 2016) (respondent did not abandon application for deferral of removal under the CAT in light of evidence that he was given the wrong address to send the application and that he twice mailed documents to a similar address) (*Grant*)

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[Ezequiel Eugenio Castillo Guzman](#), A097 573 118 (BIA Jan. 28, 2016) (remands record for respondent to pursue relief where evidence indicated that computer malfunction contributed to attorney missing filing deadline) (*O’Leary*, Adkins-Blanch, Guendelsberger)

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[Jose Eulalio Chacon](#), A094 474 544 (BIA Nov. 30, 2015) (reverses decision finding respondent abandoned TPS application where DHS failed to provide copy of application previously filed with USCIS and fingerprints expired only one day prior to individual hearing) (*Grant*, O’Leary, Guendelsberger)

[Israel Sarmiento Adamae](#), A070 932 703 (BIA May 6, 2015) (remands record where prior attorney failed to keep respondent appraised of filing deadline for adjustment application) (*Guendelsberger*, Neal, Adkins-Blanch)

[Javier Avalos-Camacho](#), A089 229 522 (BIA Apr. 8, 2015) (remands for consideration of untimely filed application in light of procedural history of case and respondent’s attendance at three prior hearings) (Guendelsberger)

[Luis Aramis Cuello-Alcantara](#), A017 726 072 (BIA March 17, 2015) (remands for consideration of untimely filed application for waiver under former section 212(c) because respondent had possessed LPR status since 1967) (*Adkins-Blanch*, Neal, Guendelsberger)

[Binh Ngoc Trinh](#), A041 556 896 (BIA Feb. 19, 2015) (respondent’s applications for relief should not be deemed abandoned because DHS also failed to comply with several filing deadlines during the course of proceedings) (*Cole*, Wendtland, Pauley)

[Nicholas Jermaine Gumbs](#), A040 159 442 (BIA Jan. 13, 2015) (respondent abandoned request for INA 211(b) waiver because attorney filed the Form I-193 by fax with the immigration court) (Grant)

[Nana Kwadwo Badu Nkrawire](#), A096 716 342 (BIA Sept. 15, 2014) (IJ erroneously deemed request for voluntary departure abandoned for failure to submit declaration in support of eligibility) (*Manuel*, Guendelsberger, Hoffman)

[Errol Stafford Brown](#), A079 095 690 (BIA Aug. 19, 2014) (IJ should have heard testimony from respondent and wife in support of adjustment application and 212(h) waiver despite respondent’s failure to submit affidavit of support (Form I-864), medical examination (Form I-693), or evidence of qualifying relatives) (Manuel)

[Tomas Ramirez](#), A026 843 980 (BIA July 31, 2014) (IJ erred under *Matter of Interiano-Rosa*, 25 I&N Dec. 264 (BIA 2010), in finding respondent abandoned adjustment application by failing to submit supporting documentation) (*Pauley*, Donovan, Wendtland)

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[George Anton Toma](#), A095 722 220 (BIA Mar. 20, 2014) (remands record because IJ failed to advise respondent of consequences of failing to file criminal record or updating fingerprints) (*Manuel, Hoffman, Guendelsberger*)

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### Ability to Apply

[Guadalupe Carmona Saldana](#), A097 705 178 (BIA May 15, 2017) (reverses order terminating proceedings based on DHS' exercise of prosecutorial discretion over opposition of respondents who wished to pursue applications for relief) (*Adkins-Blanch, Grant, Mann*)

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### Adjustment of Status

#### Affidavit of Support

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[Eduarda de Gonzalez](#), A096 699 471 (BIA March 15, 2017) (IJ erroneously required tax returns for three most recent taxable years and submission of additional evidence less than one year after signing of affidavit of support) (*Pauley, Wendtland, O'Connor*)

#### Arriving Aliens

[Erick Rayo Espinoza](#), A077 893 487 (BIA July 29, 2020) (USCIS possesses jurisdiction over adjustment applications of arriving aliens even if they are subject to a final order of removal) (Swanwick)

[D-J](#), AXXX XXX 003 (BIA July 15, 2020) (grants motion to remand for arriving alien pending adjudication of adjustment application in light of assertion that USCIS will not approve application if respondent is subject to final order) (Pepper)

[O-H](#), AXXX XXX 193 (BIA Aug. 10, 2018) (vacates finding that respondent was properly charged as an arriving alien where he reentered the United States pursuant to a grant of advance parole) (*Snow, Adkins-Blanch, Kelly*)

[Margarito Raul Ramirez-Cruz](#), A078 276 475 (BIA May 18, 2018) (TPS holder who reentered under grant of advance parole was not an arriving alien) (*Mann, Adkins-Blanch, Grant*)



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[Hiep Thanh Nguyen](#), A073 306 230 (BIA Nov. 26, 2013) (respondent improperly classified as “arriving alien” because she was paroled prior to April 1, 1997, and can renew application in removal proceedings because it was previously denied by USCIS) (*Hoffman*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Muhammad Salman Rais](#), A079 692 636 (BIA June 20, 2012) (denies motion to reopen but states that USCIS erroneously denied adjustment application of arriving alien due to outstanding removal order and encourages respondent to ask USCIS to reconsider) (Holmes)—**KEY DECISION**

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[Fatimo Eytayo Renke Smith Joda](#), A079 134 441 (BIA Aug. 11, 2020) (respondent established that marriage to prior husband was bona fide in light of USCIS’ approval of the visa petition filed for both herself and her daughter) (*Mann*, Grant, Mullane (dissenting))

[J-S-](#), AXXX XXX 258 (BIA April 22, 2020) (states that approval of visa petition for respondent who married after placement in removal proceedings constitutes sufficient evidence of bona fides of the marriage) (Donovan)

[Rosendo Hernandez-Escobedo](#), A205 572 797 (BIA Feb. 28, 2020) (grants motion to remand over DHS opposition for respondent to seek adjustment of status in light of Colorado state court order declaring that he and his wife were deemed married under state law since 1994) (Kelly)

[Jane Kani Baffour](#), A089 606 309 (BIA Dec. 20, 2019) (reverses denial of adjustment of status based on purported lack of marital bona fides where the respondent and her late husband had a child together) (*Wilson*, Greer, Rosen)

[Mohamed Gara Mosli](#), A077 916 814 (BIA April 19, 2019) (IJ erroneously denied adjustment application based on lack of good moral character and bona fides of marriage because former is not a statutory requirement and latter was demonstrated by the approval of the Form I-130) (*Grant*, Guendelsberger, Kendall Clark)

[Fatimo Eytayo Renke Smith Joda](#), A079 134 441 (BIA June 15, 2016) (IJ erred in relying on unauthenticated notes of immigration offer and ambiguous statement of former spouse who was not subject to cross-examination in concluding prior marriage was not bona fide at inception) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

[Joseff Henry Gargar Te](#), A205 279 813 (BIA March 18, 2015) (remands for further consideration of motion to reopen based on marriage to U.S. citizen where IJ failed to address letters of support and evidence of joint bank accounts and vehicle ownership) (Holmes)

[Katerina Solcova](#), A200 383 523 (BIA March 16, 2015) (remands over DHS opposition for consideration of application to adjust status based on intervening marriage to a U.S. citizen; says DHS opposition alone not sufficient under *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), and evidence submitted demonstrates strong likelihood marriage is valid) (Grant)

[Rebecca Bamfo](#), A096 201 703 (BIA June 5, 2014) (sustains appeals of revocation of approved visa petition, noting that burden on government of proving a marriage was fraudulent is higher than burden on petitioner of showing a marriage is bona fide) (*Grant*, Hoffman, Manuel)

[Elena Abella](#), A087 184 034 (BIA June 2, 2014) (USCIS may not rely exclusively on a prior sham marriage finding in determining that a noncitizen previously engaged in a sham marriage, per

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[Collins Anakor](#), A201 141 550 (BIA Feb. 10, 2014) (lack of evidence of commingling of finances excused because respondent lacked work authorization and his wife was unemployed) (Holmes)

[Manuel Lopez-Rivera](#), A089 235 276 (BIA Jan. 3, 2014) (submission of marriage certificate and pending Form I-130 not sufficient to demonstrate same-sex marriage is bona fide) (Kendall-Clark)

[Emmanuel Peterson Dontoh](#), A088 949 492 (BIA Aug. 12, 2013) (grants motion to remand over DHS opposition where Form I-130 was approved while appeal was pending and no evidence existed that it had been reconsidered or revoked due to prior sham marriage determination) (Grant)

[Antonio Roa-Carranza](#), A200 762 041 (BIA Aug. 8, 2013) (reopens proceedings in light of newly submitted evidence that respondent was father of a U.S. citizen child born to his wife) (Guendelsberger)

[Ohene Bobie Nimako](#), A099 311 604 (BIA July 19, 2013) (IJ failed to address argument that USCIS erroneously denied Form I-130 based on purported lack of request for a bona fide marriage exemption) (Manuel)

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[Ricardo J. Sinclair](#), A095 965 914 (BIA June 23, 2011) (failure to produce affirmative evidence of bona fides does not by itself establish that marriage is sham) (*Adkins-Blanch*, Guendelsberger, Holmes)—**KEY DECISION**

[Michael Eshun](#), A089 439 806 (BIA Mar. 11, 2011) (respondents need not demonstrate bona fides of marriage under *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), to obtain continuance pending adjudication of Form I-130) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

### **Child Status Protection Act (CSPA)**

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### **Crewmen**

[Everton Dane Henry](#), A089 425 229 (BIA Mar. 18, 2011) (remands record where IJ failed to question respondent whether he intended to enter as crewman) (*Pauley*, Cole, Greer)

### **Cuban Adjustment Act**

[Lorenzo Gonzalez Morales](#), A216 282 255 (BIA Aug. 20, 2020) (reopens proceedings sua sponte in light of USCIS’ belief that it lacked jurisdiction to adjudicate application for adjustment of status under the Cuban Adjustment Act based on existence of final order of removal) (Cassidy)

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[B-J-M-G-](#), AXXX XXX 763 (BIA June 3, 2020) (upholds discretionary grant of adjustment of status

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where positive equities outweighed single misdemeanor conviction for use of a firearm while under the influence) (*Liebowitz*)

[M-A-E-B-](#), AXXX XXX 098 (BIA Nov. 18, 2019) (upholds discretionary grant of adjustment of status given that respondent had distanced himself from gang members with whom he had associated after arriving in the United States in 2014) (*Wendtland*)

[Supantira Peery](#), A072 858 363 (BIA Nov. 7, 2019) (reverses discretionary denial of adjustment application where IJ improperly concluded that respondent married husband solely for immigration purposes, all of respondent's convictions were misdemeanors, and any discrepancies in testimony were the result of confusion) (*Wilson*, Cole, Cassidy)

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[W-J-V-V-](#), AXXX XXX 902 (BIA Sept. 18, 2019) (upholds discretionary grant of adjustment based on an approved SIJ petition despite convictions for unlawful carrying of handgun and three arrests for possession of marijuana) (*Grant*)

[Norman Henry Riley](#), A091 068 064 (BIA Aug. 30, 2019) (rejects DHS argument that respondent is subject to heightened standard under *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), based on assault conviction arising from incident in which respondent stabbed the victim after being punched in the face; upholds discretionary grant of adjustment of status in light of respondent's nearly 30-year residence in the United States, 15-year history of employment with one employer, sustained remission from cannabis use disorder, and hardship that he would face if returned to Jamaica) (*Creppy*, Noferi, Malphrus)

[Jorge Adalberto Sanchez](#), A076 561 900 (BIA March 25, 2019) (vacates discretionary denial of adjustment application because IJ made no findings of fact related to the respondent's equities) (*Adkins-Blanch*, Kelly, Mann)

[Manuel Velasquez Chavez](#), A094 903 327 (BIA Dec. 10, 2018) (upholds discretionary grant of adjustment application for respondent with three prior DUI convictions in light of more than 20 years' residence in the United States, consistent employment, and passage of more than seven years since most recent offense) (*Geller*, Adkins-Blanch, Snow)

[Jesus Ramirez-Ortega](#), A070 827 672 (BIA May 21, 2018) (reverses discretionary denial of adjustment application where respondent's two arrests for domestic violence were outweighed by having lived in the United States for 24 years, having a U.S. citizen wife and four U.S. citizen children, having lawful permanent resident parents, and having a consistent employment history) (*Pauley*, Snow, Kelly)

[N-M-](#), AXXX XXX 196 (BIA Dec. 1, 2017) (reverses discretionary denial where IJ found equities outweighed by actions of respondent's prior husband who was indicted for war crimes by International Criminal Tribunal for the Former Yugoslavia (ICTY)) (*Pauley*, Greer, Wendtland)

[Roderico Geronimo Tzum-Sum](#), A071 575 904 (BIA Aug. 18, 2017) (reverses discretionary denial upon finding conviction for misdemeanor sexual battery under Cal. Penal Code 243.4(d)(1) not a "violent or dangerous" crime and respondent resided in U.S. for more than 25 years, was married to U.S. citizen, and had a U.S.-citizen child with cognitive disabilities) (*Wendtland*, Greer, Pauley)

[Teresa Moreno-Gonzalez](#), A200 946 740 (BIA June 29, 2017) (reverses discretionary denial of adjustment application upon finding respondent's three U.S. citizen children, long marriage to

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naturalized U.S. citizen, and other positive equities outweigh five arrests that did not result in conviction) (*Wendtland*, Cole, O'Connor)

[Jorge Albeto Rodriguez-Vazquez](#), A205 292 786 (BIA June 15, 2017) (reverses discretionary denial of adjustment application where respondent had close ties to five U.S. citizen children, was active in church, seemed genuinely rehabilitated, and last DUI was more than eight years prior) (*Pauley*, O'Connor, Wendtland)

[G-S.](#), AXXX XXX 625 (BIA June 5, 2017) (IJ erred in denying asylum as matter of discretion based solely on respondent's failure to seek asylum during two extended stays in United Kingdom without considering totality of the circumstances) (*Pauley*)

[Zulfiqar Ali Mirza](#), A099 395 768 (BIA Feb. 19, 2016) (reverses discretionary denial of adjustment application upon finding respondent's positive equities outweighed alleged involvement in fraudulent petition for religious visa) (*Pauley*, Greer, Wendtland)

[Jose Alfredo Quijada](#), A092 041 082 (BIA Feb. 4, 2016) (reverses discretionary denial of adjustment application upon finding respondent's positive equities were not outweighed by his unlawful entry and a 1989 criminal conviction for which he was placed on probation for two years) (*Greer*, O'Herron, Pauley (dissenting))

[Mario Melgar](#), A200 550 222 (BIA Oct. 14, 2015) (finds respondent merits favorable exercise of discretion despite recent DUI conviction and lack of tax compliance) (*Grant*, Holmes, O'Leary)

[Ernest Antwi Asamoah](#), A087 310 643 (BIA Sept. 11, 2015) (failure to disclose DWI conviction on adjustment application was a factor to be considered in the exercise of discretion but did not render respondent ineligible to adjust status) (*Mullane*, Creppy, Malphrus)

[Gustavo Soto Enriquez](#), A087 274 650 (BIA Aug. 5, 2015) (reverses discretionary denial of adjustment where IJ improperly relied on purported discrepancies between the respondent's testimony and a pre-sentence investigation regarding an alleged offense for which the respondent was not prosecuted) (*Pauley*, Greer, Cole)—**KEY DECISION**

[David Aguinaga-Melendez](#), A200 759 135 (BIA May 19, 2015) (reverses discretionary denial of adjustment where no evidence existed that respondent was responsible for crime leading to prior arrest for attempted murder or that he benefitted from filing of tax return that inaccurately listed him as married) (*Grant*, Guendelsberger, Adkins-Blanch)

[Andrew Aburu Misumi](#), A094 075 414 (BIA Dec. 22, 2014) (reverses discretionary denial of adjustment because conviction for driving with open container of alcohol outweighed by marriage to U.S. citizen, present employment, and prior care for two U.S. citizen stepchildren) (*Pauley*, Cole, Donovan)

[Elena Hernandez-Hernandez](#), A074 571 777 (BIA Mar. 31, 2014) (IJ should have accepted partially complete evidence regarding the respondent's efforts to pay delinquent taxes and failed to analyze her positive and negative equities) (*Grant*, Guendelsberger, Hoffman)

[R-P.](#), AXXX XXX 024 (BIA Feb. 19, 2014) (respondent merits favorable exercise of discretion in light of lengthy residency, immediate relatives who are U.S. citizens/LPRs, acknowledgment of criminal history, past victim of domestic violence, and lack of support network in home country) (*Pauley*)

[Joao Coutinho](#), A098 236 413 (BIA Feb. 11, 2014) (remands record where IJ declined to favorably exercise discretion because respondent and his wife's account of alleged physical altercation

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[Enrique Manuel Vasquez-Perez](#), A095 802 066 (BIA Nov. 14, 2013) (reverses discretionary denial of adjustment upon finding positive equities not outweighed by single conviction for driving under the influence) (Miller)—**KEY DECISION**

[Fernando Linares-Isidoro](#), A095 729 470 (BIA Nov. 30, 2012) (sustains DHS appeal, denies adjustment of status as matter of discretion in light of respondent's criminal history) (*Donovan*, Greer, Pauley)

[Hicham Sadik](#), A096 680 844 (BIA June 8, 2012) (upholds prior denial of adjustment application due to respondent's failure to register with NSEERS program and to submit evidence demonstrating payment of back taxes) (Kendall-Clark)

### **Employment-Based Petitions**

[Edmar Petit Seabra](#), A075 393 099 (BIA Oct. 21, 2015) (IJs may not redetermine validity of approved employment-based visa petition) (*Malphrus*, Mann, Mullane)—**KEY DECISION**

### **Fraud Finding—INA 204(c)**

[Kavita Kirit Malaviya](#), A076 959 176 (BIA May 20, 2016) (IJ erroneously found respondent ineligible to adjust status under INA 204(c) based on allegedly fraudulent prior marriage where USCIS granted a visa petition filed by his U.S. citizen daughter) (Pauley, O'Herron, Wendtland)

[Kirit Malaviya](#), A074 998 626 (BIA April 15, 2016) (IJ erroneously found respondent ineligible to adjust status under INA 204(c) based on allegedly fraudulent prior marriage where USCIS granted a visa petition filed by his U.S. citizen daughter) (Pauley, O'Herron, Wendtland)

[G-K-](#), AXXX XXX 758 (BIA Sept. 2, 2015) (respondent not ineligible to adjust status because USCIS did not make a sham marriage determination in denying request for good faith marriage waiver) (*Wendtland*, Cole, Pauley)

[Joyce Jenrola Davis](#), A087 297 576 (BIA April 21, 2015) (respondent not subject to INA 204(c) because Board did not address marriage fraud finding issue in separate appeal involving of revocation of prior visa petition) (*Cole*, Pauley, Wendtland)—**KEY DECISION**

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[Viviana Sarayda Larios Andrade](#), A077 810 552 (BIA May 27, 2020) (holds that *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), represents fundamental change of law justifying sua sponte reopening for TPS holder to apply for adjustment of status)) (Kelly)

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[Margarito Raul Ramirez-Cruz](#), A078 276 475 (BIA Oct. 23, 2019) (reaffirms prior finding that respondent with TPS who left and returned under grant of advance parole was "admitted or paroled")



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[A-T-B-](#), AXXX XXX 667 (BIA Feb. 12, 2018) (adjusting to LPR status through fraud qualifies as “admission” under INA 245(a) because it was procedurally regular in nature) (*Liebowitz*, Geller, Malphrus (dissenting))

[Samuel Gomez](#), A090 921 930 (BIA April 6, 2017) (respondent was “admitted” for purposes of adjustment of status by entering country as a temporary resident and remained “admitted” after status) (Patricia Cole)

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[Myoung Sook Lee](#), A098 772 839 (BIA Mar. 27, 2014) (under 8 CFR 1245.2(a)(5)(ii), applicant who renews adjustment application in removal proceedings need not meet lawful status requirement if requirement was met when application was originally filed with USCIS; application should not be treated as new merely because respondent was no longer inadmissible) (*Donovan*, Pauley, Wendtland)—**KEY DECISION**

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[E-T-](#), AXXX XXX 204 (BIA Feb. 5, 2019) (reopens proceedings based on changed country conditions in Indonesia for Christian of Chinese ethnicity) (*Kendall Clark*)

[W-M-Y-](#), AXXX XXX 044 (BIA Jan. 28, 2019) (grants motion to reopen based on changed conditions in Iraq for Chaldean Christian asylum applicant) (*Grant*)

[J-C-T-](#), AXXX XXX 956 (BIA Dec. 20, 2018) (reopens proceedings in light of changed country conditions in Cameroon in light of arrests and interrogations of family members to discourage respondent from continuing with anti-government political activities in the United States and notwithstanding prior adverse credibility determination against respondent) (*Grant*)

[A-J-L-A-F-](#), AXXX XXX 910 (BIA Dec. 7, 2018) (reopens proceedings for respondent to seek deferral

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of removal under the CAT upon finding anti-Western threat from the government-sponsored Popular Mobilization Forces constitutes changed country conditions in Iraq) (*Donovan*, Wendtland, Greer)

[A-W-M-](#), AXXX XXX 088 (BIA Sept. 24, 2018) (reopens proceedings based on changed country conditions in Somalia for respondent who was a class member in *Ibrahim v. Acosta*, 2018 WL 3069242 (S.D. Fla. June 21, 2018) for having been aboard a flight to Mogadishu that was rerouted and returned to the United States) (Kendall Clark)

[G-P-G-](#), AXXX XXX 554 (BIA Sept. 14, 2018) (reopens proceedings based on material change in country conditions where increase in gang violence in El Salvador resulted in rape of respondent's 7-year-old daughter and various threats made against her and her family following the incident) (*Crossett*, Greer, Wendtland)

[C-L-R-](#), AXXX XXX 328 (BIA Sept. 7, 2017) (reopens proceedings in light of materially changed country conditions, citing recent killings of respondent's family members and Board and judicial decisions involving family as a particular social group) (Guendelsberger)—**KEY DECISION**

[M-E-A-S-](#), AXXX XXX 912 (BIA June 2, 2017) (threats from person in El Salvador threatening to kill respondents constituted materially changed country conditions) (*Greer*, Kendall Clark, Neal)

[Armando Marquez-Aguilar](#), A098 897 922 (BIA July 28, 2016) (IJ erred in denying motion to rescind in absentia order without addressing request to reopen proceedings to seek asylum based on changed country conditions in Honduras) (O'Leary)

[S-B-](#), AXXX XXX 223 (BIA Jan. 27, 2015) (grants motion to reopen based on changed country conditions in Central African Republic based on evidence demonstrating that Muslims in general and respondent's family members in particular have been killed on account of their religion) (Miller)

[Yakov Grigorievich Drabovskiy](#), A028 158 230 (BIA Dec. 12, 2013) (remands to let respondent submit asylum application based on changed country conditions in Russia since last removal hearing in 2007) (Grant)

[Benjamin Luis-Garcia](#), A098 237 658 (BIA Jan. 21, 2011) (proceedings reopened following submission of evidence showing respondent's father was recently threatened on account of his political activities and his belief that respondent would be threatened in Guatemala) (Holmes)

### **Confidentiality**

[R-M-E-R-](#), AXXX XXX 070 (BIA Dec. 18, 2019) (remands for respondent in MPP program to pursue asylum application where failure to previously express fear of return was caused by lack of confidentiality at hearing at which dozens of other respondents were present) (Kendall Clark)

[O-M-K-](#), AXXX XXX 951 (BIA March 8, 2019) (finds CBP breached confidentiality by informing consulate of respondent's home country that he was filing an asylum application) (*O'Connor*, Wendtland, Donovan (dissenting))

### **Corroboration**

[R-T-H-](#), AXXX XXX 054 (BIA Sept. 21, 2020) (upholds adverse credibility determination but remands for further consideration of asylum application because IJ failed to consider independent corroborating evidence) (*Liebowitz*, Malphrus, Morris)

[G-R-M-](#), AXXX XXX 331 (BIA June 2, 2017) (holds that respondents sufficiently corroborated claim

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by submitting news articles, death certificates, and own sworn affidavits, and that IJ should not have required additional affidavits from witnesses in home country) (*Greer*, Kelly, Kendall Clark)—**KEY DECISION**

### **Credible Fear Determinations**

[J-H-C-](#), AXXX XXX 365 (BIA March 9, 2017) (reverses adverse credibility determination based on discrepancies with application filed by prior attorney later convicted for filing fraudulent applications where record did not demonstrate that respondent was aware of prior attorney's behavior or prior application was fraudulent) (*Wendtland*, Cole, Pauley (concurring))

[Zayuri Lopez-Lopez](#), A206 678 764 (BIA April 27, 2016) (states “it is within the prosecutorial discretion of the DHS to place an arriving alien who expresses a fear of persecution into removal proceedings, pursuant to section 240 of the Act, without first referring that alien to an asylum officer for a credible fear interview”) (*O’Leary*, Grant, Mann)

[Randeep Singh Toor](#), A201 279 745 (BIA Feb. 10, 2016) (DHS has unreviewable prosecutorial discretion to initiate removal proceedings under INA § 240 without requiring respondent to pass credible fear interview) (*Grant*, Adkins-Blanch, Guendelsberger)

[Haresh Kumar Vishanubhai Patel](#), A202 063 738 (BIA Oct. 26, 2015) (DHS may elect to place arriving aliens directly in proceedings before an IJ without requiring them to pass a credible fear determination, citing *Matter of E-R-M- & L-R-M-*, 25 I&N Dec 520 (BIA 2011)) (*Holmes*, Miller, Guendelsberger)—**KEY DECISION**

### **Discretionary Determinations**

[L-A-C-G-](#), AXXX XXX 422 (BIA Sept. 22, 2020) (reverses discretionary denial of asylum where IJ relied solely on respondent's failure to apply for asylum in Mexico or any other country en route to United States) (*Mann*, Mullane, Grant)

[C-T-](#), AXXX XXX 676 (BIA Dec. 18, 2019) (reverses discretionary denial of asylum where only adverse factor was respondent's failure to seek protection in other countries through which he travelled en route to United States) (*Liebowitz*, Creppy, Cassidy)

[R-H-](#), AXXX XXX 179 (BIA Nov. 29, 2019) (vacates discretionary denial of asylum based on failure to seek protection in transited countries because IJ failed to consider other factors set forth in *Matter of Pula*, 19 I&N Dec. 467 (BIA 1987)) (*Greer*, Rosen, Noferi)

[A-I-N-](#), AXXX XXX 730 (BIA July 24, 2019) (denies DHS appeal challenging discretionary grant of asylum, finding that assault respondent committed while in detention was mitigated by lack of charges or conviction) (Guendelsberger)

[J-M-B-](#), AXXX XXX 197 (BIA Feb. 28, 2019) (reverses discretionary denial of asylum upon finding respondent's extensive family ties in United States were not outweighed by years old convictions and unlawfully bringing wife to United States while 8 months pregnant) (*Wendtland*, Greer, Cole)

[C-S-N-](#), AXXX XXX 231 (BIA Feb. 12, 2019) (reverses discretionary denial of asylum for applicant who fraudulently attempted to obtain visa prior to fleeing native country and failed to seek asylum in twelve countries prior to entering United States) (*Adkins-Blanch*, Kelly, Mann)

[S-A-N-](#), AXXX XXX 703 (BIA Feb. 1, 2019) (upholds discretionary grant of asylum to applicant with two convictions for possession of marijuana and two convictions for misdemeanor assault) (Grant)

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[F-N-M-](#), AXXX XXX 389 (BIA Dec. 26, 2018) (IJ should not have denied asylum as a matter of discretion based solely on respondent's prior use of false passport in failed attempt to obtain nonimmigrant visa) (*Kendall Clark*, Guendelsberger, Grant)

[M-A-B-](#), AXXX XXX 333 (BIA June 30, 2017) (reverses discretionary denial of asylum based solely on respondent's five-year stay in Israel prior to arriving in the United States) (*Pauley*, Wendtland, Cole (dissenting))

[Jean Pierre Batcha Samba](#), A088 046 199 (BIA Dec. 19, 2013) (making false statements to asylum officer or in removal proceeding not valid basis to deny asylum in exercise of discretion) (*Pauley*, Donovan, Wendtland)

### **Disfavored Groups**

[B-O-C-](#), AXXX XXX 958 (BIA June 25, 2020) (IJ failed to conduct disfavored group analysis for indigenous residents of Guatemala) (Pepper)

### **Domestic Violence**

[M-A-V-E-](#), AXXX XXX 957 (BIA Aug. 7, 2017) (reverses finding that respondent was unable to leave relationship with husband who regularly beat and raped her and threatened to harm her if she ever left him) (*Kendall Clark*, Liebowitz, Greer)—**KEY DECISION**

[S-V-C-](#), AXXX XXX 431 (BIA Nov. 1, 2016) (ability of respondent to physically leave abusive partner's house did not disqualify her from membership in particular social group consisting of "Salvadoran women unable to leave a domestic relationship") (*Greer*, Adkins-Blanch, O'Herron)—**KEY DECISION**

[H-R-M-](#), AXXX XXX 381 (BIA March 14, 2016) ("women who cannot leave a relationship" is a cognizable particular social group regardless of whether applicant was married to abuser) (*O'Herron*, Adkins-Blanch, Greer)—**KEY DECISION**

[L-Y-O-B-](#), AXXX XXX 267 (BIA Nov. 2, 2015) (prior attorney provided ineffective assistance by failing to argue that respondent qualified for asylum under *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014)) (*Greer*, Neal, O'Herron)

[D-M-R-](#) (BIA June 9, 2015) ("El Salvadoran women in domestic relationships who are unable to leave" is a cognizable particular social group, states that *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014) "does not necessarily require that an applicant seeking asylum or withholding of removal based on domestic violence have been married to his or her abuser") (*Greer*, Miller, Adkins-Blanch)—**KEY DECISION**

[E-M-](#), (BIA Feb. 18, 2015) (orders further consideration of asylum application based upon domestic violence inflicted by longtime domestic partner, stating "the absence of a legal marriage is not *ipso facto* a distinguishing factor that precludes otherwise analogous claims under the particular social group rationale set forth in *Matter of A-R-C-G-*, 26 I&N Dec 388 (BIA 2014)") (*Greer*, Miller, Adkins-Blanch)—**KEY DECISION**

### **Firm Resettlement Bar**

[O-S-M-W-](#), AXXX XXX 840 (BIA June 23, 2020) (remands for further consideration of whether respondent was firmly resettled in third country where IJ's finding was based on mistaken testimony)

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that she possessed permanent residency in third country) (*Monsky*, Morris, Liebowitz)

[T-A-](#), AXXX XXX 493 (BIA May 11, 2020) (remands for further consideration of whether respondent was firmly resettled in Malta based on the totality of the evidence, including fact that he was beaten and threatened) (*Wilson*, Donovan, Swanwick)

[S-L-E-L-](#), AXXX XXX 505 (BIA April 7, 2020) (remands for further consideration of whether respondent was firmly resettled in Mexico following grant of complementary protection where IJ relied on law review article not submitted in the record) (Swanwick)

[A-Y-G-](#), AXXX XXX 689 (BIA Feb. 27, 2020) (vacates finding that asylum applicant from Ethiopia firmly resettled in South Africa because IJ did not follow framework of *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011)) (*Liebowitz*, Hunsucker, Creppy)

[T-T-](#), AXXX XXX 731 (BIA Sept. 26, 2019) (reverses finding that Eritrean respondent was firmly resettled in Ethiopia in light of stringent conditions placed on refugee status) (*Kendall Clark*, Guendelsberger, Grant)

[I-A-P-C-](#), AXXX XXX 784 (BIA July 11, 2019) (respondent not subject to firm resettlement bar based on grant of temporary refugee status in Brazil because he left before acquiring four years of residence necessary to apply for permanent status) (Wendtland)

[J-W-A-L-](#), AXXX XXX 848 (BIA April 26, 2019) (firm resettlement bar does not apply if the respondent has a well-founded fear of persecution in the country of resettlement) (*Greer*, Wendtland, Donovan)

[M-G-](#), AXXX XXX 029 (BIA Oct. 30, 2018) (reverses finding that respondent was firmly resettled in Sudan and Israel where DHS did not submit evidence indicating that he could stay in either country indefinitely) (*Kendall Clark*, Grant, Guendelsberger)

[D-T-](#), AXXX XXX 930 (BIA June 14, 2018) (firm resettlement bar does not apply to applicant who lived in Saudi Arabia for fifteen years where work permit was tied to employer and had to be renewed annually) (*Grant*, Kendall Clark, Guendelsberger)

[L-K-U-](#), AXXX XXX 003 (BIA June 16, 2017) (firm resettlement bar does not apply to asylum applicants who have fear of persecution in country of alleged resettlement) (*Wendtland*, Pauley, Cole)—**KEY DECISION**

[N-T-A-](#), AXXX XXX 777 (BIA Aug. 12, 2011) (bar does not apply where IJ made no finding that respondent received offer of resettlement) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

### **Frivolousness Findings**

[Y-W-](#), AXXX XXX 658 (BIA June 25, 2020) (vacates frivolousness finding where IJ relied solely on respondent's failure to mention forced abortion in China during her visa interview or to medical professional) (*Goodwin*, Swanwick, Donovan)

[C-Z-](#), AXXX XXX 580 (BIA April 26, 2019) (reverses frivolousness finding because respondent was not directly confronted with or otherwise given a sufficient opportunity to account for the grounds identified by the IJ) (*Morris*, Kelly, Mann)

[R-K-](#), AXXX XXX 282 (BIA Nov. 19, 2018) (vacates finding that respondent submitted frivolous asylum application to USCIS in light of testimony that immigration consultant forged her signature)

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on Form I-589 and provided interpreter who did not fully translate warnings) (Wendtland, Crossett, Donovan)

[Alberto Israel Linares Del Poza](#), A074 353 075 (BIA Nov. 7, 2018) (reverses finding that respondent was subject to frivolous asylum bar based on application submitted by father prior to enactment of IIRIRA) (*Greer*, Wendtland, Donovan)

### **Gangs and Cartels**

[M-G-D-](#), AXXX XXX 238 (BIA Dec. 18, 2019) (orders further consideration of whether “Salvadorans who are unwilling or unable to pay ‘renta’ to the MS-13 gang” is a cognizable PSG) (*O’Connor*, Rosen, Greer)

[M-I-A-R-](#), AXXX XXX 985 (BIA May 24, 2019) (respondent established nexus to family membership where gang members targeted her in retaliation for preventing son from joining gang) (*Mann*, Kelly, Morris)

[E-M-R-](#), AXXX XXX 583 (BIA May 24, 2019) (respondent established nexus to family membership where gang members threatened her as the mother of her son and not because of personal animus against her) (*Grant*, Guendelsberger, Kendall Clark)

[H-A-C-G-](#), AXXX XXX 420 (BIA May 8, 2019) (remands for further consideration because IJ did not meaningfully consider claim based on anti-gang political opinion or PSG based on former gang membership) (*Wendtland*, Donovan, Greer)

[Godofredo Marroquin-Dimas](#), A098 793 008 (BIA Dec. 10, 2014) (remands record where IJ ordered respondent removed without letting him file an asylum application after he expressed fear of harm by gangs in El Salvador) (Miller)

[Rony Vladimir Monge](#), A205 503 682 (BIA Oct. 3, 2013) (remands record where IJ issued removal order at first master calendar hearing without inquiring into assertion that respondent feared being killed by gangs in El Salvador) (*Cole*, Mullane, Pauley)

[Oscar Giovanni Castro Rosa](#), A205 828 164 (BIA Sept. 25, 2013) (remands record where IJ failed to make further inquiry after respondent said he was “a little bit afraid” of returning to El Salvador) (Adkins-Blanch)

[Artemio Guzman-Rodriguez](#), A200 234 211 (BIA Aug. 23, 2013) (remands records where IJ did not question respondent after he expressed fear of returning to Mexico because of past physical harm inflicted by criminals) (Grant)

### **Humanitarian Asylum**

[Y-H-](#), AXXX XXX 948 (BIA Sept. 24, 2020) (grants humanitarian asylum based on severity of past persecution where respondent was victim of two forcible abortions) (*Grant*, Goodwin, Donovan)

[S-G-C-](#), AXXX XXX 943 (BIA June 18, 2020) (IJ failed to consider whether respondent whose infant daughter was killed merited humanitarian asylum after finding DHS rebutted presumption that she possessed well-founded fear of persecution) (Montante)

[F-K-](#), AXXX XXX 026 (BIA Jan. 16, 2020) (grants humanitarian asylum to applicant who underwent FGM as a child and was unable to engage in personal relationships with men and continued to experience mental anguish) (*O’Connor*, Wendtland, Greer)



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[A-A-O-](#), AXXX XXX 913 (BIA April 4, 2019) (reverses denial of humanitarian asylum to respondent who was sexually assaulted by five men) (*Baird*, Liebowitz, Malphrus)

[C-M-J-](#), AXXX XXX 286 (BIA Feb. 21, 2019) (remands to consider whether respondent would qualify for humanitarian asylum based on abuse inflicted by father) (*Wendtland*, Greer, Donovan)

[M-Y-W-](#), AXXX XXX 210 (BIA Nov. 13, 2018) (grants humanitarian asylum to victim of female genital mutilation based on continued mental suffering) (*Donovan*, Wendtland, Crossett (dissenting))

### **Internal Relocation**

[F-T-G-](#), AXXX XXX 218 (BIA June 24, 2020) (IJ failed shift burden of internal relocation to DHS) (Wilson)

[S-G-C-](#), AXXX XXX 943 (BIA June 18, 2020) (IJ failed to apply framework from *Matter of M-Z-M-R-*, 26 I&N Dec. 28 (BIA 2012), in finding that respondent could internally relocate in Guatemala) (Montante)

[C-L-R-R-](#), AXXX XXX 182 (BIA April 20, 2020) (reverses finding that respondent could internally relocate in El Salvador where she received death threats and rarely left the house during 20-month period she stayed in other city) (*Morris*, Malphrus, Liebowitz)

[M-B-](#), AXXX XXX 981 (BIA March 9, 2020) (reverses finding that respondent could internally relocate in Sierra Leone in light of evidence that Poro Society includes many government officials) (*O'Connor*, Greer, Noferi)

[M-M-F-](#), AXXX XXX 135 (BIA Jan. 2, 2020) (vacates finding that respondent could internally relocate because IJ did not identify a specific area of the country where respondent and family could reside) (*Wendtland*, Wilson, Greer)

[Z-C-P-L-](#), AXXX XXX 232 (BIA Aug. 23, 2019) (upholds IJ ruling that respondent was not required to answer DHS counsel's question regarding her ability to relocate in Venezuela where the particular government intelligence agency the respondent feared operated throughout the country and DHS presented no evidence suggesting internal relocation was possible) (Kelly)

[N-K-B-](#), AXXX XXX 425 (BIA March 31, 2016) (upholds IJ finding that respondent could not safely relocate within Pakistan) (Pauley)

### **Material Support Bar**

[O-M-Y-A-](#), AXXX XXX 195 (BIA July 19, 2019) (remands record because IJ failed to decide whether respondent would have been eligible for asylum and withholding of removal but for the material support bar) (*Creppy*, Malphrus, Baird)

[H-I-Y-](#), AXXX XXX 806 (BIA May 18, 2017) (orders further consideration of whether \$50 donation qualified as "material" support, instructs IJ to determine whether donation "would be sufficiently substantial by itself to have some effect on the ability of the terrorist organization at issue to accomplish its goals") (*Guendelsberger*, Neal, Kendall Clark)—**KEY DECISION**

[J-F-L-K-](#), AXXX XXX 261 (BIA March 31, 2015) (group of bandits to whom respondent was forced to provide domestic services did not qualify as a Tier III terrorist organization because its members were motivated by personal monetary gain) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

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### Military Conscripts

[D-G-](#), AXXX XX5 108 (BIA Jan. 28, 2014) (remands record in light of evidence submitted on appeal indicating that military conscripts in Eritrea are subjected to involuntary servitude and government disproportionately punishes those who evade military service) (*Malphrus*, Liebowitz, Mann)

### Nationality

[J-C-J-](#), AXXX XXX 315 (BIA May 29, 2019) (finds harm was inflicted on account of respondent's imputed nationality where police officers in Mexico mistakenly took him for a U.S. citizen) (*Wendtland*, Donovan, Noferi)

### Nexus

[D-G-G-](#), AXXX XXX 299 (BIA Sept. 24, 2020) (remands for further consideration of asylum claim where IJ found lack of nexus between harm and protected ground but made no clear factual findings regarding the gang members' actual motivations for targeting the respondent) (*Creppy*, Monsky, Hunsucker)

[J-C-C-G-](#), AXXX XXX 237 (BIA Sept. 1, 2020) (remands for further consideration of withholding claim under intervening decision in *Guzman-Vazquez v. Barr*, 959 F.3d 253 (6th Cir. 2020), holding that protected ground need only be a reason rather than a central reason for persecution) (*Kelly*, Pepper, Cassidy)

[H-R-M-](#), AXXX XXX 581 (BIA July 2, 2020) (orders further consideration of withholding application where IJ mistakenly considered whether protected ground was "one central reason" rather than "a reason" for persecution) (*Morris*, Gemoets, Hunsucker)

[A-F-C-](#), AXXX XXX 230 (BIA June 23, 2020) (states that fact that people other than Christians were harmed by the gangs does not mean that applicant's religion was not a central reason for his own mistreatment) (Riley)

[M-A-D-A-](#), AXXX XXX 603 (BIA Feb. 11, 2020) (remands for further consideration of withholding of removal because IJ failed to consider whether anti-gang political opinion would be "a reason" rather than a central reason why respondent was and would be targeted) (Swanwick)

[R-L-M-](#), AXXX XXX 649 (BIA Jan. 23, 2020) (remands for further consideration of whether a protected ground was "a" reason for persecution under intervening decision in *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017)) (Goodwin)

[S-N-C-M-](#), AXXX XXX 307 (BIA Oct. 7, 2019) (remands record because IJ denied withholding without separate analysis required under *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), into whether respondent's religion was "a reason" why he was persecuted) (*Hunsucker*, Liebowitz, Creppy)

[G-T-C-](#), AXXX XXX 938 (BIA June 12, 2019) (states that "even in situations where entire populations are at some risk, an applicant may establish eligibility for asylum by showing that he possesses a characteristic which places him or her at greater risk of being targeted for persecution") (*Cole*, Noferi, Wendtland)

[A-G-](#), AXXX XXX 659 (BIA March 18, 2019) (remands for further consideration of whether protected ground would be "a reason" for persecution in light of intervening decision in *Barajas-Romero v.*

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*Lynch*, 846 F.3d 351 (9th Cir. 2017)) (*Malphrus*, Creppy, Mullane)

### **Miscellaneous**

[C-A-](#), AXX XXX 698 (BIA May 11, 2000) (finds IJ disregarded evidence of abuse committed by police in Cote d'Ivoire, improperly suggested that respondent could elect not to participate in political protests) (*Cole*, Filppu, Heilman)

### **One-Year Filing Deadline**

#### **Changed Circumstances Exception**

[G-A-H-](#), AXXX XXX 097 (BIA July 27, 2020) (respondent qualifies for changed circumstances exception based on revelation of sexual orientation while case was on appeal) (*Greer*, Goodwin, Wilson)

[A-R-A-](#), AXXX XXX 199 (BIA March 13, 2020) (respondent qualified for changed circumstances exception based on threats that increased his preexisting fear of returning to India) (*Greer*, O'Connor, Donovan)

[J-R-F-F-](#), AXXX XXX 634 (BIA July 9, 2019) (changed circumstances need not occur before asylum application is filed to qualify for exception to one-year filing deadline) (*O'Connor*, Rosen, Donovan)

[J-J-I-I-](#), AXXX XXX 297 (BIA May 30, 2019) (respondent qualified for changed circumstances exception to one-year filing deadline based on the current severity of his mental health issues because his proposed PSGs all related to his mental illness) (*Greer*, Donovan, Wendtland)

[Z-X-](#), AXXX XXX 571 (BIA March 13, 2019) (respondent qualifies for changed circumstances exception because asylum application submitted in December 2012 was filed within reasonable period of respondent's baptism in April 2012) (*Greer*, Donovan, Cole)

[E-R-Z-](#), AXXX XXX 479 (BIA Oct. 12, 2018) (respondent qualifies for changed circumstances exception based on assaults on family members in Honduras that marked an escalation of prior threats and shed light on the assailants' motives) (*Malphrus*, Liebowitz, Mullane)

#### **Extraordinary Circumstances Exception**

[J-S-S-](#), AXXX XXX 471 (BIA March 30, 2020) (finds respondent qualifies for extraordinary circumstances exception to one-year filing deadline based on cognitive impairment and mental health issues) (*O'Connor*, Greer, Donovan)

[R-U-J-](#), AXXX XXX 713 (BIA Oct. 15, 2019) (finds respondent who suffered traumatic brain injury in 2011 qualifies for extraordinary circumstances exception based on asylum application filed in 2016) (*Wendtland*, O'Connor, Noferi)

[W-S-Y-](#), AXXX XXX 857 (BIA June 6, 2019) (respondent qualifies for extraordinary circumstances exception to one-year filing deadline where he did not have a master calendar hearing until two years after his entry and IJ did not address motion to advance hearing) (*Mullane*, Malphrus, Baird)

[E-A-D-](#), AXXX XXX 097 (BIA May 20, 2019) (respondent established exceptional circumstances for filing untimely asylum application where she was suffering from PTSD and severe depression resulting from traumatic violence in El Salvador, experienced high risk pregnancy, and gave birth to child with health condition requiring monitoring) (*Morris*, Kelly, Liebman)

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[H-M-C-J.](#), AXXX XXX 586 (BIA March 1, 2018) (receipt of deferred action under the DACA program qualifies for extraordinary circumstances exception even though it did not confer lawful status) (Geller)—**KEY DECISION**

[A-D.](#), AXXX XXX 526 (BIA May 22, 2017) (“minor” must be under 18 years of age to automatically qualify for extraordinary circumstances exception but youth of person between ages 18 and 21 is a factor to consider) (*Pauley*, Greer, Wendtland)

[S-V-C.](#), AXXX XXX 431 (BIA Nov. 1, 2016) (respondent qualified for “extraordinary circumstances” exception to one-year filing deadline because timing of initial master calendar hearing was beyond her control) (*Greer*, Adkins-Blanch, O’Herron)—**KEY DECISION**

### **Filing Within Reasonable Period**

[M-D-C-J.](#), AXXX XXX 846 (BIA Feb. 18, 2020) (finds respondent filed asylum application within reasonable period after being placed in removal proceedings in light of his diagnosis with PTSD) (*Kelly*, Adkins-Blanch, Mullane (dissenting))

[M-S.](#), AXXX XXX 870 (BIA Sept. 27, 2019) (respondent filed asylum application within reasonable period of changed circumstances occurring while case was administratively closed by submitting application within three months of his case being recalendared) (*O’Connor*, Greer, Wendtland)

### **Mendez Rojas Class Members**

[H-R-M.](#), AXXX XXX 581 (BIA July 2, 2020) (copy of Form I-826 indicating that respondent was released from DHS custody after being found to have credible fear of persecution sufficient to demonstrate class membership under *Mendez Rojas v. Johnson*, 305 F. Supp.3d 1176 (W.D. Wash. 2018)) (*Morris*, Gemoets, Hunsucker)

[R-A-A.](#), AXXX XXX 886 (BIA Jan. 16, 2020) (finds respondent to be class member of *Mendez Rojas v. Johnson*, 305 F. Supp. 3d 1176 (W.D. Wash. 2018), because he entered the United States in 2014, was found to have a credible fear of persecution, and was not alerted to need to file asylum application within one year) (Wendtland)

[M-M-B-B.](#), AXXX XXX 045 (BIA June 14, 2019) (remands to consider whether respondent is a class member under *Mendez Rojas v. Johnson*, 305 F.Supp.3d 1176 (W.D. Wash. Mar. 29, 2018), in light of argument that she was released without a credible fear determination, issued a notice to appear, and did not receive notice from DHS of the one-year filing deadline) (Noferi)

### **Miscellaneous**

[D-O-B-O.](#), AXXX XXX 857 (BIA Dec. 17, 2019) (reopens proceedings sua sponte for consideration of asylum application where respondent’s prior attorney stipulated to grant of withholding of removal based on erroneous belief that Form I-589 was untimely filed) (Guendelsbeger)

[M-G-O.](#), AXXX XXX 611 (BIA Feb. 4, 2014) (remands record where IJ failed to provide opportunity to testify regarding reasons for missing one-year filing deadline) (*Donovan*, Wendtland, Pauley)

### **Other Serious Harm**

[L-M-R.](#), AXXX XXX 221 (BIA April 26, 2016) (gang violence in Guatemala qualifies as “other serious harm” for purposes of humanitarian asylum) (Wendtland)

## Particular Social Groups

### General

[J-I-F-M-](#), AXXX XXX 834 (BIA Oct. 2, 2020) (IJ failed to sufficiently analyze cognizability of proposed PSGs consisting of “former Guatemalan business owners,” “former Guatemalan business owners who resist drug traffickers,” and “former Guatemalan business owners who make police reports against drug traffickers”) (*Donovan*, Greer, Goodwin (dissenting))

[C-E-P-E-](#), AXXX XXX 950 (BIA Aug. 8, 2020) (IJs possess authority to consider social groups distinct from but encompassed within groups articulated by a respondent) (Goodwin)

[K-I-](#), AXXX XXX 247 (BIA July 7, 2020) (respondent who appeared pro se before the IJ permitted to clarify definition of PSG on appeal) (*Goodwin*, Donovan, Greer)

[E-E-G-R-](#), AXXX XXX 363 (BIA Nov. 14, 2019) (remands to consider cognizability of PSGs raised for first time on appeal because respondent was pro se before the IJ) (*Guendelsberger*, Grant, Kendall Clark)

[V-H-C-C-](#), AXX XXX 507 (BIA Nov. 12, 2019) (upholds grant of asylum based on membership in particular social group consisting of “former military members of the Kaibil” in Guatemala) (Cole)

[V-J-C-](#), AXXX XXX 972 (BIA Sept. 9, 2019) (remands record because IJ failed to determine whether “Brazilian landowners and businessmen who have been extorted by police officers” is a cognizable PSG) (*Malphrus*, Creppy, Noferi)

[V-H-R-](#), AXXX XXX 489 (BIA July 24, 2019) (“medical professionals” is a cognizable PSG) (*Liebowitz*, Malphrus, Mullane (dissenting))

[M-B-](#), AXXX XXX 282 (BIA July 18, 2019) (Roma people is a cognizable PSG) (*Baird*, Liebowitz, Malphrus (dissenting))

[J-M-V-](#), AXXX XXX 484 (BIA July 3, 2019) (remands for further consideration of whether “former pro-rule of law employees of a Honduran Public Ministry forensics unit” is a cognizable PSG) (*Donovan*, O’Connor, Wendtland)

[E-G-M-](#), AXXX XXX 051 (BIA May 10, 2019) (remands for further consideration because IJ failed to address cognizability of PSG consisting of “Mexicans, who formerly migrated to the United States, and are involuntarily repatriated during the Trump Administration”) (*Wendtland*, Greer, Noferi)

[J-M-B-](#), AXXX XXX 197 (BIA Feb. 28, 2019) (remands for further consideration of asylum application because IJ required pro se respondent to articulate particular social group in lieu of considering group formulated by asylum officer) (*Wendtland*, Greer, Cole)

[M-G-M-](#), AXXX XXX 152 (BIA Feb. 22, 2019) (DHS waived opportunity to challenge validity of PSG by stating that it would defer to the IJ on the issue and failing to argue it on appeal) (*Wendtland*, O’Connor, Donovan)

[A-T-](#), AXXX XXX 370 (BIA Oct. 16, 2018) (upholds grant of asylum based on membership in group consisting of “land owners who lost their lands to more powerful families”) (Cole)

[L-M-R-](#), AXXX XXX 221 (BIA April 26, 2016) (“children unable to leave their domestic relationships” is a cognizable particular social group) (Wendtland)

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[F-X-M-C-](#), AXXX XXX 194 (BIA Feb. 20, 2018) (upholds grant of asylum to respondent found to have been persecuted on account of membership in particular social group consisting of “Catholic youth group leaders refusing gang membership”) (Geller)

#### **Crime Victims/Witnesses**

[J-L-T-F-](#), AXXX XXX 170 (BIA Aug. 11, 2020) (remands for further consideration because IJ altered proposed PSG of “El Salvadorian men who refuse to pay extortion money to gangs”) (Pepper)

[K-A-B-R-](#), AXXX XXX 670 (BIA June 22, 2020) (remands to consider whether prosecutorial witnesses is a cognizable PSG) (*Donovan*, Goodwin, Wilson)

[M-R-A-](#), AXXX XXX 952 (BIA May 4, 2020) (upholds grant of asylum to applicant from Mexico based on membership in PSG consisting of “individuals who assisted law enforcement in the arrest of cartel members”) (Gemoets)

[K-E-R-](#), AXXX XXX 877 (BIA April 14, 2020) (remands to further consider whether “persons persecuted by members of the MS-18 gang because they are believed to have witnessed a crime and made a report to the police against members of the MS-18 gang” is a cognizable PSG, citing evidence that Salvadoran society may recognize witnesses to gang criminal activity as a group protected by law) (Kelly)

[S-M-J-S-](#), AXXX XXX 509 (BIA Feb. 6, 2020) (“Hondurans who testify in court against MS-13 members” is a cognizable PSG) (Creppy)

[L-M-M-D-](#), AXXX XXX 840 (BIA Nov. 19, 2019) (“noncriminal informants that have testified against criminals” is a cognizable PSG) (*Cole*, Wendtland, Greer)

[M-S-](#), AXXX XXX 870 (BIA Sept. 27, 2019) (finds respondent was member of proposed PSG consisting of “prosecutorial witnesses of MS-13 gang members in United States Federal Court” because the gang knew he was a cooperating witness even though he did not testify) (*O'Connor*, Greer, Wendtland)

[D-R-M-](#), AXXX XXX 606 (BIA July 16, 2019) (“Salvadoran men who are protected witnesses and testify to crimes by MS-13” is a cognizable PSG) (Cole)

[A-B-M-M-](#), AXXX XXX 694 (BIA July 30, 2018) (orders further consideration of whether respondent qualifies for asylum as member of PSG consisting of “prosecutorial witnesses” based on testimony provided against gang members in United States) (Crossett)

[A-L-D-G-](#), AXXX XXX 287 (BIA March 14, 2018) (finds “persons known to have filed criminal charges or assist police in prosecutions of the MS-13 gang” to be cognizable particular social group) (*Greer*, Crossett, Pauley (dissenting))

[E-D-R-](#), AXXX XXX 907 (BIA June 17, 2016) (orders further consideration of application based on PSG consisting of “witnesses of criminal conduct committed by Guatemalan police”) (*Kendall-Clark*, Guendelsberger, Holiona)—**KEY DECISION**

#### **Family-Based Claims**

[A-A-R-C-](#), AXXX XXX 901 (BIA Nov. 15, 2019) (remands to consider whether *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019), supersedes Fourth Circuit precedent regarding family as a particular social group) (*Kendall Clark*, Guendelsberger, Grant)



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[M-I-A-R-](#), AXXX XXX 985 (BIA May 24, 2019) (respondent established nexus to family membership where gang members targeted her in retaliation for preventing son from joining gang) (*Mann*, Kelly, Morris)

[E-M-R-](#), AXXX XXX 583 (BIA May 24, 2019) (respondent established nexus to family membership where gang members threatened her as the mother of her son and not because of personal animus against her) (*Grant*, Guendelsberger, Kendall Clark)

[N-F-H-G-](#), AXXX XXX 536 (BIA March 14, 2019) (respondent established nexus to family membership where gang members threatened him if his aunt did not pay extortion demand) (*Mullane*, Creppy, Liebowitz)

[K-A-A-P-](#), AXXX XXX 625 (BIA March 7, 2019) (states that “[t]he Fourth Circuit has found a nexus to family relationship when the alien was threatened as a result of or as revenge for the acts of a family member”) (*Kelly*, Adkins-Blanch, Mann)

[R-R-P-](#), AXXX XXX 272 (BIA Feb. 22, 2019) (respondent’s family membership was “one central reason” for persecution where gang members threatened to kill him if he interfered with efforts to recruit his son) (*Wendtland*, Donovan, Greer)

[N-A-G-F-](#), AXXX XXX 670 (BIA Oct. 19, 2018) (applicant’s family membership was “a reason” for persecution under *Barajas-Romero v. Lynch*, 846 F.3d 351 (9th Cir. 2017), because he was targeted as a means of getting his father to pay a debt) (*Wendtland*, Donovan, Crossett)

[C-O-M-](#), AXXX XXX 428 (BIA June 22, 2018) (vacates determination that Respondent’s family membership was not one central reason for persecution in light of Fourth Circuit precedent cautioning against excessively narrow interpretation of nexus requirement) (*Wendtland*, Cole, Crossett)

[M-R-G-](#), AXXX XXX 922 (BIA Sept. 16, 2015) (respondent established nexus to persecution on account of her membership in particular social group (her family) where she received death threats after assisting her daughter pursue a criminal case against gang member who raped and kidnapped her) (*Pauley*, Cole, O’Herron)—**KEY DECISION**

[M-N-](#), AXX XXX 094 (BIA Oct. 12, 2000) (grants withholding of removal based on family support for former Shah of Iran) (*Hurwitz*, Dunne, Holmes)

### **Gender-Based Claims**

[R-M-T-](#), AXXX XXX 377 (BIA Sept. 21, 2020) (grants DHS motion to remand to consider whether “women in El Salvador” is a cognizable social group) (*Morris*, Hunsucker, Malphrus)

[I-R-G-](#), AXXX XXX 231 (BIA Aug. 19, 2020) (remands record because IJ failed to consider proposed social groups of “women who cannot leave a relationship” and “women who resist and oppose organized criminal activity by the father of their children”) (*Pepper*, Kelly, Adkins-Blanch)

[N-P-S-](#), AXXX XXX 777 (BIA July 27, 2020) (remands for further consideration of whether “Mexican women” is a cognizable PSG) (Donovan, Swanwick, Greer (dissenting))

[M-D-M-D-](#), AXXX XXX 663 (BIA July 13, 2020) (*Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018), is not binding in Sixth Circuit in light of decision in *Juan Antonio v. Barr*, 959 F.3d 778 (6th Cir. 2020)) (*Wilson*, Swanwick, Donovan)

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[M-A-T-V-](#), XXXX XXX 357 (BIA May 6, 2020) (grants DHS motion to remand to consider whether “all women in Mexico” is a cognizable PSG) (Grant)

[H-F-V-G-](#), XXXX XXX 748 (BIA April 13, 2020) (remands to further consider whether “Guatemalan married women viewed as property by virtue of their position within a domestic relationship who are unable to leave the relationship” is a cognizable PSG) (Goodwin)

[A-R-C-](#), XXXX XXX 103 (BIA March 10, 2020) (remands to consider whether “women in Guatemala” and “Mayan women in Guatemala” are cognizable PSGs) (*Hunsucker*, Malphrus, Noferi)

[I-G-](#), XXXX XXX 156 (BIA Feb. 28, 2020) (grants DHS motion to remand to consider whether “Mexican women” is cognizable PSG) (*Mullane*, Creppy, Hunsucker)

[A-B-S-P-](#), XXXX XXX 561 (BIA Dec. 19, 2019) (*Matter of A-B-*, 27 I&N Dec.316, 320 (A.G. 2018), “does not preclude all domestic violence claims without exception in the asylum context”) (Greer)

[E-E-G-R-](#), XXXX XXX 363 (BIA Nov. 14, 2019) (remands to consider asylum claim predicated on membership in PSG of “Guatemalan women”) (*Guendelsberger*, Grant, Kendall Clark)

[A-C-A-A-](#), XXXX XXX 222 (BIA Nov. 6, 2019) (upholds grant of asylum based on membership in particular social group consisting of “Salvadoran females”) (Liebowitz)

[Y-V-P-](#), XXXX XXX 977 (BIA Nov. 6, 2019) (grants DHS request for remand to consider whether “women in El Salvador” is a cognizable particular social group) (*Malphrus*, Liebowitz, Baird)

[J-J-](#), XXXX XXX 686 (BIA Oct. 23, 2019) (IJ improperly relied on adverse credibility finding in determining that respondent did not undergo FGM where she submitted independent medical evidence corroborating claim) (*Greer*, Wendtland, Wilson (dissenting))

[Y-M-L-](#), XXXX XXX 294 (BIA Sept. 10, 2019) (remands for further consideration of whether “Guatemalan women” is a cognizable PSG) (Wendtland)

[T-S-M-](#), XXXX XXX 911 (BIA April 16, 2019) (remands for consideration of whether “Guatemalan women” is a cognizable PSG) (O’Connor)

[M-D-A-](#), XXXX XXX 053 (BIA Feb. 14, 2019) (remands for further consideration of whether “women in El Salvador” is cognizable PSG given that *Perdomo v. Holder*, 611 F.3d 662 (9th Cir. 2010), rejected notion “that a persecuted group may simply represent too large a portion of a population to allow its members to qualify for asylum”) (O’Connor)

[S-R-P-O-](#), XXXX XXX 056 (BIA Dec. 20, 2018) (remands for further consideration of whether “Mexican women” is a valid particular social group) (*Crossett*, Wendtland, Greer)

[X-G-C-D-](#), XXXX XXX 474 (BIA Dec. 11, 2018) (remands for further consideration of whether “women in Mexico” is a valid particular social group) (*Crossett*, Greer, O’Connor)

[H-A-C-S-](#), XXXX XXX 247 (BIA May 22, 2018) (remands for further consideration of whether “young women in Honduras” is a cognizable particular social group) (Greer)

[I-M-E-G-](#), XXXX XXX 997 (BIA Aug. 23, 2016) (“Honduran women unable to leave a domestic relationship” is a cognizable PSG) (*Liebowitz*, O’Herron, Greer)—**KEY DECISION**

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[R-D-D-K-](#), AXXX XXX 728 (BIA Sept. 1, 2015) (holds that “women who have been subjected to FGM in Mali and who have expressed an opinion about this practice, condemning it” is a valid PSG) (*Cole*, Pauley, Wendtland)

[B-P-](#), AXX XXX 269 (BIA Oct. 15, 2002) (remands record in light of promulgation of regulations by former INS regarding gender-based asylum claims) (Schmidt)

### **Mental Health Claims**

[C-E-P-E-](#), AXXX XXX 950 (BIA Aug. 8, 2020) (“Salvadorans with polio, spasticity, hemiplegia, and epilepsy who exhibit involuntary and exaggerated movement and speech patterns” is a cognizable PSG) (Goodwin)

[D-E-O-G-](#), AXXX XXX 904 (BIA June 18, 2019) (“Guatemalan men with schizophrenic spectrum and psychotic disorder who exhibit erratic behavior” is a cognizable PSG) (*Greer*, Noferi, Donovan)

[M-P-R-](#), AXXX XXX 004 (BIA Nov. 14, 2018) (“Mexican individuals who suffer from incurable delusional disorder and who experience auditory and visual hallucinations” is a cognizable PSG) (Wendtland)

[J-M-O-M-](#), AXXX XXX 580 (BIA May 16, 2018) (“Hondurans with severe, permanent bipolar disorder who exhibit erratic behavior” is a cognizable particular social group) (*Pauley*, Greer, Wendtland)

[L-A-A-](#), AXXX XXX 875 (BIA April 3, 2018) (finds “persons with serious or severe mental disability” a cognizable particular social group) (Wendtland)

[E-D-H-](#), AXXX XXX 523 (BIA Aug. 29, 2017) (“Indigent Mexicans without familial support and with chronic and perceptible mental illness involving psychosis” is a cognizable particular social group) (*Greer*, Kelly, Kendall Clark)

[T-G-](#), AXXX XXX 353 (BIA April 6, 2017) (remands record for unrepresented respondent to apply for relief where he stated he suffered from mental illness and feared people in Ghana might harm him because they believe he practices witchcraft) (*Kendall Clark*, Greer, Kelly)

[D-F-L-S-](#), AXXX XXX 858 (BIA May 20, 2010) (“Peruvians with serious chronic mental disabilities” is a cognizable PSG) (Greer, Wendtland, Pauley (dissenting))

### **Sexual Orientation/Transgender-Based Claims**

[J-I-R-T-](#), AXXX XXX 918 (BIA Sept. 3, 2020) (upholds grant of withholding of removal to respondent from Mexico based on membership in PSG consisting of “transgender women”) (*Goodwin*, Donovan, Monsky)

[H-A-H-S-](#), AXXX XXX 689 (BIA Aug. 3, 2020) (reverses denial of asylum to respondent from Jordan fearing persecution on account of his sexual orientation) (Pepper, Adkins-Blanch, Couch (dissenting))

[D-A-A-](#), AXXX XXX 643 (BIA Dec. 19, 2019) (“Bisexual men” and “LGBTQ persons in El Salvador” are cognizable PSGs) (*Wendtland*, O'Connor, Greer)

[J-S-G-V-](#), AXXX XXX 803 (BIA Dec. 12, 2019) (sexual orientation was at least one central reason for persecution in light of respondent’s testimony that police officers used homophobic remarks while raping him) (*Guendelsberger*, Kendall Clark, Grant)

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[J-C-M-](#), AXXX XXX 100 (BIA Nov. 25, 2019) (upholds grant of withholding of removal to respondent whose life or freedom would be threatened in Mexico on account of his sexual orientation and HIV-positive status) (Kelly)

[L-R-M-](#), AXXX XXX 308 (BIA Nov. 22, 2019) (reverses finding that respondent's membership in PSG consisting of Mexican transgender women was not one central reason for persecution inflicted by abusive father) (*Kendall Clark*, Guendelsberger, Grant)

[C-R-R-](#), AXXX XXX 955 (BIA Oct. 20, 2019) (reverses as clearly erroneous IJ's finding that respondent was not raped and abused in Mexico based on her membership in the particular social group of transgender women) (*Kendall Clark*, Goodwin, Guendelsberger)

[L-R-P-](#), AXXX XXX 863 (BIA Oct. 3, 2019) (remands for further consideration of asylum claim based on sexual orientation because IJ provided no support for conclusion that conditions had not changed in Brazil since election of President Bolsonaro) (Kendall Clark)

[D-A-A-](#), AXXX XXX 079 (BIA Sept. 26, 2019) (excuses failure of transgender asylum applicant to seek protection from Honduran authorities in light of evidence demonstrating that reporting would have been futile) (*Liebmann*, Kelly, Adkins-Blanch)

[M-M-V-](#), AXXX XXX 262 (BIA May 1, 2019) (reverses finding that respondent failed to establish nexus to membership in PSG consisting of "Mexican women who identify as a sexual minority (lesbian or bisexual) and who exhibit masculine or gender non-conforming characteristics" where facts of case were similar to *Bringas-Rodriguez v. Sessions*, 850 F.3d 1051, 1073 (9th Cir. 2017)) (*Donovan*, O'Connor, Wendtland)

[W-M-V-C-](#), AXXX XXX 939 (BIA April 22, 2019) (remands for further consideration of asylum application based on membership in PSG consisting of persons "believed to be lesbians") (*Greer*, Rosen, Donovan)

[M-G-O-](#), AXXX XXX 611 (BIA Feb. 4, 2014) (respondent from Mexico qualified for withholding of removal based on membership in a particular social group consisting of effeminate gay males with female gender identities) (*Donovan*, Wendtland, Pauley)

[Sadat Ibrahim](#), A208 920 376 (BIA July 12, 2018) (reopens proceedings sua sponte in light of new evidence regarding the prominent nature of his asylum claim in both the United States and in Ghana and showing his return to Ghana may be met with a lack of adequate safety protocols) (*Kendall Clark*, Guendelsberger, Grant)

[E-G-M-](#), AXXX XXX 773 (BIA July 12, 2018) (remands for further consideration because IJ considered claim based on sexual orientation but failed to consider fear of persecution based on transgender identity) (Kendall Clark)

### **Particularly Serious Crimes**

[S-P-R-H-](#), AXXX XXX 572 (BIA Aug. 17, 2020) (remands for further consideration of whether conviction qualifies as particular serious crime where respondent served as interpreter for transaction involving one kilogram of methamphetamine but record did not contain other information about her role in the offense or the sentence she received) (*Goodwin*, Pepper, Donovan)

[J-L-](#), AXXX XXX 280 (BIA June 9, 2020) (IJ failed to consider respondent's testimony in determining whether she was convicted of a particularly serious crime) (*Liebowitz*, Gemoets, Creppy)

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[F-A-G-](#), XXXX XXX 054 (BIA March 12, 2020) (presumption in *Matter of Y-L-, A-G-, & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), does not apply in Ninth Circuit to convictions entered prior to decision) (*Noferi*, Creppy, Hunsucker)

[G-G-G-](#), XXXX XXX 185 (BIA Feb. 27, 2020) (reverses finding that conviction for third degree assault under N.Y.P.L. 120.00(01) was a particularly serious crime because offense was a misdemeanor unaccompanied by any unusual circumstances) (*Greer*, Wendtland, O'Connor)

[O-D-V-R-](#), XXXX XXX 637 (BIA Feb. 25, 2020) (conviction for being felon in possession of a firearm under 18 U.S.C. 922(g)(1) with 41-month sentence not a particularly serious crime) (*Swanwick*, Wendtland, Donovan)

[H-H-S-M-](#), XXXX XXX 551 (BIA Dec. 12, 2019) (IJ erred by combining underlying facts of two separate convictions in finding that respondent had been convicted of a particularly serious crime) (*Greer*, O'Connor, Wilson)

[H-J-](#), XXXX XXX 659 (BIA Dec. 10, 2019) (IJ improperly pretermitted withholding application based on conviction for aggravated felony without considering whether it qualified as a particularly serious crime) (*Liebowitz*, Creppy, Hunsucker)

[L-R-Z-](#), XXXX XXX 659 (BIA Oct. 17, 2019) (presumption in *Matter of Y-L-, A-G-, & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), does not apply in Ninth Circuit to convictions entered prior to decision) (Wilson)

[E-M-V-](#), XXXX XXX 681 (BIA Sept. 10, 2019) (conviction under Va. Code Ann. 18.2-427 for leaving threatening voicemail for state prosecutor not a particularly serious crime because respondent did not have actual plan to carry out threats) (*Baird*, Creppy, Liebowitz)

[J-A-R-](#), XXXX XXX 246 (BIA July 8, 2019) (reverses prior finding that respondent was convicted of a particularly serious crime following the reduction of his conviction for false imprisonment under Calif. Penal Code 236 from a felony to a misdemeanor) (*Kendall Clark*, Guendelsberger, Grant)

[G-M-S-](#), XXXX XXX 876 (BIA May 6, 2019) (IJ improperly applied presumption in *Matter of Y-L-*, 23 I&N Dec. 270 (A.G. 2002), to conviction entered prior to 2002) (Greer)

[S-D-S-C-](#), XXXX XXX 765 (BIA May 3, 2019) (convictions for bail jumping do not qualify as particularly serious crimes given that they required no serious threat to others and resulted from the respondent's drug addiction and ability to find transportation to court) (*Baird*, Greer, Donovan)

[M-F-H-](#), XXXX XXX 149 (BIA Feb. 13, 2019) (IJ improperly found res judicata precluded further consideration of whether respondent was convicted of particularly serious crime because intervening decision in *Gomez-Sanchez v. Sessions*, 892 F.3d 985 (9th Cir. 2018), held that mental health is a relevant factor in considering whether a crime was particularly serious) (*Malphrus*, O'Connor, Donovan)

[G-N-L-](#), XXXX XXX 970 (BIA Feb. 1, 2019) (respondent with four DUI convictions not ineligible for withholding under particularly serious crime bar) (*Wendtland*, Greer, Cole (dissenting))

[F-M-N-](#), XXXX XXX 877 (BIA Dec. 27, 2018) (misdemeanor sexual abuse under D.C. Code 22-3006 not a particularly serious crime because maximum sentence was only 180 days and the least culpable conduct involved brushing up against another person) (*Kendall Clark*, Guendelsberger, Grant)

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[L-G-M-](#), AXXX XXX 348 (BIA Sept. 24, 2018) (reverses finding that respondent was convicted of a particularly serious crime based on recidivist DUI conviction and IJ's reliance on contacts with criminal justice system that did not result in convictions) (*Crossett, Wendtland, Greer*)

[J-F-B-](#), AXX XXX 977 (BIA Sept. 13, 2018) (presumption under *Matter of Y-L-, A-G- & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), only applies to drug trafficking crimes that qualify as aggravated felonies) (*Wendtland, Greer, Crossett*)

[J-C-L-](#), AXXX XXX 961 (BIA Aug. 30, 2018) (reverses finding that DUI conviction under statute requiring blood alcohol concentration of .15 or higher or qualifies as a particularly serious crime, stating that the designation is reserved for offenses "of truly exceptional gravity") (*Crossett, Wendtland, Greer*)

[H-M-C-J-](#), AXXX XXX 586 (BIA March 1, 2018) (finds convictions for attempted robbery and alluding law enforcement were not particularly serious in light of underlying circumstances) (*Geller*)

[J-J-V-](#), AXXX XXX 994 (BIA July 18, 2017) (grand larceny from the person under Va. Code Ann. 18.2-95 not a particularly serious crime and elements make it unnecessary to examine underlying circumstances) (*Pauley, Guendelsberger, Neal*)—**KEY DECISION**

[Jose Luis Ramirez](#), A075 986 662 (BIA May 31, 2013) (vacates termination of withholding of removal after DHS withdrew argument that HIV-positive respondent's conviction for soliciting or engaging in prostitution was "particularly serious crime") (*Kendall-Clark*)

[M-N-](#), AXX XXX 094 (BIA Oct. 12, 2000) (grand theft under Calif. Penal Code 487(c) not a particularly serious crime in light of lack of evidence of violence and relatively short sentence) (*Hurwitz, Dunne, Holmes*)

### **Pattern or Practice**

[M-R-A-](#), AXXX XXX 847 (BIA Aug. 27, 2020) (respondents raising pattern-or-practice claims need not demonstrate that they would be singled out for persecution) (*Monsky, Donovan, Greer*)

[A-H-](#), AXXX XXX 164 (BIA Feb. 14, 2018) (grants asylum application upon finding respondent established pattern or practice of persecution of Ahmadi Muslims in Pakistan) (*Pauley, Greer, Cole* (dissenting))

### **Persecution**

[M-H-H-](#), AXXX XXX 816 (BIA Sept. 11, 2020) (maltreatment qualified as persecution where respondent from Cuba was detained for three days, beaten with a baton on multiple occasions, and threatened with death if he did not change his political opinion) (*Liebowitz, Malphrus, Morris* (dissenting))

[Y-A-A-R-](#), AXXX XXX 914 (BIA Sept. 3, 2020) (maltreatment rose to level of persecution where police in Cuba repeatedly beat and threatened the respondent over a four-year period, broke his rib with a baton, and broke his tooth after pushing him to the ground) (*Greer, Donovan, Pepper*)

[L-B-P-](#), AXXX XXX 918 (BIA Sept. 2, 2020) (maltreatment rose to level of persecution where police in Cuba detained respondent on three separate occasions, one of which lasted ten days, during which he was beaten and had his anus penetrated with an officer's finger) (*Liebowitz, Morris, Creppy*)

[M-S-F-](#), AXXX XXX 188 (BIA Aug. 27, 2020) (maltreatment rose to level of persecution where police



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in Cuba detained respondent for seven days on two different occasions and beat him to the point of losing consciousness and a tooth) (*Monsky, Donovan, Pepper*)

[D-P-J-](#), AXXX XXX 170 (BIA Aug. 7, 2020) (maltreatment rose to level of persecution where police in Cuba detained respondent in her home for 12 hours without food and water, detained her at the station for 24 hours, slammed her head into the wall, beat her for more than 30 minutes, and threatened her life if she continued to oppose the government) (*Liebowitz, Creppy, Morris*)

[R-A-S-G-](#), AXXX XXX 107 (BIA July 7, 2020) (harm was sufficiently severe to qualify as persecution where respondent was repeatedly arrested, beaten, left in a cold room naked, sprayed with high pressure cold water, and deprived of food) (*Goodwin, Greer, Swanwick*)

[Y-H-S-](#), AXXX XXX 078 (BIA June 30, 2020) (remands record because IJ failed to make any findings with regard to claim that respondent suffered economic persecution in Cuba) (*Monsky, Donovan, O'Connor*)

[K-F-G-](#), AXXX XXX 172 (BIA June 25, 2020) (finds mistreatment rose to level of persecution where respondent was detained for five days, severely beaten, deprived of food, and threatened with death) (*Swanwick, Donovan, Pepper*)

[M-N-G-G-G-](#), AXXX XXX 169 (BIA June 10, 2020) (mistreatment qualified as persecution where respondent was detained for 13 days during which time army officers tied rope around his hands and neck, took off his clothes, beat him with a baton, and sprayed him in the face with a hose) (*Grant, Mann, Mullane*)

[Z-M-](#), AXXX XXX 820 (BIA April 30, 2020) (respondent suffered persecution by virtue of being detained for three months during which he received daily beatings and was given little food) (*Goodwin, Wilson, Donovan*)

[H-K-](#), AXXX XXX 465 (BIA April 27, 2020) (finds threats and multiple physical attacks cumulatively rose to level of persecution) (*Donovan, O'Connor, Malphrus*)

[H-Z-](#), AXXX XXX 062 (BIA Jan. 22, 2020) (remands for further consideration of whether maltreatment qualified as persecution under intervening decision in *Guo v. Sessions*, 897 F.3d 1208 (9th Cir. 2018), where applicant was arrested at home church, detained for two days, beaten to the point of bruises and minor injury, and forbidden from continuing to worship at the home church) (*Hunsucker, Creppy, Liebowitz*)

[J-C-B-F-](#), AXXX XXX 622 (BIA Dec. 23, 2019) (maltreatment cumulatively rose to level of persecution where respondent suffered a fractured rib and sustained bruises during a beating and experienced harassment and mistreatment over a period of years) (*Kelly, Liebmann, Mann*)

[D-F-R-G-](#), AXXX XXX 290 (BIA Dec. 19, 2019) (maltreatment cumulatively rose to level of persecution where respondent was with a crowd of demonstrators that were shot at with gun, was present at other demonstrations in which soldiers used water cannons, was threatened with death by government supporters for organizing anti-government marches, and received a beating that required medical treatment) (*Creppy*)

[C-N-A-](#), AXXX XXX 484 (BIA Sept. 12, 2019) (finds respondent was persecuted in light of testimony that she was imprisoned in overcrowded cells for more than two weeks during which she was beaten up to three times per day) (*Guendelsberger, Grant, Kelly*)

[S-I-](#), AXXX XXX 729 (BIA Aug. 29, 2019) (past harm rose to level of persecution where respondent

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was beaten unconscious on one occasion, had to remain in bed for a week on another occasion, and was threatened with death) (*Guendelsberger*, Grant, Kendall Clark)

[N-F-H-G-](#), AXXX XXX 536 (BIA March 14, 2019) (incident in which gang member pointed gun at respondent's head and threatened his family qualifies as persecution) (*Mullane*, Creppy, Liebowitz)

[R-M-S-](#), AXXX XXX 563 (BIA Oct. 26, 2018) (asylum applicant suffered past persecution where he received threatening phone calls for many years and members of the FARC killed two of his relatives and threatened to kill him) (*Wendtland*, Greer, Crossett)

[K-D-H-](#), AXXX XXX 337 (BIA Oct. 5, 2017) (respondent subject to past persecution where he was interrogated, severely beaten, and later witnessed killing of grandfather) (*Kendall Clark*, Guendelsberger, Neal)

[M-N-](#), AXX XX8 795 (BIA Sept. 26, 2013) (remands record where the IJ failed to consider whether incidents of harassment and discrimination constituted persecution in the aggregate) (Pauley)

[N-T-A-](#), AXXX XXX 777 (BIA Aug. 12, 2011) (33-day detention with beatings and electric shocks constitutes persecution) (*Pauley*, Greer, Wendtland)

#### **Persecutor Bar**

[Jose Santos Luna-Canales](#), A094 142 206 (BIA Apr. 28, 2011) (respondent not subject to "persecutor bar" because he avoided combat while serving as a member of the DM-3 unit in the Salvadoran Army and because of his youth and lack of sophistication at the time) (Pauley)

#### **Political Opinion**

[M-S-F-](#), AXXX XXX 188 (BIA Aug. 27, 2020) (respondent established nexus between persecution and political opinion where he was detained by authorities in Cuba for holding a sign saying he opposed "dictatorship" and refusing to vote) (*Monsky*, Donovan, Pepper)

[A-J-V-U-](#), AXXX XXX 645 (BIA July 10, 2020) (upholds grant of asylum to applicant from Venezuela due to opposition to Chavez and Maduro regimes) (Gemoets)

[K-I-](#), AXXX XXX 247 (BIA July 7, 2020) (respondent was persecuted on account of political opinion where his mistreatment arose from his refusal as a soldier to carry out an order to execute unarmed civilians) (*Goodwin*, Donovan, Greer)

[K-I-](#), AXXX XXX 247 (BIA July 7, 2020) (soldier who was imprisoned and beaten for refusing to carry out unlawful order to kill civilians was persecuted on account of political opinion) (*Goodwin*, Donovan, Greer)

[J-S-R-Z-](#), AXXX XXX 188 (BIA June 24, 2020) (upholds finding that respondent possessed well-founded fear of persecution in Venezuela on account of political opinion in light of longstanding political activism and threats from state actors) (*Creppy*, Hunsucker, Liebowitz)

[M-M-A-](#), AXXX XXX 675 (BIA June 9, 2020) (applicants seeking asylum based on political opinion need not demonstrate that they spoke out publicly against the government) (*Donovan*, Swanwick, Greer (dissenting))

[Z-M-](#), AXXX XXX 820 (BIA April 30, 2020) (IJ clearly erred in finding respondent was not persecuted on account of imputed political opinion where police suspected he was a separatist) (*Goodwin*,

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Wilson, Donovan)

[D-E-D-L-](#), AXXX XXX 662 (BIA April 10, 2020) (orders further consideration of asylum claim where IJ failed to consider whether authorities in Nicaragua imputed anti-government political opinion to respondent) (*Gemoets*, Creppy, Liebowitz)

[A-E-M-P-](#), AXXX XXX 795 (BIA March 16, 2020) (remands for further consideration of political opinion claim where respondent alleged political expression rather than mere opposition to gangs) (*Creppy*, Gemoets, Liebowitz)

[M-A-D-A-](#), AXXX XXX 603 (BIA Feb. 11, 2020) (remands for further consideration of withholding of removal because IJ failed to consider whether anti-gang political opinion would be “a reason” rather than a central reason why respondent was and would be targeted) (Swanwick)

[J-V-S-E-](#), AXXX XXX 159 (BIA Jan. 10, 2020) (orders further consideration of whether respondent would be persecuted on account of his political opinion in light of testimony that he would continue to speak out against Ortega regime if removed to Nicaragua) (*Greer*, O’Connor, Wendtland)

[N-G-M-](#), AXXX XXX 926 (BIA Oct. 4, 2019) (finds respondent has well-founded fear of persecution in Cuba on account of political opinion in light of arrest and detention for participating in demonstration supporting the “White Ladies”) (*Cole*, Noferi, Wendtland)

[M-H-](#), AXXX XXX 860 (BIA Oct. 4, 2019) (reverses finding that political opinion was not one central reason for persecution where respondent was targeted because of perceived support for Bangladesh National Party) (*Cole*, Greer, Wendtland)

[C-N-A-](#), AXXX XXX 484 (BIA Sept. 12, 2019) (respondent’s political opinion was one central reason for persecution where she was detained with other student protestors in Cameroon who opposed government policy) (*Guendelsberger*, Grant, Kelly)

[Y-M-G-L-](#), AXXX XXX 119 (BIA Sept. 4, 2019) (respondent was persecuted on account of anti-corruption political opinion where she was threatened after refusing to help mayoral candidate rig election) (*Cole*, Noferi, Greer)

[D-T-](#), AXXX XXX 959 (BIA July 27, 2018) (reverses finding that respondent’s secessionist views did not qualify as a “political opinion” merely because Cameroon had forbidden its expression through laws of general applicability) (*Crossett*, Wendtland, O’Connor)

### **Prior Residences**

[J-K-](#), AXXX XXX 467 (BIA Aug. 23, 2019) (IJ improperly found respondent not credible for failing to list on his asylum application places he lived while on the run from persecutors and residences outside the prior five-year period) (*Donovan*, Wendtland, Greer)

### **Rebuttable Presumption of Future Harm**

[B-A-T-S-](#), AXXX XXX 315 (BIA Jan. 10, 2020) (passage of an amnesty law and the release of some political prisoners in Nicaragua insufficient for DHS to demonstrate fundamental change in circumstances) (O’Connor)

[P-S-C-](#), AXXX XXX 778 (BIA March 13, 2019) (IJ erroneously relied on evidence predating persecution and failed to shift burden to DHS in finding respondent did not have a well-founded fear of persecution due to change in country conditions) (*Malphrus*, Creppy, Mullane)

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[O-M-C-](#), AXXX XXX 460 (BIA Dec. 20, 2018) (DHS failed to establish that change of president in Cuba constituted fundamental change in circumstances sufficient to rebut presumption of future persecution) (*Kendall-Clark*, Grant, Guendelsberger)

[Jean Pierre Batcha Samba](#), A088 046 199 (BIA Dec. 19, 2013) (two return trips to Cameroon not sufficient to rebut presumption of future persecution) (*Pauley*, Donovan, Wendtland)

[M-A-H-](#), AXX XXX 562 (BIA Sept. 29, 2003) (DHS failed to rebut presumption of future persecution facing respondent previously persecuted in Sudan) (*Cole*, Filppu, Hess)

### **Referral from USCIS**

[F-R-M-C-](#), AXXX XXX 037 (BIA March 17, 2017) (holds that NTA was not improvidently issued against respondent who withdrew affirmative application filed with USCIS and reverses order granting DHS motion to terminate proceedings because respondent was not an enforcement priority) (*Kendall Clark*, Neal, Guendelsberger)—**KEY DECISION**

### **Religion**

[Q-C-](#), AXX XXX 001 (BIA Sept. 1, 2020) (reverses adverse credibility determination based on purported lack of doctrinal knowledge of asylum applicant fearing persecution on account of being Catholic) (*Goodwin*, Donovan, Pepper)

[A-F-C-](#), AXXX XXX 230 (BIA June 23, 2020) (upholds grant of asylum to evangelical Christian who preached religion to street youth in El Salvador) (Riley)

[N-N-L-J-](#), AXXX XXX 941 (BIA June 28, 2019) (upholds finding that religion was one central reason for respondent's persecution where gang members warned him to cease practicing his faith and to worship their saint instead, vandalized his church, and sent threatening letters to his pastor) (*Creppy*, Noferi, Malphrus)

[V-R-F-](#), AXXX XXX 637 (BIA May 31, 2019) (respondent's religion was one central reason for persecution where gang members threatened her with death for continuing to attend church and refusing to abandon her religious practice) (*O'Connor*, Wendtland, Donovan)

### **Right to Specialized Counsel**

[K-O-](#), AXXX XXX XXX (BIA Aug. 27, 2013) (IJ failed under 8 CFR 1240.11(c)(1)(iii) to provide list of individuals available to provide representation in asylum proceedings on a pro bono basis) (*Wendtland*, Donovan, Pauley (dissenting))—**KEY DECISION**

### **Right to Apply and/or Testify In Support of Application**

[Y-G-](#), AXXX XXX 909 (BIA Sept. 30, 2020) (IJ erroneously pretermitted asylum application because Attorney General's decision in *Matter of E-F-H-L-*, 27 I&N Dec. 226 (A.G. 2018), did not disturb the legal reasoning of *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014), or *Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989)) (*Kelly*, Couch, Montante)

[A-S-](#), AXXX XXX 488 (BIA Sept. 24, 2020) (remands to give asylum applicant additional opportunity to present application where he was proceeding pro se, the IJ advanced his individual hearing date by more than a week, and his family had difficulty retaining an attorney due to COVID-19 epidemic) (*Malphrus*, Creppy, Liebowitz)

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[L-R-A-P-](#), AXXX XXX 515 (BIA Aug. 14, 2020) (remands record because IJ denied asylum application without taking any testimony from the respondent) (*Grant*, Mullane, Riley)

[R-B-P-](#), AXXX XXX 237 (BIA May 15, 2020) (remands for further consideration of asylum application where submission containing corroborating evidence was rejected by the clerk's office and IJ denied continuance to allow respondent to resubmit) (*Malphrus*, Gemoets, Morris)

[D-C-L-](#), AXX XXX 525 (BIA Sept. 25, 2019) (remands record under *Matter of Fefe*, 20 I&N Dec. 116 (BIA 1989), because IJ pretermitted withholding application without allowing respondent to testify) (*Mann*, Kelly, Liebmann)

[G-A-](#), AXXX XXX 612 (BIA June 21, 2019) (remands record because IJ failed to advise pro se respondent of her right to apply for asylum despite a positive credible fear determination or of her right to counsel at no expense to the government) (*Donovan*, Cole, Wendtland)

[F-J-](#), AXXX XXX 609 (BIA June 6, 2019) (remands record because IJ did not comply with regulations requiring respondents who express fear of return to be notified of their right to apply for asylum and the privilege of being represented by an attorney) (*Adkins-Blanch*, Morris, Liebmann)

[V-S-D-](#), AXXX XXX 986 (BIA May 7, 2019) (remands for further consideration of asylum application because IJ denied claim without taking testimony from respondent) (*Liebowitz*, Creppy, Malphrus)

[L-E-X-S-](#), AXXX XXX 843 (BIA April 5, 2019) (remands record because IJ found respondent ineligible for asylum after only brief exchange and based on aggravated felony conviction of which no evidence appeared in the record) (*Liebmann*, Adkins-Blanch, Mann)

[C-Y-R-C-](#), AXXX XXX 937 (BIA March 27, 2019) (orders new hearing on respondent's Form I-589 where the IJ scheduled the hearing less than two weeks away, did not ask any questions relating to the nature of her claim, and faulted her for submitting no corroborating evidence) (*Greer*, Cole, O'Connor)

[A-I-B-A-](#), AXXX XXX 491 (BIA Feb. 21, 2019) (reopens proceedings to allow respondent from Libya to apply for asylum and withholding of removal in light of significant questions raised by audio of the hearing as to whether he was adequately advised of the asylum process) (Guendelsberger)

[V-J-M-L-](#), AXXX XXX 844 (BIA Jan. 17, 2019) (IJ improperly denied withholding application without permitting respondent to testify after finding she would not be a credible witness based on her prior encounters with immigration officers) (Adkins-Blanch)

[E-A-M-L-](#), AXXX XXX 266 (BIA Dec. 19, 2018) (remands for evidentiary hearing because IJ denied asylum application without allowing respondent to testify) (Guendelsberger)

[G-S-](#), AXXX XXX 772 (BIA Aug. 6, 2018) (reverses finding that respondent abandoned asylum application given that he was detained and pro se, was given ten days to file his Form I-589, did not speak or write English, was not advised that his application would be deemed abandoned if not filed at his next hearing, and submitted a completed application on appeal) (*Adkins-Blanch*, Mann, Snow)

[C-A-R-M-](#), AXXX XXX 713 (BIA March 15, 2018) (IJ failed to advise minor respondents of right to apply for asylum after father appeared on their behalf and said they feared returning to El Salvador) (*Cole*, Greer, Crossett)

[S-Y-G-L-](#), AXXX XXX 225 (BIA March 1, 2018) (reverses determination that respondents abandoned

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asylum applications by submitting Form I-589 that did not include preparer's information, stating that respondents should have been provided an opportunity to correct the application) (*Pauley, Snow, Kelly*)

[M-E-C-](#), AXXX XXX 039 (BIA Oct. 13, 2017) (remands record because IJ failed to notify respondent of his potential eligibility for asylum after he expressed fear of returning to Mexico) (*Pauley*)

[N-M-C-M-](#), AXXX XXX 821 (BIA July 5, 2017) (remands record where IJ found pro se respondent was ineligible for asylum after asking a handful of questions) (*Mann, Kelly, Adkins-Blanch*)

[F-R-M-C-](#), AXXX XXX 037 (BIA March 17, 2017) (holds that NTA was not improvidently issued against respondent who withdrew affirmative application filed with USCIS and reverses order granting DHS motion to terminate proceedings because respondent was not an enforcement priority) (*Kendall Clark, Neal, Guendelsberger*)—**KEY DECISION**

[Anabela Godinez-Perez](#), A208 202 259 (BIA Jan. 31, 2017) (remands record because IJ did not ask whether respondent feared returning to Guatemala and relied instead on notation in Form I-213 stating that she did not express fear of persecution at the time of apprehension at border) (*Grant*)—**KEY DECISION**

[Nuria Esely Sabillon-Guardado](#), A208 275 394 (BIA Jan. 27, 2017) (IJ failed to advise respondent of right to apply for asylum or withholding of removal or make application forms available after respondent expressed fear of returning to Honduras) (*Grant, O'Connor, Mann*)

[Eladia Pablo Mendoza](#), A208 307 494 (BIA Sept. 14, 2016) (IJ failed to advise respondent of ability to apply for asylum or withholding of removal after expressing fear of returning to Guatemala) (*Kendall-Clark*)—**KEY DECISION**

[A-M-G-B-](#), A206 773 739 (BIA June 28, 2016) (finds respondent was unfairly pressured to withdraw application without receiving opportunity to testify under *Matter of E-F-H-L-*, 26 I&N Dec. 319 (BIA 2014) (*Guendelsberger*))

### **Safe Third Country Agreement**

[M-S-](#), AXXX XXX 600 (BIA June 5, 2020) (respondent not subject to Safe Third Country Agreement with Canada because he was not apprehended within "immediate vicinity" of port of entry) (*Cassidy, Kelly, Pepper*)

[P-S-](#), AXXX XXX 211 (BIA March 29, 2018) (respondent not prohibited from seeking asylum under the bilateral agreement with Canada because he entered the United States without inspection rather than arriving at land border port of entry) (*Pauley, Wendtland, Crossett*)

### **Serious Nonpolitical Crimes**

[M-G-D-](#), AXXX XXX 238 (BIA Dec. 18, 2019) (duress may be considered in determining whether an asylum applicant committed a serious nonpolitical crime) (*O'Connor, Rosen, Greer*)

[V-M-Z-B-](#), AXXX XXX 488 (BIA Dec. 19, 2018) (reverses finding that respondent had been convicted of a serious nonpolitical crime in light of the dismissal of criminal charges that had resulted in the issuance of an INTERPOL red notice) (*Guendelsberger, Grant, Kendall Clark*)

[R-M-D-](#), AXXX XXX 040 (BIA April 16, 2018) (no serious reason to believe respondent committed



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serious nonpolitical crime where INTERPOL Red Notice did not identify respondent's criminal conduct, identified him only as a "potential" collaborator, and contained several internal contradictions) (*Pauley, Wendtland, Greer*)

[C-H-C-](#), AXXX XXX 702 (BIA May 4, 2017) (reverses finding that respondent committed serious nonpolitical crime by being forced as a 12-year-old homeless child to deliver drugs and extortion money by a gang in El Salvador) (*Greer, Kelly, Kendall Clark*)

### **State Department Reports**

[O-I-P-H-](#), AXXX XXX 697 (BIA April 10, 2019) (remands record because IJ relied on State Department report that was not published at time of individual hearing and did not give notice to respondent that report would be considered) (*Wendtland, O'Connor, Donovan*)

### **Termination Of**

[J-L-](#), AXXX XXX 280 (BIA June 9, 2020) (IJ violated *Matter of V-X-*, 26 I&N Dec. 147, 149 (BIA 2013), by ordering respondent removed without first considering whether to terminate asylum status) (*Liebowitz, Gemoets, Creppy*)

[M-J-F-M-](#), AXXX XXX 864 (BIA Oct. 2, 2019) (IJ violated due process by terminating asylee status on basis never proposed by DHS) (*Guendelsberger*)

[T-A-I-](#), AXXX XXX 688 (BIA Jan. 26, 2018) (holds that respondent who was granted withholding in 2009 still subject to protection from removal after departing and illegally reentering country; states that DHS must file motion to reopen under 8 C.F.R. 1208.24(f) to terminate withholding) (*Pauley*)

### **Third Country Transit Rule**

[F-C-N-](#), AXX XXX 892 (BIA July 31, 2020) (vacates denial of asylum in light of decision in *Capital Area Immigrants' Rights Coalition v. Trump*, Nos. 19-2117, 19-2530, \_\_ F. Supp. 3d \_\_ (D.D.C. June 30, 2020), vacating the Third Country Transit Rule in 8 C.F.R. 1208.13(c)(4)) (*Malphrus, Donovan, Mullane*)

[Y-S-H-](#), AXXX XXX 166 (BIA July 27, 2020) (vacates denial of asylum in light of decision in *Capital Area Immigrants' Rights Coalition v. Trump*, Nos. 19-2117, 19-2530, \_\_ F. Supp. 3d \_\_ (D.D.C. June 30, 2020), vacating the Third Country Transit Rule in 8 C.F.R. 1208.13(c)(4)) (*Swanwick*)

[H-M-](#), AXXX XXX 861 (BIA July 27, 2020) (vacates denial of asylum in light of decision in *Capital Area Immigrants' Rights Coalition v. Trump*, Nos. 19-2117, 19-2530, \_\_ F. Supp. 3d \_\_ (D.D.C. June 30, 2020), vacating the Third Country Transit Rule in 8 C.F.R. 1208.13(c)(4)) (*Donovan*)

[S-K-](#), AXXX XXX 113 (BIA July 2, 2020) (vacates denial of asylum in light of decision in *Capital Area Immigrants' Rights Coalition v. Trump*, Nos. 19-2117, 19-2530, \_\_ F. Supp. 3d \_\_ (D.D.C. June 30, 2020), vacating the Third Country Transit Rule in 8 C.F.R. 1208.13(c)(4)) (*Swanwick, Donovan, Monsky*)

[G-M-](#), AXXX XXX 500 (BIA May 22, 2020) (remands for IJ to consider respondent's eligibility for asylum in light of injunction entered by *Al Otro Lado, Inc. v. McAleenan*, 423 F. Supp. 3d 848 (S.D. Cal. 2019), prohibiting enforcement of Third Country Transit Rule against non-Mexicans who arrived at southern border seeking asylum before July 16, 2019, but were denied entry and prevented from making an asylum claim under the metering policy) (*Greer, Donovan, Foote*)

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### Timing of Individual Hearing

[Y-D-E-](#), AXXX XXX 512 (BIA Jan. 15, 2020) (remands for new hearing on asylum application because individual hearing was scheduled only eight days after last master calendar hearing in violation of the ABT settlement) (*Greer*)

### Unaccompanied Minors

[A-M-P-V-](#), 213 303 038 (BIA Sept. 11, 2020) (reopens proceedings sua sponte for respondent who wished to pursue independent asylum claim from her mother after witnessing attempted kidnapping and rape at camp in Mexico and who asserted that she qualified as an unaccompanied child) (*Malphrus*, *Liebowitz*, *Morris*)

[C-F-M-C-](#), AXXX XXX 962 (BIA May 13, 2020) (detention of unaccompanied alien child after filing of asylum application does not strip USCIS of jurisdiction over application) (*O'Connor*, *Donovan*, *Foote*)

[D-R-](#), AXXX XXX 337 (BIA Dec. 31, 2019) (USCIS has original jurisdiction over asylum applications filed by unaccompanied alien children even if they turn 18 while application is pending) (*Kelly*)

[E-C-A-V-](#), AXXX XXX 483 (BIA Dec. 26, 2019) (reopens proceedings sua sponte for respondent who entered as an unaccompanied alien child and had a pending asylum application before USCIS) (*Guendelsberger*, *Grant*, *Kendall Clark*)

[B-E-B-B-](#), AXXX XXX 040 (BIA July 31, 2019) (vacates order of removal against unaccompanied minor issued before USCIS adjudicated his asylum application) (*Guendelsberger*, *Grant*, *Kendall Clark*)

[D-V-G-](#), AXXX XXX 356 (BIA Dec. 7, 2018) (remands for USCIS to adjudicate respondent's asylum application because he was designated a UAC and the application was filed before he turned 18) (*Kendall Clark*, *Grant*, *Guendelsberger*)

[A-M-R-L-](#), AXXX XXX 473 (BIA April 10, 2018) (IJ should not have deemed asylum claim abandoned for failure to file Form I-589 because respondent was told she did not need to refile after application was denied by USCIS) (*Grant*, *Guendelsberger*, *Kendall Clark*)

[S-G-P-G-](#), AXXX XXX 389 (BIA Oct. 20, 2016) (dismisses interlocutory DHS appeal challenging administrative closure of proceedings to let USCIS to adjudicate asylum application) (*Greer*)—**KEY DECISION**

[Jhosimbher Holar Rodas-Mazariegos](#), A206 512 862 (BIA Sept. 7, 2016) (reverses denial of continuance to apply for asylum for unaccompanied minor) (*Greer*, *Kendall-Clark*, *Neal*)

[B-A-P-J-](#), AXXX XXX 863 (BIA Aug. 31, 2016) (reopens and administratively closes proceedings sua sponte pending adjudication of asylum application by USCIS for respondent who was unaccompanied minor at time he was ordered removed in absentia) (*Greer*, *O'Herron*, *Kendall-Clark*)

[Y-B-S-H-](#), AXXX XXX 187 (BIA May 6, 2016) (remands for consideration of whether USCIS possesses initial jurisdiction over asylum application under TVPRA) (*O'Herron*, *Greer*, *Kendall-Clark*)

### Well-Founded Fear

[K-I-](#), AXXX XXX 553 (BIA Aug. 5, 2020) (upholds grant of asylum based on well-founded fear of persecution despite adverse credibility relating to past persecution due to inconsistencies between

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testimony and credible fear interview) (Monsky)

[J-A-S-G-](#), AXXX XXX 785 (BIA May 4, 2020) (remands for further consideration of well-founded fear where IJ failed to consider evidence of continued political repression in Nicaragua) (*Donovan, Goodwin, Foote*)

[L-A-P-](#), AXXX XXX 237 (BIA Oct. 18, 2019) (vacates denial of asylum where IJ did not explain basis for finding that unrest in Nicaragua had subsided) (Guendelsberger)

[T-Y-](#), AXX XXX 421 (BIA Feb. 12, 2002) (reverses denial of asylum to Amhara ethnic group and Student's Association of Ethiopia; less of an individualized showing of fear is required when other members of same group have been targeted) (*Pauley, Holmes, Hurwitz*)

### Cancellation of Removal

#### LPR Cancellation—INA 240A(a)

##### LPR Status

[M-N-](#), AXXX XXX 912 (BIA Jan. 17, 2020) (remands record to consider cancellation application because respondent accrued five years of permanent residence while case was on appeal) (*Mullane, Liebowitz, Noferi*)

##### Continuous Residence

[A-M-U-](#), AXXX XXX 567 (BIA Nov. 8, 2018) (grant of V nonimmigrant status from within United States qualifies as “admission” for purposes of LPR cancellation of removal) (*Guendelsberger, Kendall Clark, Adkins-Blanch*)

[Jose Gustavo Castaneda](#), A204 047 431 (BIA July 26, 2018) (remands record because IJ mistakenly believed period of continuous residence under INA 240A(a)(2) restarted each time respondent left and reentered the country) (*Kelly, Snow, Adkins-Blanch*)

[L-H-A-N-](#), AXXX XXX 813 (BIA June 29, 2018) (IJ mistakenly measured period of continuous residence from most recent admission rather than from initial admission as a nonimmigrant) (*Hunsucker, Creppy, Liebowitz*)

[Cynthia Ramos de Marquez](#), A076 616 869 (BIA May 24, 2018) (reopens proceedings sua sponte in light of intervening decision in *Saldivar v. Sessions*, 877 F.3d 812 (9th Cir. 2017), which held that a waive-through at the border constitutes an “admission” in any status) (Grant)

[J-F-M-P-](#), AXXX XXX 061 (BIA March 14, 2018) (reverses finding that respondent failed to establish seven years of continuous residence where he was admitted more than seven years prior to commission of offense triggering the stop-time rule and nothing suggested he was absent from the country for any significant period of time) (*Pauley, Adkins-Blanch, Kelly*)

##### Discretionary Determinations

[A-C-G-](#), AXXX XXX 948 (BIA Sept. 30, 2020) (remands for further consideration of application for LPR cancellation where IJ did not make sufficient findings of fact regarding positive and negative factors or show how he reached his ultimate conclusion) (*Greer, Donovan, Pepper*)

[L-L-H-](#), AXXX XXX 541 (BIA Nov. 14, 2019) (reverses discretionary denial of LPR cancellation where

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respondent's criminal history stemmed from alcohol addiction, he had resided in the United States since he was an infant, and his family included five U.S. citizen children, two U.S. citizen parents, and three U.S. citizen siblings) (*Kelly*, Liebmann, Adkins-Blanch)

[D-T-H-](#), AXXX XXX 307 (BIA Nov. 12, 2019) (upholds discretionary grant of LPR cancellation, stating that "evidence of rehabilitation is not a prerequisite to relief in every case") (*Kelly*)

[S-J-G-](#), AXXX XXX 005 (BIA Sept. 23, 2019) (remands for additional consideration of application for LPR cancellation in light of intervening birth of U.S. citizen child and passage of nearly a decade since respondent's last criminal offense) (*Greer*, Noferi, Wendtland)

[L-P-H-](#), AXXX XXX 811 (BIA Aug. 30, 2019) (rejects DHS argument that heightened discretionary standard set forth in *Matter of Jean*, 23 I&N Dec. 373 (A.G. 2002), applies to cancellation of removal; upholds discretionary grant of LPR cancellation of removal where sole negative factor was conviction for manslaughter that arose from respondent's mishandling of a firearm) (*Cole*)

[C-G-B-](#), AXXX XXX 004 (BIA Aug. 29, 2019) (reverses discretionary denial of LPR cancellation of removal in light of respondent's 17 years as LPR, hardship to U.S. citizen children and terminally ill mother, and fact that DHS stipulated to grant of relief during the hearing) (*Mann*, Kelly, Mullane (dissenting))

[L-A-M-L-](#), AXXX XXX 338 (BIA July 18, 2019) (affirms grant of cancellation of removal to respondent who entered United States in 1990, became an LPR in 2001, whose mother and brother who were U.S. citizens, and who stopped using methamphetamine and marijuana, notwithstanding extensive criminal record, including having unlawful sex with a minor at the age of 19) (*Creppy*)

[D-A-C-](#), AXXX XXX 28 (BIA Feb. 25, 2019) (reverses discretionary denial of cancellation of removal for respondent who was admitted as an LPR in 1993 at age 12, was married to a U.S. citizen and had two U.S. citizen children, whose mother and brother were U.S. citizens, and whose most recent criminal conviction was in 1995) (*Greer*, Wendtland, Donovan)

[J-L-O-](#), AXXX XXX 511 (BIA Oct. 4, 2018) (reverses discretionary denial of LPR cancellation where respondent had resided in the United States since age 5, was married to a U.S. citizen with two U.S. citizen children, and most of his criminal convictions occurred while he was a juvenile) (*Cole*, Wendtland, O'Connor (dissenting))

[J-R-F-](#), AXXX XXX 595 (BIA July 23, 2018) (remands for further consideration of application for LPR cancellation of removal where IJ did not meaningfully address the effect respondent's removal to Cuba would have on his own life or the lives of his relatives in the United States) (*Crossett*)

[J-M-C-](#), AXXX XXX 494 (BIA March 28, 2018) (upholds discretionary grant of cancellation of removal despite extensive criminal record) (*Pauley*, Snow, Crossett (dissenting))

[V-A-C-](#), AXXX XXX 523 (BIA Nov. 15, 2017) (reverses discretionary denial where unsourced notation in police report that respondent was active gang member was rebutted by testimony of numerous witnesses) (*O'Connor*, Greer, Pauley (dissenting))

[S-L-M-L-](#), AXXX XXX 703 (BIA Sept. 29, 2017) (reverses discretionary denial for respondent who had been LPR for more than 30 years, immigrated at age of 19, had three U.S. citizen children, was receiving treatment for depression and Post-Traumatic Stress Disorder, and had been arrested twelve times mostly for shoplifting) (*Greer*, Kelly, Kendall Clark)

[E-H-](#), AXXX XXX 689 (BIA May 20, 2015) (finds respondent merits favorable exercise of discretion

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notwithstanding prior convictions for shoplifting, obstruction of a law enforcement officer, driving under the influence, aggravated assault, and public drunkenness) (*Wendtland*, Cole, Paulley (dissenting))

[V-M-B-B-](#), AXXX XXX 723 (BIA March 27, 2015) (upholds grant of cancellation despite conviction for trafficking in cocaine under N.C.G.S. 90-95(h)(3) and issuance of 44- to 62-month sentence) (*Greer*, Guendelsberger, Pauley (dissenting))

[Rabih Almasri](#), A075 415 097 (BIA Mar. 25, 2011) (record remanded where prior counsel failed to advise respondent of type of evidence required to obtain favorable exercise of discretion and additional evidence of positive equities submitted on appeal) (Miller)

[Manuel Jesus Olivas-Matta](#), A021 179 705 (BIA Aug. 9, 2010) (denies cancellation as a matter of discretion upon finding the respondent's criminal record outweighed substantial favorable equities) (Mullane) (Note: this decision was subsequently overturned for other reasons by *Olivas-Matta v. Holder*, 716 F.3d 1199 (9th Cir. May 17, 2013))

### **Non-LPR Cancellation—INA 240A(b)(1)**

#### **Continuous Physical Presence**

[Oscar Ivan Rojas-Carvajal](#), A209 418 857 (BIA June 16, 2020) (remands for further consideration of whether respondent knowingly and voluntarily waived right to hearing when accepting voluntary departure and thereby broke period of continuous physical presence) (*Kelly*, Adkins-Blanch, Couch)

[M-S-Z-](#), AXXX XXX 385 (BIA April 10, 2020) (reverses finding that voluntary returns broke continuous physical presence where record did not contain copies of papers respondent signed or evidence she agreed to forfeit her right to appear before an IJ) (*Morris*, Creppy, Liebowitz)

[J-A-C-S-](#), AXXX XXX 322 (BIA Nov. 22, 2019) (voluntary removal at border did not break period of continuous physical presence under *Matter of Castrejon-Colino*, 26 I&N Dec. 667 (BIA 2015)) (*Liebmann*, Kelly, Mann)

[L-F-F-V-](#), AXXX XXX 816 (BIA July 1, 2019) (orders further factfinding on whether voluntary return to Mexico terminated period of continuous presence under *Matter of Castrejon-Colino*, 26 I&N Dec. 667 (BIA 2015), where record did not demonstrate whether respondent was informed of and waived right to hearing before an IJ) (Cole)

[S-M-A-](#), AXXX XXX 421 (BIA Dec. 14, 2018) (respondent established continuous physical presence despite confusion during testimony over length of trips abroad where sole departure that occurred within 10-year period was approximately one month) (*Wendtland*)

[V-C-S-](#), AXXX XXX 250 (BIA April 23, 2018) (reverses finding that respondent failed to establish continuous physical presence where he was unable to recall the precise dates on which he left the country in November 2003 and returned in January 2004) (*Grant*, Snow, Mann)

[S-S-E-](#), AXXX XXX 896 (BIA April 3, 2018) (orders further consideration argument that period of continuous physical presence was not broken by acceptance of administrative voluntary departure because respondent was provided with pre-checked Form I-826 and was not advised of right to hearing before an IJ) (*Snow*, Kelly, Mann)

[B-R-D-](#), AXXX XXX 864 (BIA March 7, 2018) (reverses finding that respondent failed to establish continuous physical presence in light of credible testimony that he only departed United States for

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two months during prior ten-year period) (*O'Connor*, Charles Adkins-Blanch, Cole (dissenting))

[A-C-C-](#), AXXX XXX 862 (BIA Feb. 7, 2018) (respondent established ten years of continuous physical presence based on testimony of himself and son and letters from individuals who met him in United States) (*Pauley*, Greer, Crossett)

[Mariano Gonzalez-Martinez](#), A097 845 427 (BIA May 6, 2015) (IJ erroneously found respondent ineligible based solely on statements that he left the country for “two or three months” on one occasion and “like three months” on another occasion) (Cole)

[Marcelo Herrera Martinez](#), A098 007 723 (BIA Feb. 11, 2011) (continuous presence not broken where record contained no evidence that respondent knowingly and voluntarily accepted administrative voluntary departure after being apprehended at the border) (*Grant*, Liebowitz, Malphrus)

### **Discretionary Determinations**

[R-N-](#), AXXX XXX 556 (BIA Sept. 20, 2019) (reverses discretionary denial of LPR cancellation despite convictions for child molestation, public lewdness, and DUI) (*Cole*, Wendtland, Wilson)

[S-F-C-](#), AXXX XXX 766 (BIA Sept. 17, 2019) (upholds discretionary grant of non-LPR cancellation of removal despite convictions in 2009 and 2017 for DUI) (Wendtland)

[R-G-U-](#), AXXX XXX 352 (BIA Aug. 23, 2019) (reverses discretionary denial of non-LPR cancellation where only negative factor was respondent’s misrepresentation on a border visa application in 2013) (*Wendtland*, Donovan, Greer)

[J-S-M-](#), AXXX XXX 604 (BIA July 19, 2019) (reverses discretionary denial of non-LPR cancellation of removal because IJ’s belief that consular processing would only require respondent to leave the United States for one week was speculative) (*O'Connor*)

[J-A-M-A-](#), AXXX XXX 369 (BIA April 18, 2019) (reverses discretionary denial of non-LPR cancellation in light of commitment to participate in six-month inpatient program for alcohol treatment upon release from custody) (*Adkins-Blanch*, Liebmann, Kelly)

[J-C-C-R-](#), AXXX XXX 185 (BIA April 17, 2019) (upholds finding that respondent merits cancellation of removal in the exercise of discretion upon finding hardship to family outweighed multiple arrests relating to domestic violence ) (Wendtland)

[E-A-G-G-](#), AXXX XXX 882 (BIA Feb. 4, 2019) (reverses finding that respondent did not merit favorable exercise of discretion based on DUI conviction from May 2018) (*Adkins-Blanch*, Mann, Kelly)

[C-M-M-T-](#), AXXX XXX 245 (BIA July 30, 2018) (reverses adverse discretionary determination for respondent with two convictions and one prior arrest for driving under the influence where none of the incidents resulted in injury or property damage) (*Wendtland*, Greer, Crossett)

[H-E-T-](#), AXXX XXX 314 (BIA May 1, 2018) (reverses discretionary denial where respondent demonstrated genuine rehabilitation for four prior DUI convictions, the last of which occurred in 2001) (*Pauley*, O'Connor, Wendtland)

[B-V-C-J-](#), AXXX XXX 939 (BIA Aug. 3, 2013) (finds IJ’s determination that respondent was “doing very little to become a productive member of society” not appropriate basis to decline to favorably exercise discretion) (*Kendall-Clark*, Miller, Greer)



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### **Eligibility of LPRs**

[Gregorio Vergara](#), A076 110 704 (BIA Mar. 8, 2011) (LPR not disqualified from seeking non-LPR cancellation by virtue of LPR status) (Pauley)

### **Exceptional and Extremely Unusual Hardship**

[I-R-S-](#), AXXX XXX 228 (BIA Sept. 21, 2020) (reopens proceedings over DHS opposition for further consideration of application for non-LPR cancellation in light of U.S. citizen daughter's recent diagnosis with Hashimoto's Thyroiditis requiring her to take thyroid medication for condition that must be monitored) (*Donovan*, Monsky, O'Connor)

[M-R-S-L-](#), AXXX XXX 937 (BIA Sept. 9, 2020) (upholds grant of non-LPR cancellation based on child's health issues and states that respondent was not required to offer evidence that medical treatment would be unavailable in Mexico since the child would remain in the United States) (O'Connor)

[F-J-M-M-](#), AXXX XXX 294 (BIA July 20, 2020) (reopens proceedings for further consideration of application for non-LPR cancellation in light of qualifying relative being newly diagnosed with Nemaline Myopathy Type 7, a muscular dystrophy condition) (Couch)

[A-A-A-R-](#), AXXX XXX 108 (BIA July 9, 2020) (respondent established exceptional and extremely unusual hardship to 13-year-old son with potential learning disability with below average IQ score who was required to repeat a grade in school) (*Goodwin*, Greer, Donovan)

[J-V-A-](#), AXXX XXX 128 (BIA July 7, 2020) (reopens proceedings sua sponte to seek non-LPR cancellation in light of evidence that respondent's 10-year-old son suffers from autism, receptive-expressive language disorder, motor impairment, disruptive behavior, and intellectual disability, and that his 7-year-old son suffers from developmental delay and a speech impairment) (*Kelly*, Adkins-Blanch, Couch (dissenting))

[R-G-H-](#), AXXX XXX 190 (BIA June 26, 2020) (respondent established exceptional and extremely unusual hardship to 11-year-old U.S. citizen son who tested in 99th percentile for depression and anxiety) (Swanwick)

[A-V-G-O-](#), AXXX XXX 968 (BIA May 21, 2020) (remands for further consideration of cancellation application because IJ improperly discounted testimony that respondent's 14-year-old daughter had daily thoughts of harming herself and told her mother she does not want to live) (Swanwick)

[T-M-L-](#), AXXX XXX 676 (BIA April 22, 2020) (remands for further consideration of non-LPR cancellation application in light of intervening evidence that respondent's son experienced multiple medical conditions resulting in paralysis and bleeding in the brain) (O'Connor)

[A-A-A-](#), XXX XXX 326 (BIA April 14, 2020) (remands for further consideration of non-LPR cancellation in light of potential hardship to qualifying relatives from intervening serious medical conditions developed by nonqualifying relative) (O'Connor)

[R-E-M-A-](#), AXXX XXX 113 (BIA March 30, 2020) (respondent established exceptional and extremely unusual hardship to autistic U.S. citizen son who would not be able to live independently as an adult and to U.S. citizen daughter who was mostly deaf and required audiology services twice per month) (*Goodwin*, Wilson, Greer)

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[D-V-](#), AXXX XXX 863 (BIA March 26, 2020) (respondent established exceptional and extremely unusual hardship to qualifying relatives who would have to arrange for lifesaving treatment for respondent's own renal failure upon her removal) (*Greer, Donovan, Wilson*)

[G-F-V-](#), AXXX XXX 568 (BIA March 23, 2020) (respondent established exceptional and extremely unusual hardship where one U.S. citizen child was born with heart murmur, another was born with an abnormally shaped head, and another was born with a cleft palate that had not been surgically corrected) (*Swanwick, Donovan, Greer*)

[J-M-G-](#), AXXX XXX 884 (BIA March 12, 2020) (remands for further consideration of non-LPR cancellation where respondent's son was diagnosed with fibrous dysplasia of the ribs after the IJ issued his decision) (*Noferi, Donovan, Swanwick*)

[M-S-H-](#), AXXX XXX 169 (BIA Feb. 26, 2020) (remands for further consideration of non-LPR cancellation in light of evidence submitted on appeal that she and two children were subjected to physical and mental abuse by sole custodial parent of children) (*O'Connor, Greer, Wendtland*)

[L-F-B-H-](#), AXXX XXX 401 (BIA Feb. 25, 2020) (respondent established exceptional and extremely unusual hardship to U.S. citizen son who suffers from autism) (*Greer, Wendtland, Wilson*)

[I-D-M-](#), AXXX XXX 318 (BIA Feb. 6, 2020) (respondent established exceptional and extremely unusual hardship to U.S. citizen son suffering from speech, vision, circulatory, and orthopedic issues affecting his mobility which require monitoring and therapeutic intervention) (*Greer, Donovan, Wendtland*)

[D-J-F-](#), AXXX XXX 628 (BIA Feb. 6, 2020) (reopens proceedings to further consider application for non-LPR cancellation in light of U.S. citizen son being diagnosed with a cleft palate, significant auditory deficits, and severe speech delay) (*Mann*)

[L-R-O-](#), AXXX XXX 619 (BIA Feb. 5, 2020) (respondent established exceptional and extremely unusual hardship to U.S. citizen wife with a long history of emotional and mental health struggles) (*Greer, Wendtland, Donovan*)

[C-A-L-G-](#), AXXX XXX 519 (BIA Jan. 31, 2020) (reopens proceedings sua sponte for further consideration of respondent's application for non-LPR cancellation in light of intervening birth of U.S. citizen child diagnosed with severe brachycephaly and plagiocephaly) (*Liebmann*)

[R-G-A-](#), AXXX XXX 403 (BIA Jan. 22, 2020) (remands for further consideration of non-LPR cancellation in light of respondent's marriage to woman whose daughter suffers from Down's Syndrome and whose son has been diagnosed with ADHD and exhibits and behavioral problems) (*Liebmann, Mann, Couch* (dissenting))

[A-L-M-](#), AXXX XXX 266 (BIA Dec. 16, 2019) (reopens proceedings for further consideration of whether removal would result in exceptional and extremely unusual hardship in light of evidence that one of respondent's children was recently diagnosed with autism and ADHD, and that his wife and children would accompany him to Mexico) (*Kelly*)

[N-L-M-M-](#), AXXX XXX 471 (BIA Nov. 22, 2019) (respondent established exceptional and extremely unusual hardship to two-year-old U.S. citizen son who was experiencing significant developmental delays and was at high risk of autism) (*Cole*)

[S-P-R-](#), AXXX XXX 306 (BIA Nov. 18, 2019) (remands for further consideration of non-LPR cancellation in light of birth of new U.S. citizen child with medical issues including a heart anomaly,

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hearing loss, and Down syndrome) (Kelly)

[B-J-C-](#), AXXX XXX 535 (BIA Nov. 14, 2019) (reopens proceedings sua sponte for respondent to apply for non-LPR cancellation in light of evidence that U.S. citizen son suffers from autism, attention deficit hyperactivity disorder, disruptive mood dysregulation disorder, intermittent explosive disorder, and intellectual disability) (Kendall Clark)

[J-J-](#), AXXX XXX 686 (BIA Oct. 23, 2019) (IJ failed to consider hardship that respondent herself would face in determining whether hardship to qualifying relative would be exceptional and extremely unusual) (*Greer*, *Wendtland*, *Wilson* (dissenting))

[O-R-](#), AXXX XXX 175 (BIA Oct. 2, 2019) (respondent established exceptional and extremely unusual hardship to his U.S. citizen wife and two children each suffering from significant medical and psychological disorders requiring medication) (Cole)

[M-M-P-](#), AXXX XXX 317 (BIA Sept. 27, 2019) (respondent established exceptional and extremely unusual hardship to child who had been diagnosed with autism spectrum and attention deficit disorders) (*Greer*, *Rosen*, *Wendtland*)

[P-W-B-G-](#), AXXX XXX 217 (BIA Sept. 24, 2019) (reopens proceedings sua sponte over DHS opposition in light of adverse mental health impact on U.S. citizen daughter from death of respondent's son) (Kendall Clark)

[S-F-C-](#), AXXX XXX 766 (BIA Sept. 17, 2019) (respondent established exceptional and extremely unusual hardship to son suffering from emotional and psychological trauma from being sexually abused) (*Wendtland*)

[M-M-C-](#), AXXX XXX 054 (BIA Sept. 16, 2019) (respondent established exceptional and extremely unusual hardship to U.S. citizen son suffering from profound hearing loss who attends school for the deaf) (*Wendtland*, *Noferi*, *Greer*)

[H-M-A-](#), AXXX XXX 010 (BIA Sept. 10, 2019) (respondent established exceptional and extremely unusual hardship to stepdaughter suffering from heart problem, tuberous sclerosis, and epilepsy) (*Greer*)

[J-C-R-R-](#), AXXX XXX 870 (BIA Sept. 10, 2019) (respondent established exceptional and extremely unusual hardship to 8-year-old child born with spina bifida who cannot walk and must be catheterized to empty his bladder) (*Mullane*, *Kelly*, *Adkins-Blanch*)

[S-C-S-](#), AXXX XXX 001 (BIA Sept. 4, 2019) (remands for further consideration of hardship given that two of three U.S. citizen children suffered from mental health problems and respondent's wife suffered from depression and could not provide stable home environment) (*Noferi*)

[R-G-U-](#), AXXX XXX 352 (BIA Aug. 23, 2019) (finds removal would cause exceptional and extremely unusual hardship to son with interstitial lung disease) (*Wendtland*, *Donovan*, *Greer*)

[J-C-R-M-](#), AXXX XXX 519 (BIA Aug. 20, 2019) (grants motion to remand to apply for non-LPR cancellation in light of report from licensed clinical social worker stating that child's mental health had significantly regressed and that he had expressed thoughts of harming himself) (*Liebmann*, *Kelly*, *Mullane* (dissenting))

[N-A-C-C-](#), AXXX XXX 911 (BIA Aug. 14, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to apply for non-LPR cancellation in light of diagnosis of respondent's U.S. citizen

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child with cerebral heterotopia, symptomatic generalized epilepsy, and autism disorder) (Grant)

[L-M-G-S-](#), AXXX XXX 751 (BIA Aug. 9, 2019) (remands for further consideration of hardship given passage of seven years since final hearing before IJ and intervening birth of two U.S. citizen children) (*Wendtland*, Donovan, Cole)

[A-A-C-V-](#), AXXX XXX 620 (BIA Aug. 8, 2019) (respondent established exceptional and extremely unusual hardship in light of cumulative impact on each of five qualifying relatives and combined disabilities of two U.S. citizen children) (*Cole*, *Wendtland*, Rosen)

[F-U-C-](#), AXXX XXX 463 (BIA July 9, 2019) (vacates finding that respondent's removal would not cause exceptional and extremely unusual hardship where IJ mistakenly assumed that daughter with special education needs would remain in United States) (*Wendtland*, Donovan, Rosen)

[E-N-L-E-](#), AXXX XXX 835 (BIA June 20, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to seek non-LPR cancellation of removal in light of severe and worsening skin condition suffered by U.S. citizen child) (Kendall Clark)

[C-J-K-](#), AXXX XXX 138 (BIA June 19, 2019) (respondent's wife would suffer extreme hardship in event of removal because she would be separated from elderly parents, two U.S. citizen siblings, two LPR children (one with a chronic kidney disease) and one grandchild) (*Adkins-Blanch*, Kelly, Morris)

[M-T-M-](#), AXXX XXX 874 (BIA June 18, 2019) (reopens proceedings sua sponte for respondent to seek non-LPR cancellation of removal in light of hardship that would befall her 77-year-old LPR mother suffering from serious health issues and 17-year-old U.S. citizen daughter suffering from serious mental health problems) (Kendall Clark)

[H-H-R-](#), AXXX XXX 822 (BIA June 18, 2019) (respondent established that his removal would cause exceptional and extremely unusual hardship to U.S. citizen children who suffered from severe respiratory conditions, PTSD from sexual abuse, and atopic dermatitis) (*Guendelsberger*, Kendall Clark, *Adkins-Blanch*)

[S-D-V-](#), AXXX XXX 663 (BIA June 7, 2019) (reopens proceedings for further consideration of eligibility for non-LPR cancellation in light of the birth of three new qualifying relatives, one of whom suffers from phonological disorder) (*Morris*, *Adkins-Blanch*, Kelly)

[R-M-C-](#), AXXX XXX 889 (BIA May 31, 2019) (respondent established exceptional and extremely unusual hardship to two children who inherited a kidney disease and would likely need dialysis and a kidney transplant) (*Donovan*, Greer, *Wendtland*)

[M-A-L-P-](#), AXXX XXX 438 (BIA May 17, 2019) (respondent established exceptional and extremely unusual hardship to wife and son where each been diagnosed with Major Depressive and Anxiety disorders that had been aggravated while respondent was detained) (*Donovan*, Noferi, *Wendtland*)

[H-A-V-A-](#), AXXX XXX 915 (BIA May 9, 2019) (respondent established exceptional and extremely unusual hardship in light of marriage to U.S. citizen who had not worked since 2010 and five U.S. citizen children between ages of 2 and 11 years old) (*Kelly*, *Adkins-Blanch*, Morris)

[H-C-D-](#), AXXX XXX 872 (BIA May 3, 2019) (reopens proceedings sua sponte for further consideration of eligibility for non-LPR cancellation in light of evidence of serious mental and physical conditions suffered by the respondent's children) (Kendall Clark)

[R-D-M-O-](#), AXXX XXX 345 (BIA May 2, 2019) (respondent established requisite hardship to spouse

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who had been diagnosed with depression and PTSD, was taking prescription medication and attending therapy, had never worked outside the home, and would be the sole caretaker for the couple's two children) (*Adkins-Blanch*, Morris, Kelly)

[H-B-G-](#), AXXX XXX 613 (BIA April 25, 2019) (respondent established requisite hardship to U.S. citizen spouse because she would be left alone to care for couple's daughter and three grandchildren, each of whom had suffered abuse and neglect) (*Adkins-Blanch*, Mann, Kelly)

[R-Z-S-](#), AXXX XXX 730 (BIA March 19, 2019) (respondent established exceptional and extremely unusual hardship to children because their mother was battling drug addiction and they would likely be placed in foster care if he was removed) (Greer)

[L-L-](#), AXXX XXX 882 (BIA Feb. 14, 2019) (respondent established requisite hardship to U.S. citizen wife in light of deaths of two adult sons due to random violence) (*Kelly*, *Adkins-Blanch*, Cole)

[H-E-A-](#), AXXX XXX 294 (BIA Feb. 13, 2019) (reopens proceedings over DHS opposition for further consideration of application of non-LPR cancellation in light of evidence that respondent's 8-year-old son has rare and serious eye condition called early onset idiopathic bilateral cataracts) (Kendall Clark)

[E-A-G-G-](#), AXXX XXX 882 (BIA Feb. 4, 2019) (IJ erred by discounting autism diagnosis solely because it was provisional diagnosis) (*Adkins-Blanch*, Mann, Kelly)

[F-V-P-](#), AXXX XXX 144 (BIA Jan. 17, 2019) (respondent who suffers from both HIV and insulin-dependent diabetes established exceptional and extremely unusual hardship to U.S. citizen children because his ability to provide economic support would diminish if his health declined) (*Kendall Clark*, *Adkins-Blanch*, Grant)

[E-J-F-](#), AXXX XXX 382 (BIA Dec. 14, 2018) (respondent established exceptional and extremely unusual hardship to spouse with whom he co-owned a business given significant economic hardship caused by his removal) (*Greer*, *Wendtland*, Donovan (dissenting))

[S-M-A-](#), AXXX XXX 421 (BIA Dec. 14, 2018) (respondent established exceptional and extremely unusual hardship to LPR mother who suffered from major depressive disorder and generalized anxiety disorder) (*Wendtland*)

[J-C-H-](#), AXXX XXX 004 (BIA Dec. 7, 2018) (respondent established exceptional and extremely unusual hardship to son who previously underwent surgery for osteochondroma) (*Cole*, *Wendtland*, *Crossett*)

[R-H-C-](#), AXXX XXX 830 (BIA Dec. 7, 2018) (respondent established exceptional and extremely unusual hardship to 15-year-old daughter who had been treated for generalized anxiety disorder, social phobia, and a dependent personality disorder) (*Mann*, *Adkins-Blanch*, *Snow*)

[J-L-X-F-](#), AXXX XXX 135 (BIA Nov. 30, 2018) (respondent established requisite hardship to child with moderate developmental disability of whom respondent is the primary caretaker) (*Kelly*)

[N-R-](#), AXXX XXX 860 (BIA Nov. 13, 2018) (IJ erred in applying requirement in *Matter of Ige*, 20 I&N Dec. 880 (BIA 1994), because respondent's spouse would remain in United States with qualifying children relatives) (*Adkins-Blanch*, Mann, *Snow*)

[R-L-R-L-](#), AXXX XXX 540 (BIA Nov. 2, 2018) (respondent established requisite hardship in light of opinion of licensed clinical psychologist that 16-year-old U.S. citizen son would be at high risk for



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“significant mental deterioration” if respondent was removed to Mexico) (Snow)

[V-D-G-](#), AXXX XXX 267 (BIA Oct. 26, 2018) (respondent established hardship to U.S. citizen children with developmental disabilities despite seeing them only 3-4 times per year because he provided financial support and medical insurance) (*Greer*, *Wendtland*, *Donovan*)

[L-M-P-](#), AXXX XXX 167 (BIA Oct. 12, 2018) (reopens proceedings sua sponte where respondent was prima facie eligible for non-LPR cancellation based on hardship to son who was diagnosed with pica and exhibited severe delays in speech and fine motor skills) (Kendall Clark)

[B-G-C-](#), AXXX XXX 655 (BIA Oct. 9, 2018) (respondent established requisite hardship to 15- and 19-year-old U.S. citizen daughters where she was a single mother and daughters did not speak or write Spanish well) (*Crossett*, *Wendtland*, *Donovan* (dissenting))

[M-Q-R-](#), AXXX XXX 384 (BIA Oct. 3, 2018) (remands for further consideration of cancellation application in light of evidence submitted after IJ decision demonstrating that respondent married new spouse with medical conditions and whose new stepchild had educational and behavioral issues) (Kelly)

[E-E-L-C-](#), AXXX XXX 690 (BIA Sept. 21, 2018) (respondent established requisite hardship to U.S. citizen daughter who had already survived two rounds of kidney cancer and required regular follow up appointments with the pediatric oncology unit) (*Kelly*, *Adkins-Blanch*, *Mann*)

[A-M-V-](#), AXXX XXX 887 (BIA Sept. 11, 2018) (respondent established requisite hardship to respondent’s middle daughter, who was blind, and youngest daughter, who was legally blind) (*Kendall Clark*, *Guendelsberger*, *Grant*)

[G-V-C-](#), AXXX XXX 104 (BIA Aug. 29, 2018) (upholds finding that respondent’s removal would cause requisite hardship to U.S. citizen wife, who suffers from major depression and a life-threatening allergy) (*Wendtland*)

[Y-M-](#), AXXX XX 937 (BIA Aug. 14, 2018) (respondent established requisite hardship to his two teenage U.S. citizen daughters in light of the possibility that they would be subject to female genital mutilation in The Gambia) (*Greer*, *Crossett*, *Wendtland*)

[O-A-H-R-](#), AXXX XXX 208 (BIA Aug. 6, 2018) (grants motion to remand for further consideration of hardship in light of new evidence demonstrating that respondent’s 2-year-old U.S. citizen daughter was removed from mother’s custody after being exposed to drugs) (Kelly)

[A-Z-H-](#), AXXX XXX XXX (BIA July 27, 2018) (finds that respondent’s removal to Mexico would result in requisite hardship to U.S. citizen stepdaughter diagnosed with Von Willebrand disease who requires injections in a hospital setting) (*Snow*, *Kelly*, *Mann*)

[M-O-I-](#), AXXX XXX 790 (BIA June 29, 2018) (upholds finding that U.S. citizen child would suffer exceptional and extremely unusual hardship upon respondent’s removal to Palestine because she does not read or write Arabic and would be regularly subjected to Israeli security checkpoints) (*Wendtland*)

[M-A-B-V-](#), AXXX XXX 385 (BIA May 24, 2018) (respondent established requisite hardship to at least one of six U.S. citizen children where his spouse had diabetes and could not provide time or financial means necessary to take care of children) (*Mann*, *Kelly*, *Snow*)

[M-A-V-A-](#), AXXX XXX 453 (BIA May 3, 2018) (respondent established requisite hardship to his five



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U.S. citizen children given that he was HIV positive and their mothers had both passed away) (*Adkins-Blanch*, Snow, Pauley (dissenting)).

[V-G-C-H-](#), AXXX XXX 792 (BIA April 26, 2018) (respondent established requisite hardship where one U.S. citizen child had cranial surgery as a toddler and another had severe asthma) (*Adkins-Blanch*, Snow, Pauley (dissenting))

[M-V-L-](#), AXXX XXX 869 (BIA April 13, 2018) (respondent established requisite hardship to U.S. citizen children where their mother passed away in 2007, respondents speak Quiche and has no formal education, and children may not understand or speak Spanish) (*Mann*, *Adkins-Blanch*, Snow)

[C-D-S-G-](#), AXXX XXX 876 (BIA April 13, 2018) (reopens proceedings sua sponte following unexpected death of the respondent's husband due to increased hardship her children would experience in country of removal being raised by single mother) (Kendall-Clark)

[A-R-R-](#), AXXX XXX 004 (BIA Feb. 26, 2018) (reverses IJ determination that respondent failed to establish requisite hardship to U.S. citizen daughter receiving therapy for anxiety and depression she was experiencing from her father's potential removal) (Snow)

[H-C-A-](#), AXXX XXX 557 (BIA Feb. 16, 2018) (finds respondent established requisite hardship where U.S. citizen children received therapy for speech and language delays and LPR wife would be forced to abandon professional occupation by relocating to Mexico) (Cole)

[M-S-](#), AXXX XXX 653 (BIA Feb. 12, 2018) (finds respondent's U.S. citizen daughters would experience requisite hardship in light of likelihood that they would suffer FGM in Gambia, states that IJ should not have substituted personal judgment for what was in daughters' best interest) (*O'Connor*, Kendall Clark, *Adkins-Blanch*)—**KEY DECISION**

[L-A-B-C-](#), AXXX XXX 797 (BIA Jan. 19, 2018) (upholds finding that respondent established requisite hardship to U.S. citizen son who had been diagnosed with adjustment disorder with mixed anxiety and depression, had been in therapy since 2014, had been prescribed Zoloft, and had been hospitalized on several occasions for asthma) (Greer)

[L-V-S-](#), AXXX XXX 285 (BIA Jan. 3, 2018) (respondent established that removal would cause requisite hardship to 15-year-old U.S. citizen child who was diagnosed with Major Depressive Disorder and had experienced suicidal ideations) (*Adkins-Blanch*, Kendall Clark, Cole (dissenting))

[B-D-](#), AXXX XXX 395 (BIA Dec. 21, 2017) (respondent established that removal to Mali would cause requisite hardship to three U.S. citizen daughters in light of high risk that they would be subject to female genital mutilation) (*Adkins-Blanch*, Cole, Grant)

[J-R-M-B-](#), AXX XXX 175 (BIA Oct. 25, 2016) (upholds denial of application but faults IJ for citing speculative receipt of additional public benefits in finding lack of exceptional and extremely unusual hardship) (Holiona)

[Y-Y-C-](#), AXXX XXX 786 (BIA Aug. 4, 2015) (respondent established requisite hardship where U.S. citizen husband suffered from hepatitis, U.S. citizen daughter suffered from excessive tearing in left eye, and U.S. citizen son suffered from hyperactivity, excessive vomiting and fevers, and speech delays) (*O'Herron*, Cole, Geller)

[B-V-C-J-](#), AXXX XXX 939 (BIA Aug. 3, 2013) (finds two of U.S. citizen children born with heart defects would suffer requisite hardship in Mexico) (*Kendall-Clark*, Miller, Greer)

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[K-C-](#), AXX XXX 101 (BIA June 24, 2014) (finds respondent established requisite hardship based on likelihood that U.S. citizen daughters would be subject to female genital mutilation (FGM) in Senegal) (*Cole, Greer, Miller*)—**KEY DECISION**

[Herminio Robles-Quintano](#), A074 351 862 (BIA June 9, 2011) (finds qualifying relatives would suffer requisite hardship on account of high cost of living in Hawaii and spouse's need to maintain her nursing certification and vest her state retirement pension) (Grant)—**KEY DECISION**

[Hector Retiguin-Alvarez](#), A088 763 754 (BIA July 14, 2010) (respondent established requisite hardship where he was single father of children aged 9 and 15 whose mother died of cancer five years before) (*Kendall Clark, King, Miller*)

[Brenda Elizabeth Noguera Lopez](#), A72 522 974 (BIA Feb. 26, 2009) (respondent established requisite hardship where son was diagnosed with ADHD and required daily medication, participation in special education classes, psychotherapy, and an individual education plan) (*Holmes, Kendall Clark, Miller*)

[Maria Isabel Ruiz-Abrego](#), A79 559 641 (BIA June 30, 2006) (respondent established requisite hardship where she was a single mother of two U.S. citizen children aged 6 and 9, the elder of which had been diagnosed with ADHD requiring daily medication and ongoing psychiatric evaluation) (*Miller, Adkins-Blanch, Hurwitz (dissenting)*)

#### **Good Moral Character**

[W-F-V-](#), AXXX XXX 107 (BIA Oct. 5, 2020) (DHS assertion that it is “standard procedure” for USCIS to place beneficiaries under oath not sufficient to establish that respondent testified falsely under oath) (*Goodwin, Baird, Greer*)

[M-B-C-](#), AXXX XXX 185 (BIA Aug. 31, 2020) (respondents deemed inadmissible under INA 212(a)(2)(C) only lack good moral character under INA 101(f)(3) if they were convicted of or admit to trafficking in controlled substances) (*Liebowitz, Creppy, Hunsucker*)

[A-K-G-R-](#), AXXX XXX 885 (BIA Aug. 28, 2020) (reverses finding that respondent who admitted to being drunk approximately one weekend per month over the course of four years was a “habitual drunkard”) (*Greer, Donovan, O'Connor*)

[C-C-L-](#), AXXX XXX 756 (BIA Aug. 27, 2020) (remands for further consideration of whether respondent recanted false testimony prior to exposure or threat of imminent exposure for purposes of establishing good moral character) (*Morris, Liebowitz, Hunsucker*)

[J-M-D-L-](#), AXXX XXX 251 (BIA Aug. 13, 2020) (respondent no longer precluded from establishing good moral character because more than 10 years elapsed since he provided false testimony in 2009) (*Wilson, Goodwin, Pepper*)

[R-M-S-](#), AXXX XXX 485 (BIA Feb. 25, 2020) (vacates denial of cancellation of removal based on lack of good moral character because IJ considered time in custody outside the 10-year period) (*Mann, Mullane, Grant*)

[E-G-T-L-](#), AXXX XXX 765 (BIA Feb. 14, 2020) (reverses finding that respondent was habitual drunkard in light of evidence that he mostly consumed alcohol on weekends and was considered a dependable worker by his employer) (*Greer, Swanwick, O'Connor*)

[M-A-S-](#), AXXX XXX 751 (BIA Jan. 6, 2020) (remands finding that respondent lacked good moral

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character based on photographs purporting to show him flashing gang signs because DHS presented no evidence that photographs were taken in last ten years or that the gestures were in fact gang signs) (Noferi)

[E-G-C-](#), AXXX XXX 017 (BIA Dec. 17, 2019) (remands for further consideration of whether respondent possessed good moral character in light of submission of amended tax returns while case was on appeal) (Liebmann)

[E-A-A-](#), AXXX XXX 215 (BIA Oct. 2, 2019) (reverses finding that respondent lacked good moral character based on arrest for sexual misconduct against 5-year-old child given that no criminal charges were brought and a polygraph examiner found no deception in the respondent's denial of the allegations) (*Grant*, Guendelsberger, Kendall Clark)

[E-J-](#), AXXX XXX 671 (BIA Sept. 26, 2019) (reverses finding that respondent lacked good moral character based on purported discrepancies between testimony and Form I-213 in light of substantial errors elsewhere on form) (*Mann*, Kelly, Mullane (dissenting))

[R-P-L-S-](#), AXXX XXX 262 (BIA Aug. 28, 2019) (IJ failed to consider hardship to qualifying relatives in finding that respondent lacked good moral character under catchall provision of INA 101(f)) (Kendall Clark)

[R-G-U-](#), AXXX XXX 352 (BIA Aug. 23, 2019) (bar to good moral character in INA 101(f)(6) for providing false testimony only applies to oral statement made under oath) (*Wendtland*, Donovan, Greer)

[E-M-G-](#), AXXX XXX 603 (BIA Aug. 5, 2019) (reverses finding that respondent lacked good moral character and notes that DHS stipulated that respondent possessed good moral character) (*Kelly*, Liebmann, Mullane)

[J-C-T-B-](#), AXXX XXX 164 (BIA Aug. 1, 2019) (reverses finding that respondent lacked good moral character based on two DUI convictions and without considering family circumstances at time of incidents and trauma respondent had experienced) (*Guendelsberger*, Grant, Kendall Clark)

[M-F-S-](#), AXXX XXX 136 (BIA July 19, 2019) (grants motion to remand in light of evidence that respondent was only confined for a period of 170 days following testimony while he was unrepresented that he served approximately eight months in jail) (Liebmann)

[J-S-M-](#), AXXX XXX 604 (BIA July 19, 2019) (reverses finding that respondent lacked good moral character based on having three-dot tattoo where he had never been arrested for gang activity and he and his wife testified credibly that he was not a member of a gang) (O'Connor)

[F-U-C-](#), AXXX XXX 463 (BIA July 9, 2019) (vacates finding that respondent lacked good moral character because 2008 conviction that IJ found most troubling no longer fell within 10-year period) (*Wendtland*, Donovan, Rosen)

[H-H-R-](#), AXXX XXX 822 (BIA June 18, 2019) (reverses finding that respondent lacked good moral character where IJ relied on incidents falling outside 10-year period and failed to consider evidence of rehabilitation) (*Guendelsberger*, Kendall Clark, Adkins-Blanch)

[R-M-C-](#), AXXX XXX 889 (BIA May 31, 2019) (reverses determination that respondent lacked good moral character based on convictions for criminal trespass, driving on a suspended license, following another vehicle too close, operating a vehicle without insurance, revocation/suspension, and failure to appear) (*Donovan*, Greer, Wendtland)

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[Nevanly Cisse](#), A077 943 726 (BIA April 1, 2019) (respondent did not necessarily engage in polygamy by marrying second wife before being officially divorced from first wife) (*Donovan*, *Wendtland*, *O'Connor*)

[N-M-C-](#), AXXX XXX 756 (BIA Aug. 31, 2018) (remands for further consideration because more than 10 years had elapsed while case was on appeal from event prohibiting respondent from establishing good moral character) (*Adkins-Blanch*, *Snow*, *Geller*)

[R-S-C-](#), AXXX XXX 059 (BIA June 7, 2018) (use of U.S. passport to enter country did not categorically bar positive good moral character finding) (*Pauley*)

[V-H-V-A-](#), AXXX XXX 979 (May 11, 2018) (reverses determination that respondent lacked good moral character where IJ failed to take positive countervailing equities into account) (*Adkins-Blanch*, *Kendall Clark*, *Grant*)

[Ruperto Andrade](#), A097 681 046 (BIA Sept. 17, 2012) (finding that respondent did not testify credibly not valid basis to find he lacked good moral character) (*Miller*, *Adkins-Blanch*, *Kendall-Clark*)

[Francisco Hernandez Pina](#), A073 976 639 (BIA Jan. 19, 2012) (falsely claiming citizenship of El Salvador on EAD application does not mandate finding of lack of good moral character under “catch all” provision of INA 101(f)) (*Pauley*, *Cole*, *Greer*)

[Herminio Robles-Quintano](#), A074 351 862 (BIA June 9, 2011) (finds respondent’s extensive criminal arrest record did not preclude finding of good moral character) (*Grant*)—**KEY DECISION**

#### **Qualifying Relatives**

[Alonso Martinez-Perez](#), A089 821 875 (BIA July 22, 2020) (child remained a qualifying relative despite being over age 21 where IJ unduly delayed adjudicating application) (*Kelly*)

[L-A-A-](#), AXXX XXX 738 (BIA April 6, 2020) (remands for further consideration of non-LPR cancellation where respondent obtained new qualifying relative based on marriage to woman whose son has numerous severe medical issues) (*Hunsucker*, *Creppy*, *Gemoets*)

[Z-R-](#), AXXX XXX 655 (BIA March 19, 2020) (provision preventing natural parents of noncitizens with SIJ status from being accorded any “right, privilege, or status” does not preclude IJs from considering hardship to parents in granting cancellation of removal) (*Gemoets*)

[Hugo Enrique Campos-Franco](#), A088 197 517 (BIA June 11, 2018) (grants motion to remand following birth of twins while appeal was pending) (*Wendtland*)

[Epifanio Martinez Juarez](#), A095 194 852 (BIA Mar. 21, 2011) (child who turned 21 while case was on appeal still considered qualifying relative for cancellation purposes) (*C. King*, *Adkins-Blanch*, *Guendelsberger*)—**KEY DECISION**

#### **Special Rule Cancellation—INA 240A(b)(2)**

[M-A-A-](#), AXXX XXX 001 (BIA June 18, 2020) (remands to pursue VAWA cancellation where respondent was unable to provide evidence of abuse before the IJ in the presence of her husband) (*Greer*)

[C-N-L-O-](#), AXXX XXX 340 (BIA April 27, 2020) (reverses discretionary denial of VAWA cancellation where sole adverse factors were 2011 conviction for driving under the influence and a 2012

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conviction for disorderly conduct) (*Donovan, Wilson, Greer*)

[J-A-T-C-](#), AXXX XXX 039 (BIA Dec. 16, 2019) (IJ failed to advise then pro se respondent of potential eligibility for cancellation of removal under INA 240A(b)(2) despite statement that he had been abused by his stepfather and he was listed on a Form I-360 filed by his mother) (*Adkins-Blanch*)

[B-M-M-](#), AXXX XXX 698 (BIA Nov. 14, 2019) (remands to consider whether respondent's convictions for DUI were connected to his having been battered or subjected to extreme cruelty) (*Greer, O'Connor, Wendtland*)

[B-J-G-](#), AXXX XXX 333 (BIA May 29, 2014) (respondent subjected to extreme cruelty due to psychological and verbal abuse arising from husband's alcoholism and gambling) (*Greer, Kendall-Clark, Cole* (dissenting))—**KEY DECISION**

[Tabassum Saleheen](#), A097 967 736 (BIA July 20, 2009) (domestic abuser need not be LPR at time abuse is inflicted for victim to qualify for cancellation under INA 240a(b)(2)) (*Greer, Cole, Pauley*)—**KEY DECISION**

### **“Stop-Time” Rule**

[Veselin Saparevski](#), A096 540 058 (BIA Aug. 21, 2020) (issuance of hearing notice did not trigger stop-time rule where it was never received by respondent) (*Liebowitz, Malphrus, Creppy*)

[L-A-G-G-](#), AXXX XXX 414 (BIA April 28, 2020) (remands for respondent to seek non-LPR cancellation of removal in light of decision in *Banuelos v. Barr*, 953 F.3d 1176 (10th Cir. 2020), holding that hearing notice does not trigger stop-time rule) (*Hunsucker*)

[Lydia Gonzalez-Pelico](#), A094 074 720 (BIA Dec. 6, 2019) (reopens proceedings sua sponte for further consideration of respondent's eligibility for non-LPR cancellation where hearing notice was served more than 10 years after asserted date of entry) (*Cole, O'Connor, Wendtland*)

[Luis Nivicela-Velecela](#), A075 798 613 (BIA Dec. 2, 2019) (reopens proceedings for respondent to apply for non-LPR cancellation because first effective hearing notice was not served until more than 10 years after respondent's entry) (*Grant*)

[Laura Alicia Rocha-Garcia](#), A077 152 416 (BIA Nov. 14, 2019) (reopens proceedings sua sponte for respondent to seek LPR cancellation of removal in light of decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), holding that hearing notice does not trigger stop-time rule)) (*Cassidy*)

[Israel Mateo-Mateo](#), A205 489 483 (BIA Sept. 27, 2019) (reopens proceedings for respondent apply for non-LPR cancellation in light of intervening decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), and prima facie eligibility for such relief) (*Kendall Clark*)

[Julia Bustos-Moreno](#), A075 513 721 (BIA July 30, 2019) (reopens proceedings sua sponte for respondent to seek LPR cancellation of removal in light of decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), holding that hearing notice does not trigger stop-time rule) (*Donovan*); [Bernardo Guzman-Aranda](#), A047 347 949 (BIA July 10, 2019) (same) (*Grant*); [Rosa Villalpando-Velasquez](#), A077 150 018 (BIA July 2, 2019) (same) (*Greer*); [Maria De Rodriguez-Echeverria](#), A077 983 920 (BIA June 11, 2019) (same) (*Kendall Clark*)

[Maria Luisa Vasquez-Ramirez](#), A079 156 633 (BIA July 31, 2019) (reopens proceedings sua sponte for respondent to seek non-LPR cancellation of removal in light of decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), holding that hearing notice does not trigger stop-time rule) (*Donovan*); [Suresh](#)



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[Kumar Bhoganadham](#), A098 050 426 (BIA July 12, 2016) (same) (Guendelsberger); [Luis Castillo-Juarez](#), A201 237 462 (BIA July 10, 2019) (same) (*Guendelsberger*, Grant, Kendall Clark); [R-D-A-](#), AXXX XXX 314 (BIA July 9, 2019) (same) (Mann); [Milomir Djuric](#), A071 758 106 (BIA July 1, 2019) (same) (Kendall Clark); [Francisco Jose Hernandez-Lazo](#), A200 711 490 (BIA June 27, 2019) (same) (Guendelsberger); [Karen Lisseth Guzman](#), A079 652 323 (BIA June 21, 2019) (same) (Cole); [Daisy Pineda-Navarrete](#), A096 234 504 (BIA June 21, 2019) (same) (Liebowitz)

[Anees Moustafa Fahmy](#), A076 972 586 (BIA July 12, 2019) (reopens proceeding sua sponte for respondent to apply for non-LPR cancellation of removal under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because NTA did not contain time or date of hearing and hearing notice was not served until after respondent accrued 10 years of continuous physical presence) (Guendelsberger)

[Alfonso Lopez-Mateo](#), A213 082 356 (BIA June 24, 2019) (grants interlocutory appeal and reverses decision denying request to apply for non-LPR cancellation of removal in light of decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), holding that hearing notice does not trigger stop-time rule) (*Kendall Clark*, Grant Guendelsberger)

[E-Y-M-E-](#), AXXX XXX 100 (BIA June 18, 2019) (reopens proceeding sua sponte for respondent to apply for non-LPR cancellation of removal under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because NTA did not contain time or date of hearing and hearing notice was not served until after respondent accrued 10 years of continuous physical presence) (Liebmann)

[Roxana Elizabeth Orellana-Santos](#), A200 135 216 (BIA April 25, 2019) (grants motion to reconsider sua sponte for respondent to apply for cancellation of removal where NTA did not list time or date of hearing and respondent never received subsequent hearing notice) (*Wendtland*, Donovan, Greer)

[J-H-](#), AXXX XXX 980 (BIA Feb. 28, 2019) (implicitly finds hearing notice did not trigger stop-time rule by stating that respondent who was served with deficient NTA in 2011 need only establish continuous physical presence since early 2009) (Greer)

[R-D-](#), AXXX XXX 483 (BIA Feb. 21, 2019) (reopens proceedings sua sponte for respondent who entered United States in 2004 to seek non-LPR cancellation because NTA served in 2007 did not contain time or date of hearing) (Grant)

[A-O-C-](#), AXXX XXX 761 (BIA Feb. 12, 2019) (remands for further consideration of whether respondent established ten years of continuous physical presence under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because NTA served in 2014 did not contain time or date of hearing) (Adkins-Blanch)

[M-E-G-](#), AXXX XXX 653 (BIA Feb. 7, 2019) (reopens proceeding sua sponte for respondent who entered in 2007 to apply for non-LPR cancellation because NTA issued in 2008 did not contain time or date of hearing) (Kendall Clark)

[L-A-C-](#), AXXX XXX 156 (BIA Jan. 31, 2019) (grants motion to remand to apply for non-LPR cancellation under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because NTA did not contain time or date of hearing) (Kelly)

[Roman Moldavchuk](#), A096 109 377 (BIA Dec. 4, 2018) (reopens proceedings sua sponte for respondent who was eligible to apply for non-LPR cancellation under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), because he had accrued 10 years of continuous physical presence by the time of the IJ's decision) (Grant)

[J-S-A-](#), AXXX XXX 174 (BIA Oct. 30, 2018) (remands for respondent to apply for non-LPR



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cancellation of removal under *Pereira v. Sessions*, 138 S. Ct. 735 (2018), given that he entered the country in 2008 and NTA issued in 2011 did not include time or place of hearing) (Mann)

[J-M-C-](#), AXXX XXX 624 (BIA Oct. 5, 2018) (remands for further consideration of respondent's cancellation application upon finding she was not subject to stop-time rule under *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (Adkins-Blanch)

[Rebecca Akpevwe Obi](#), A099 002 920 (BIA Sept. 26, 2018) (reopens proceedings sua sponte for respondent to apply for cancellation of removal in light of *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (*Kendall Clark*, Grant, Guendelsberger)

[Leonardo Hernandez Juarez](#), A205 291 061 (BIA Sept. 26, 2018) (grants motion to remand for respondent to apply for cancellation of removal in light of *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (Snow)

[Paulino Erik Soto Perez](#), A206 412 792 (BIA Sept. 21, 2018) (remands record for further consideration of respondent's eligibility for cancellation of removal in light of *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (Snow)

[J-H-A-V-](#), AXXX XXX 493 (BIA Sept. 17, 2018) (remands for further consideration of respondent's cancellation application upon finding she was not subject to stop-time rule under *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (Geller)

[Antonio Lira-Martinez](#), A090 116 421 (BIA June 21, 2018) (stop-time rule does not retroactively apply to offense committed prior to effective date of IIRIRA that did not render the respondent removable at the time) (*Greer*, Wendtland, Crossett)

[A-N-](#), AXXX XXX 803 (BIA June 7, 2017) (service of NTA did not stop period of continuous physical presence because record did not demonstrate that respondent actually received NTA) (*Grant*, Mann, Pauley (dissenting))—**KEY DECISION**

[Manuel Victor Lucero](#), A074 912 171 (BIA Dec. 27, 2016) (service of NTA did not trigger stop-time rule because NTA was not received and in absentia order was subsequently rescinded) (Kendall-Clark)

[Erik Mendoza-Olivas](#), A044 547 316 (BIA Feb. 26, 2014) (admission of crime must comply with requirements in *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), to trigger stop-time rule) (Wendtland, Pauley, Cole (concurring))—**KEY DECISION**

## Citizenship

### General

[Jose Gustavo Blanco](#), A206 493 377 (BIA July 7, 2020) (IJ failed to make sufficient factual findings regarding whether DHS established respondent's alienage where parties disputed authenticity of birth certificate from Texas) (*Greer*, Donovan, Swanwick)

[Rodolfo Jones Mendoza](#), A205 147 042 (BIA June 29, 2020) (remands to consider whether respondent qualifies as a "foundling" under 8 U.S.C. 1401(f)) (*Liebowitz*, Creppy, Gemoets)

[Kawo Otis Flah](#), A075 072 523 (BIA Feb. 3, 2020) (remands for further consideration of motion to terminate in light DHS' statement to respondent's counsel that respondent had derived U.S. citizenship) (Greer)

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[Carlos Javier Hinojosa-Trejo](#), A090 393 900 (BIA March 11, 2019) (remands for further consideration of acquired citizenship claim in light of evidence submitted on appeal and despite concession of alienage before IJ) (*Mullane*, Malphrus, Morris)

[Jose Gustavo Torres-Luiton](#), A041 773 526 (BIA Jan. 18, 2019) (IJ erred in refusing to let respondent's mother and grandmother testify in support of his claim that his mother had continuously resided in the United States for a period of one year prior to his birth) (*Malphrus*, Creppy, Donovan)

[Melia Howie](#), A036 367 206 (BIA April 5, 2017) (terminates removal proceedings after respondent was issued Certificate of Citizenship) (Kendall Clark)

[Joselito Vasquez-Gomez](#), A094 222 573 (BIA July 23, 2013) (remands to consider evidence indicating respondent is U.S. citizen by virtue of birth in Puerto Rico despite prior claims to having been born in the Dominican Republic) (Cole)

[Karen Louise Difeo](#), A074 093 925 (BIA June 14, 2013) (remands where respondent is prima facie eligible for naturalization to consider whether "exceptionally appealing or humanitarian factors" exist to warrant termination, per 8 CFR 1239.2(f)) (*Hoffman*, Adkins-Blanch, Guendelsberger)

[Julian Dominguez-Tinoco](#), A027 094 320 (BIA Dec. 7, 2012) (IJ improperly prohibited respondent from testifying in support of citizen claim and explaining prior submission of Mexican birth certificate with adjustment application) (*Adkins-Blanch*, Manuel, Guendelsberger)

[Enrique Ramos](#), A022 833 741 (BIA Apr. 8, 2011) (dismisses respondent's citizenship claim; states that letter from respondent's godfather attesting to being present during respondent's birth in El Paso, Texas, not verified by "objective, independent evidence") (Grant)

[Francisco Cruz Alvarez](#), A076 375 249 (BIA Feb. 28, 2011) (issuance of birth certificate pursuant to order of a California state court did not warrant termination of proceedings) (*Grant*, Malphrus, Miller)

### **Derivative**

[David Anderson Payne](#), A035 187 615 (BIA Oct. 22, 2018) (reopens and terminates proceedings sua sponte upon finding that the respondent derived citizenship under former INA 321(a) under intervening Second Circuit rulings involving meaning of custody) (*Kendall Clark*, Gundelsberger, Grant)

[Ali Mohamed Abdalla](#), A071 711 443 (BIA June 27, 2018) (upholds finding that respondent derived citizenship where the IJ did not clearly err in finding that he was under 18 at the time his father naturalized) (*Mullane*, Malphrus, Liebowitz)

[Maribel Feliz-Valles](#), A090 351 513 (BIA May 17, 2018) (respondent acquired citizenship under INA 309(a) because her father acknowledged paternity in writing under oath before she reached 18 years of age by submitting an affidavit of support in which he listed her as his daughter) (Greer)

[Antonio Garcia Varela](#), A074 573 762 (BIA March 27, 2017) (remands for further fact-finding where respondent claimed to have derived U.S. citizenship under former INA 321(a)(3) through mother's naturalization) (Pauley)

[Zakaria Sheriff](#), A060 519 204 (BIA April 25, 2016) (grants motion to remand to consider derivative

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citizenship claim despite DHS assertion that evidence was likely fraudulent) (O’Leary)

[Jessy Nkechi Ogbunefi Kelly](#), A099 256 275 (BIA June 15, 2015) (remands for further consideration of derivative citizenship claim because respondent was not officially legitimated under law of Haiti) (Adkins-Blanch)

[Daniel Joseph Scarry](#), A012 129 154 (BIA Feb. 18, 2015) (remands record sua sponte for consideration of whether the respondent derived citizenship from parents who served in the U.S. Air Force) (Pauley)

[Patrick Cadet](#), A041 584 694 (BIA Jan. 23, 2015) (upholds denial of respondent’s derivative citizenship claim under former INA 321(a) because respondent was born out of wedlock and his biological father officially registered his birth under Haitian law) (Adkins-Blanch)

[Rios Francisco M. Jacobo](#), A099 101 953 (BIA Oct. 21, 2014) (remands for further consideration of citizenship claim because IJ applied former INA 321(a) rather than current INA 320(a), which applies to children who were 18 years old and under on the effective date of the Child Citizenship Act of 2000) (*Manuel*, Guendelsberger, Hoffman)

[Robinson W. Bordamonte](#), A035 979 158 (BIA Oct. 8, 2014) (under former INA 321(a)(3), respondent not required to submit court-issued documentation establishing parents legal separation at time of one parent’s naturalization) (*Greer*, Pauley, Wendtland)

[Ivan Francisco Moreno-Virrey](#), A042 847 549 (BIA Jan. 23, 2014) (IJ required to make independent determination of derivative citizenship claim if USCIS denies Application for Certificate of Citizenship (Form N-600)) (Guendelsberger)

[Juan Carlos Gomez](#), A041 591 459 (BIA Aug. 30, 2013) (IJ denied derivative citizenship claim without evaluating the sufficiency of the evidence, including delayed birth certificate listing a U.S. citizen as respondent’s father) (Cole)

[Tristan Nathaniel Francis Gould](#), A027 911 731 (BIA Aug. 16, 2013) (respondent did not derive citizenship under former INA 321(a) because he was already 21 when his mother naturalized; Board cannot order equitable relief based on assertion that government improperly delayed adjudication of mother’s application) (Holmes)

[Rodrigue Laventure](#), A018 098 964 (BIA Aug. 2, 2013) (affirms without opinion IJ decision finding respondent failed to demonstrate derivation of citizenship prior to mother’s death) (Manuel)

[R-C-](#), XXXX XXX XXX (BIA Aug. 1, 2013) (“legal separation” in former INA 321(a)(3) includes informal separations not requiring formal action or intervention by state) (*Cole*, Pauley, Donovan (dissenting))—**KEY DECISION**

[Antonio Moscol-Bernard](#), A035 047 966 (BIA June 25, 2013) (respondent failed to satisfy burden of proof under former INA 321(a)(3) where he was legitimized by his father prior to his mother’s naturalization) (Pauley)

[Patrick Anthony Brown](#), A043 400 049 (BIA Dec. 18, 2012) (derivative citizenship claim foreclosed by the Jamaican Status of Children Act of 1976; states that respondent may seek a Certificate of Citizenship (Form N-600) with USCIS or passport from State Department) (Holmes)

[Heyman Martinez](#), A073 661 308 (BIA July 27, 2012) (reopens proceedings sua sponte to consider respondent’s claim that he derived U.S. citizenship from his mother under former INA 321(a)(3))

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(Miller) (Note: The Board had previously upheld an order of removal against the respondent in 2004)

[David M. Zavala](#), A020 683 429 (BIA Apr. 30, 2012) (remands record where IJ failed to meaningfully address the respondent's claim that he derived U.S. citizenship from his parents or grandparents) (Adkins-Blanch)

[Odane Carlton Dixon](#), A045 881 695 (BIA Mar. 20, 2012) (denies derivative citizenship claim where pro se respondent failed to submit sufficient evidence of formal adoption by U.S. citizen grandmother) (Kendall-Clark)

[Muamar Sayyed Asad](#), A042 164 835 (BIA Feb. 8, 2012) (respondent did not provide sufficient evidence demonstrating that he derived citizenship from his father following parents' divorce under former INA 321(a)) (Creppy)

[Jennsey Josue Zarzuela](#), A044 821 167 (BIA Dec. 8, 2011) (remands record in light of evidence submitted on appeal indicating that respondent derived U.S. citizenship when he was adopted by his biological grandfather) (Adkins-Blanch) (Note: the Board had previously [remanded](#) a summary order of removal after finding the IJ improperly deemed the respondent to have waived his right to appeal)

[Carlos Arturo Sequeira](#), A043 136 860 (BIA Aug. 3, 2011) (denies derivative citizenship claim under former INA 321(a) because respondent did not show he was in mother's legal custody at time of separation) (Malphrus) (Note: The Board subsequently [terminated](#) proceedings against the respondent after evidence demonstrating his U.S. citizenship was submitted)

[Cheddi Desmond Jr Dillon](#), A040 097 680 (BIA May 10, 2011) (remands record where IJ improperly issued summary removal order against respondent with derivative citizenship claim and erroneously indicated that respondent waived appeal) (Pauley) (Note: the Board later [ruled](#) that the respondent did not derive citizenship under former INA 321(a) because his parents were never legally married)

[Asbert Fitzgerald Joseph](#), A036 805 976 (BIA Sep. 27, 2011) (dismisses claim to derivative citizenship under former INA 321(a) where respondent's parents' divorce was vacated by New York state court at time of mother's naturalization) (Miller)

[Ryan Damion Coulbourne](#), A041 457 839 (BIA Jan. 18, 2011) (dismisses derivative citizenship under former INA 321(a) where respondent's father's naturalization application was not approved until after the respondent's 18th birthday) (*Pauley*, Greer, Cole)

## Convention Against Torture (CAT)

[B-N-](#), AXXX XXX 675 (BIA Oct. 7, 2020) (upholds grant of CAT to citizen of Democratic Republic of Congo based on Banyamulenge ethnicity where respondent submitted statement from similarly situated individual who was tortured after being deported to the DRC) (Morris)

[M-C-V-](#), AXXX XXX 468 (BIA Sept. 25, 2020) (grants motion to reopen to pursue CAT claim where respondent feared torture in Liberia based on his sexual orientation but was previously afraid to pursue the claim while in state custody) (Monsky)

[J-A-R-S-](#), AXXX XXX 927 (BIA Sept. 22, 2020) (upholds grant of CAT to respondent fearing he would be tortured or killed by MS-13 in El Salvador) (*Wilson*, Goodwin, Pepper)

[D-V-L-](#), AXXX XXX 486 (BIA Sept. 22, 2020) (reverses denial of protection under CAT where IJ mistakenly required respondent to demonstrate nexus to protected ground and overlooked that

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respondent's relatives were all murdered, attacked, or threatened whenever they sought assistance from the police) (*O'Connor*, Donovan, Pepper)

[V-M-B-G-](#), AXXX XXX 925 (BIA Sept. 11, 2020) (single sentence in IJ decision stating that respondent did not establish eligibility for CAT not sufficient to enable meaningful appellate review) (*O'Connor*, Wilson, Donovan)

[H-D-L-](#), AXXX XXX 563 (BIA Sept. 3, 2020) (grants protection under the CAT to respondent from Vietnam who participated in anti-government resistance activities before fleeing in the late 1970s and became an active supporter of the Government for Free Vietnam in the late 1990s) (*Wilson*, Goodwin, Donovan)

[J-M-R-](#), AXXX XXX 865 (BIA Aug. 20, 2020) (upholds grant of CAT to respondent from Mexico in light of IJ's finding that he would be tortured in Mexico's mental health system) (*Liebowitz*)

[R-A-F-](#), AXXX XXX 809 (BIA Aug. 3, 2020) (on remand from *Matter of R-A-F-*, 27 I&N Dec. 778 (A.G. 2020), remands to IJ to make findings of fact regarding whether personnel at Mexico's mental health facilities specifically intend to inflict torture on their patients) (*Greer*, O'Connor, Swanwick)

[Y-A-M-](#), AXXX XXX 095 (BIA June 25, 2020) (remands for further consideration of CAT claim because IJ failed to make factual findings as to how public officials would likely act if they became aware respondent was targeted for torture) (*Donovan*, Wilson, Goodwin)

[I-R-O-](#), AXXX XXX 539 (BIA June 12, 2020) (upholds grant of protection under CAT to respondent who was brutally beaten by police in Tijuana at the behest of a drug cartel) (*Pepper*)

[E-A-H-H-](#), AXXX XXX 797 (BIA June 4, 2020) (remands for further consideration of claim that MS-13 operates as a "state actor" in El Salvador) (*Pepper*)

[J-M-M-L-](#), AXXX XXX 832 (BIA June 4, 2020) (upholds grant of protection under CAT to respondent from Mexico who feared torture because of his mental health conditions) (*Creppy*, Liebowitz, Morris)

[N-J-G-L-](#), AXXX XXX 959 (BIA May 27, 2020) (affirms grant of CAT claim to respondent from Guatemala who was threatened at gunpoint at behest of politically involved persons with friends in ranks of law enforcement to whom he owed money) (*Grant*)

[O-R-](#), AXXX XXX 629 (BIA May 14, 2020) (upholds grant of deferral of removal to Dominican Republic of former member of drug trafficking organization who acted as an informant in a U.S. criminal investigation) (*Liebowitz*)

[C-R-R-S-](#), AXXX XXX 717 (BIA April 22, 2020) (vacates denial of CAT where IJ failed to make findings regarding likelihood of torture in Venezuela solely because Hugo Chavez was no longer in power) (*Wilson*, Donovan, Goodwin)

[H-J-](#), AXXX XXX 892 (BIA April 1, 2020) (upholds grant of CAT to respondent from Somalia) (*Gemoets*)

[J-R-T-M-](#), AXXX XXX 786 (BIA March 13, 2020) (reverses denial of CAT to respondent from Honduras who was threatened with death by police officer and whose brother and cousin were believed to have been murdered by police) (*Liebowitz*, Gemoets, Morris)

[F-A-G-](#), AXXX XXX 054 (BIA March 12, 2020) (orders further consideration of CAT claim because IJ did not consider any factors other than possibility of internal relocation) (*Noferi*, Creppy, Hunsucker)



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[T-K-G-](#), AXXX XXX 108 (BIA March 5, 2020) (upholds grant of CAT to respondent from South Sudan who was a member of the Nuer tribe) (Noferi)

[M-E-C-J-](#), AXXX XXX 965 (BIA Feb. 28, 2020) (reverses denial of CAT to respondent from Honduras given police's refusal to take report after she witnessed a murder and country report stating that gangs act with impunity) (*Wendtland*, O'Connor, Swanwick)

[A-S-D-](#), AXXX XXX 901 (BIA Feb. 21, 2020) (upholds grant of CAT to respondent subject to Red Notice in Russia where the "use of torture is widespread and systemic throughout the Russian criminal justice system") (Creppy)

[H-V-C-A-](#), AXXX XXX 351 (BIA Feb. 6, 2020) (upholds grant of CAT to former MS-13 member from El Salvador who testified against one of its members) (*Noferi*, *Wendtland*, Greer)

[G-L-P-](#), AXXX XXX 275 (BIA Jan. 22, 2020) (IJ failed to aggregate risk of torture from multiple sources) (*Kelly*, Liebmann, Mullane)

[K-T-A-](#), AXXX XXX 350 (BIA Jan. 17, 2020) (upholds grant of deferral of removal under CAT to transgender woman from Mexico) (Noferi)

[F-J-](#), AXXX XXX 616 (BIA Jan. 13, 2020) (remands for further consideration of CAT claim in light of intervening decision in *Rodriguez-Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019), holding that the risk of torture from all sources must be combined to assess whether the probability of torture exceeds 50 percent) (*Malphrus*, Hunsucker, Creppy)

[F-R-A-](#), AXXX XXX 750 (BIA Dec. 27, 2019) (upholds grants of deferral of removal to respondent from Dominican Republic who served as informant to numerous criminal investigations in the United States) (Creppy)

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[G-O-U-V-](#), AXXX XXX 408 (BIA Nov. 21, 2019) (upholds grant of deferral of removal to Mexico to respondent who witnessed members of a cartel disposing of two corpses) (*Wendtland*)

[J-R-D-H-](#), AXXX XXX 098 (BIA Oct. 3, 2019) (attack that included cutting respondent's throat and leaving him for dead constituted past torture) (*Kendall Clark*, Guendelsberger, Grant)

[M-O-A-G-](#), AXXX XXXX 037 (BIA Sept. 12, 2019) (remands for further consideration of CAT claim because IJ considered whether Honduran officials were willfully blind to crime rather than torture) (Guendelsberger)

[I-S-G-](#), AXXX XXX 994 (BIA July 25, 2019) (reopens proceedings in light of *Alvarez Lagos v. Barr*, 927 F.3d 236 (4th Cir. 2019), because IJ did not evaluate all evidence relevant to possibility of future torture) (*Wendtland*)

[L-R-](#), AXXX XXX 069 (BIA June 14, 2019) (IJ erred in failing to consider CAT claim where respondent failed to check box on Form I-589 but stated on the record that he wished to seek such protection) (*Wendtland*)

[P-S-C-](#), AXXX XXX 778 (BIA March 13, 2019) (IJ failed to consider prior incidents of torture before denying CAT claim) (*Malphrus*, Creppy, Mullane)



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[A-R-R-D-](#), AXXX XXX 354 (BIA Jan. 23, 2019) (IJ erred in finding that torture would not be inflicted by persons acting under “color of law” where respondent feared being kidnapped by rogue police officers) (*Malphrus*, Liebowitz, Mullane (dissenting))

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[A-H-A-B-](#), AXXX XXX 502 (BIA Aug. 31, 2018) (upholds grant of CAT to respondent given likelihood that he would be identified in Iraq as the spouse of a former interpreter for the U.S. Department of Defense) (*Malphrus*, Creppy, Hunsucker)

[A-A-H-](#), AXXX XXX 492 (BIA July 18, 2018) (reopens proceedings upon finding respondent demonstrated materially changed circumstances in Iraq for members of the Kurdish minority with respect to his CAT claim) (*Adkins-Blanch*, Kelly, Snow)

[T-A-H-](#), AXXX XXX 491 (BIA July 11, 2018) (reopens proceedings for respondent to pursue CAT claim in light of evidence suggesting that people of Kurdish ethnicity may now be targeted in Iraq by paramilitary groups operating under the nominal or actual control of the Iraqi government) (*Adkins-Blanch*, Kelly, Snow)

[F-F-G-](#), AXXX XXX 910 (BIA June 25, 2018) (upholds grant of withholding of removal under CAT where prior instance of torture over two-week period caused permanent and continuing harm) (Pauley)

[O-A-J-](#), AXXX XXX 109 (BIA May 18, 2018) (upholds grant of deferral of removal to respondent who was tortured in prison in Brazil) (*Geller*, Liebowitz, *Malphrus*)

[H-J-K-](#), AXXX XXX 108 (BIA May 11, 2018) (reopens proceedings to allow Chaldean Christian from Iraq to pursue CAT claim based on fear of being targeted by paramilitary groups operating under the nominal or actual control of the Iraqi government) (*Mann*, *Adkins-Blanch*, Snow)

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[Jose Luis Gonzales](#), A029 158 835 (BIA Nov. 26, 2013) (upholds grant of NACARA relief; finds respondent did not provide “material support” to terrorists when armed militants forcibly robbed his store) (Pauley)

[Luis A. Reyes](#), A094 391 611 (BIA Dec. 8, 2011) (upholds denial of special rule cancellation under NACARA because respondent was deportable under INA 237(a)(2)(A)(i) by virtue of a conviction for CIMT) (Pauley) (Note: this decision was [overturned](#) by the Second Circuit because respondent was only subject to the grounds of inadmissibility under INA 212, not the grounds of deportability under INA 237.)

[Jose Santos Luna-Canales](#), A094 142 206 (BIA Apr. 28, 2011) (respondent not subject to NACARA “persecutor bar” because he avoided combat while serving as a member of the DM-3 unit in the Salvadoran Army and because of his youth and lack of sophistication at the time) (Pauley)

[Isaias Rodriguez-Ovalle](#), A070 090 008 (BIA Apr. 2, 2010) (remands record where IJ failed to advise respondent of apparent eligibility for NACARA relief as required by 8 CFR 1240.11(a)(2)) (Pauley)

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[Li Fang Yang](#), A073 671 907 (BIA Feb. 12, 2019) (reopens and terminates proceedings sua sponte following grant of U2 nonimmigrant status) (Kendall Clark)

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[Arturo Alan Moreno-Zaldivar](#), A208 506 163 (BIA May 15, 2018) (reopens proceedings for respondent to apply for waiver of inadmissibility in connection with pending U visa application in light of intervening decision in *Baez-Sanchez v. Sessions*, 872 F.3d 854 (7th Cir. 2017)) (Grant)

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[Hardip Singh](#), A088 173 258 (BIA Jan. 18, 2018) (reopens and terminates proceedings sua sponte over DHS' opposition following the approval of petition for U nonimmigrant status) (*Guendelsberger*)

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[Jose Luis Gutierrez-Rodriguez](#), A090 835 106 (BIA Sept. 26, 2016) (remands to consider whether to continue or administratively close proceedings pending adjudication of U visa application notwithstanding separate finding that respondent was inadmissible under INA 212(a)(2)(C) based on potential involvement in trafficking of controlled substances) (Pauley)

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[Duane Grant](#), A099 743 627 (BIA Sept. 9, 2016) (reverses denial of request for continuance or administrative closure where IJ failed to consider likelihood that U visa would be approved) (Pauley)

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[Michael Mutukwa](#), A099 395 254 (BIA Oct. 25, 2013) (remands to provide additional opportunity for pro se respondent to seek continuance and U nonimmigrant status) (Adkins-Blanch)

[Roberto Ceja-Ruiz](#), A200 558 702 (BIA Sept. 26, 2013) (remands for further consideration of request for continuance pending USCIS determination of petition for U nonimmigrant status in light of evidence indicating respondent's sister received certification from law enforcement agency and mother may claim his as derivative) (Grant)

[Domingo Pacheco Garcia](#), A205 062 933 (BIA Aug. 29, 2013) (grants motion for continuance pending pursuit of application for U nonimmigrant status, construes DHS non-opposition as motion to administratively close proceedings) (Holmes)

[Ramiro Carbajal-Esparza](#), A087 269 262 (BIA Jan. 24, 2013) (grants DHS motion to terminate proceedings where petition for U nonimmigrant status approved while appeal was pending) (Manuel)

[Fowobi George](#), A071 996 819 (BIA Sept. 14, 2012) (remands for re-evaluation of respondent's request for a continuance to seek U nonimmigrant status in light of intervening decision in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012)) (Greer)

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Z-R-, AXXX XXX 655 (BIA March 19, 2020) (provision preventing natural parents of noncitizens with SIJ status from being accorded any “right, privilege, or status” does not preclude IJs from considering hardship to parents in granting cancellation of removal) (Gemoets)

L-F-C-L-, AXXX XXX 892 (BIA March 11, 2020) (remands to consider whether to grant continuance to respondent with SIJ status whose priority date was seven months from date in current visa bulletin) (*O'Connor*, Donovan, Noferi)

A-A-E-M-, AXXX XXX 358 (BIA Dec. 13, 2019) (reopens and terminates proceedings sua sponte in light of grant of adjustment of status based on previously approved application for SIJ status) (Goodwin)

Eduardo Urias-Velasquez, A206 734 672 (BIA Oct. 11, 2019) (reverses decision rescinding adjustment of status because IJ should not have second guessed whether state court had jurisdiction to issue dependency order) (*Cole*, Greer, O'Connor (dissenting))

I-U-S-P-, AXXX XXX 425 (BIA July 19, 2019) (reverses denial of continuance to 3-year-old respondent wishing to pursue SIJ status in light of pending petition in family court and IJ's improper focus on fraud committed by adults to bring respondent to United States) (*Cole*, Greer, Donovan)

E-A-A-V-, AXXX XXX 271 (BIA April 16, 2019) (reopens proceedings sua sponte in light of respondent's eligibility to self-adjust based on having SIJ status) (*Cole*)

L-P-G-, AXXX XXX 818 (BIA Feb. 21, 2019) (remands for consideration of respondent's adjustment application in light of evidence that USCIS approved his petition for SIJ status while the case was pending on appeal) (*Adkins-Blanch*, Liebowitz, Kelly)

C-A-R-A-, AXXX XXX 928 (BIA Feb. 8, 2019) (reopens proceedings sua sponte in light of granting of SIJ status by USCIS) (Guendelsberger)

E-A-G-, AXXX XXX 014 (BIA Dec. 13, 2018) (remands for further consideration of request for continuance in light of evidence submitted on appeal demonstrating that child custody complaints had been failed with the appropriate state court) (*Cole*)

M-C-R-A-, AXXX XXX 536 (BIA Nov. 23, 2018) (IJ erred in denying continuance to beneficiary of approved SIJ petition with a June 2016 priority date in the EB-4 category) (*Greer*, Cole, Wendtland)

L-A-M-T-, AXXX XXX 861 (BIA Aug. 13, 2018) (rescinds in absentia order where the minor respondent was erroneously advised by ICE that venue had been changed to the Newark, submitted a Form EOIR-33 to ICE, reported to ICE on several occasions, and was the beneficiary of an approved petition for SIJ status) (*Kelly*, Adkins-Blanch, Snow)

J-C-R-M-, AXXX XXX 178 (BIA July 16, 2018) (grants motion to reinstate and terminate proceedings for respondent to apply for adjustment of status before USCIS based on an approved petition for SIJ status) (Adkins-Blanch)

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[C-E-M-M-](#), AXXX XXX 189 (BIA March 15, 2017) (IJ should have granted additional continuance to pursue SIJ status where state court proceedings were about to move forward following service of petition on respondent's father in Honduras) (*Greer*, Kendall Clark, Neal)

[J-A-A-G-](#), AXXX XXX 844 (BIA March 8, 2017) (administrative closure rather than termination warranted following filing of petition for SIJ status and adjustment application with USCIS) (*Greer*, Neal, Clark)

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[E-F-H-](#), AXXX XXX 818 (BIA Dec. 22, 2016) (administrative closure warranted in light of prima facie eligibility for SIJ status) (*O'Herron*, Greer, Kendall-Clark)

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[S-L-A-C-](#), AXXX XXX 633 (BIA Aug. 25, 2016) (reverses denial of joint motion to reopen filed by beneficiary of approved Form I-360 who was eligible to adjust status with USCIS) (*O'Leary*, Adkins-Blanch, Mann)

[J-R-S-](#), AXXX XXX 803 (BIA June 27, 2016) (rescinds in absentia order and terminates proceedings for beneficiary of approved Special Immigrant Juvenile visa) (*Greer*, Kendall-Clark, *O'Herron*)

[M-J-A-B-](#), AXXX XXX 307 (BIA June 27, 2016) (reopens proceedings pending adjudication of Form I-360 for respondent abandoned by biological father prior to his death) (*Greer*, Kendall-Clark, *O'Herron*)—**KEY DECISION**

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[Alfredo Pimentel-Aragon](#), A201 142 906 (BIA March 17, 2015) (lowers voluntary departure bond from \$20,000 to \$1,000) (*Grant*, Adkins-Blanch, Guendelsberger)

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[Victor Hugo Ruiz Reyes](#), A207 198 666 (BIA Aug. 15, 2017) (reverses discretionary denial where respondent had resided in the U.S. since the age of 4, had previously been granted DACA, and only conviction was for possession of less than one ounce of cocaine) (*Adkins-Blanch*, Mann, Grant)

[Cuahutemoc Mora-Coronoa](#), A205 403 701 (BIA March 23, 2016) (reverses discretionary denial in light of respondent's lengthy residence, significant family ties, and history of employment in the United States, and notwithstanding prior DUI conviction and continued use of alcohol) (*O'Leary*, Grant, Guendelsberger)

[Angel Rafael Chan Tapia](#), A205 466 970 (BIA June 16, 2015) (orders further consideration of

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[Perla Adiatna Benitez Marban](#), A205 210 387 (BIA Jan. 20, 2015) (reverses IJ decision denying pre-conclusion voluntary departure, finding respondent's long residence and family ties outweighed pending criminal charges) (*Guendelsberger*, Adkins-Blanch, Grant)

[Marcelino Segundo-Sanchez](#), A200 248 313 (BIA Dec. 29, 2014) (reverses discretionary denial where respondent's arrest in 2011 for driving under the influence with young children present in his vehicle was outweighed by his gainful employment, long period of residence, and acting as father-figure to young children) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Homero Berber Castro](#), A200 140 768 (BIA Nov. 10, 2014) (vacates denial and orders further consideration of voluntary departure where despite numerous criminal convictions respondent was married to U.S. citizen, had seven U.S. citizen children, and wished to obtain an immigrant visa through consular processing) (Guendelsberger)

[Carlos Pereira Figueiredo](#), A200 550 034 (BIA July 23, 2014) (finds criminal conviction for evading arrest, arrest for driving without a license, and failure to pay taxes, outweighed by 14-year presence in the United States, 21-year-old U.S. citizen stepson, and activeness in his religious community) (*Manuel*, Adkins-Blanch, Hoffman)

[Johana Altagracia Peguero](#), A079 128 590 (BIA June 10, 2014) (finds respondent merits voluntary departure where positive equities, including two U.S. citizen children, one of whom suffered from asthma, outweighed prior immigration violations, including illegally re-entering the country) (*Hoffman*, Manuel, Adkins-Blanch)

[Martin Gerardo Velasco-Garcia](#), A089 850 114 (BIA Nov. 14, 2013) (remands record because IJ did not consider length of residence in country, marriage to U.S. citizen, or child who was five months old at time of the hearing) (Grant)

[Cresencio Araujo-Navarro](#), A200 662 702 (BIA Oct. 18, 2013) (remands record where respondent was beneficiary of approved visa petition and had not re-entered illegally in past five years) (Guendelsberger)

[Jose de Jesus Alcantar-Miramontes](#), A077 361 213 (BIA Oct. 17, 2013) (remands record where IJ failed to explicitly balance positive and negative equities) (Grant)

[Marcelo Castorena-Alonso](#), A205 866 201 (BIA Sept. 17, 2013) (remands record where IJ denied voluntary departure solely on basis of marijuana conviction and did not consider any of respondent's favorable equities) (Manuel)

[Gerardo Antonio Gutierrez-Cabrera](#), A205 760 561 (BIA June 25, 2013) (respondent's lengthy period of residence and strong family ties outweighed convictions for driving under the influence and possession of a controlled substance) (*Hoffman*, Manuel, Adkins-Blanch)

[Eduardo Lagunez-Bravo](#), A205 013 184 (BIA Apr. 30, 2012) (IJs may consider ability to pay travel expenses in determining whether to grant pre-conclusion voluntary departure as matter of discretion) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Bacilio Hernandez-Garcia](#), A098 237 003 (BIA Apr. 11, 2012) (attempt to procure U.S. passport by falsely claiming to be U.S. citizen outweighed by marriage to U.S. citizen with whom respondent had a four-year-old U.S. citizen child) (*Cole*, Wendtland, Pauley (dissenting))

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[Omar Cruz](#), A089 965 334 (BIA Feb. 11, 2011) (remands record where IJ failed to consider respondent's positive equities, including role as caretaker for wife and four children) (C. King)

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[Darwin Leonardo Cabrera-Guertasaca](#), A205 134 459 (BIA Jul. 9, 2012) (grants additional 45 days to depart country because respondent was never asked to waive appeal rights) (Hoffman)

### **Failure to Depart**

[Hiram Abecardo Gonzalez Sarat](#), A205 164 431 (BIA Jan. 30, 2017) (respondent not subject to bar for failure to depart because Board previously vacated order after finding prior attorney provided ineffective assistance of counsel) (*Mann*, Adkins-Blanch, Mann)

[E-R-](#), AXXX XXX 571 (BIA Dec. 21, 2016) (respondent not subject to ten-year bar because she was nine years old at time of voluntary departure order and neither understood consequences of failing to depart nor was able to depart on her own) (Kendall-Clark)—**KEY DECISION**

[Valerie Lee Maedgen](#), A093 407 562 (BIA May 30, 2014) (respondent did not “voluntarily” overstay period of voluntary departure where she remained in country in reliance on promise made by IJ to reopen proceedings if I-130 was granted during voluntary departure period) (*Pauley*, Wendtland, Greer)

[Osman Orozco Garcia](#), A043 745 973 (BIA Aug. 9, 2013) (upholds denial of motion to reopen where respondent failed to comply with order of voluntary departure, rendering him ineligible to adjust status for ten years under INA 240B(d)(1)(B)) (*Pauley*)

### **IJ Failure to Consider**

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[Jorge Ernesto Pastor-Iturralde](#), A094 910 236 (BIA Nov. 30, 2012) (remands to permit respondents to apply for voluntary departure where attorney stated incorrectly that they were not eligible for any relief and IJ did not independently assess their eligibility as required under 8 CFR 1240.11) (Hoffman)

[Nilesh Hasmukhbhai Ahir](#), A096 348 639 (BIA Nov. 16, 2012) (remands case where IJ failed to consider respondents' eligibility for post-conclusion voluntary departure) (Guendelsberger)

[Jose Gabriel Amaya](#), A094 853 698 (BIA July 23, 2013) (remands for further consideration of eligibility for voluntary departure where IJ stated there “may be” regulatory impediment to granting such relief but did not elaborate) (Grant)

### **Intention/Means to Depart**

[Cesar Herrera-Munoz](#), A097 708 351 (BIA June 24, 2015) (applicants for pre-conclusion voluntary departure not required to establish that they have means to depart the country) (Guendelsberger)

[Crisoforo Ramos-Najera](#), A200 945 567 (BIA June 27, 2014) (IJ should have afforded respondent additional time to present passport) (*Grant*, Manuel, Hoffman)

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[Hugo Lorenzo-Cabrera](#), A200 610 998 (BIA June 13, 2014) (failure to have passport in physical possession at time of hearing not valid basis to deny voluntary departure) (Grant)

[Abner Salazar-Herrera](#), A200 191 590 (BIA Oct. 21, 2013) (IJ failed to inquire into respondent's ability to obtain passport and did not address possibility of a continuance) (Kendall-Clark)

[Miguel Angel Aguirre-Barron](#), A201 217 294 (BIA Nov. 29, 2012) (remands record after respondent provided copies of Mexican identification on appeal and stated he had received his passport from Mexico) (Adkins-Blanch)

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[Maria Ludivia Sanchez-Medina](#), A087 944 781 (BIA June 27, 2014) (declines to consider decision certified by IJ William Van Wyke holding that IJs may grant voluntary departure *nunc pro tunc* to respondents who left the country on their own in lieu of issuing an in absentia order of removal) (Pauley)

### **Physical Presence Requirement**

[Bessy Jackeline Zuniga Rios](#), A206 370 601 (BIA Aug. 20, 2020) (service of hearing notice did not stop period of physical presence for purposes of voluntary departure under *Banuelos-Galviz v. Barr*, 953 F.3d 1176 (10th Cir. 2020)) (*Goodwin*, Wilson, Greer)

[J-R-H-V-](#), AXXX XXX 440 (BIA Nov. 5, 2019) (remands for consideration of request for post-conclusion voluntary departure in light of intervening decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), concerning stop-time rule) (Couch)

[M-M-B-M-](#), AXXX XXX 873 (BIA June 27, 2019) (remands for respondent to apply for voluntary departure because NTA did not cut off period of physical presence under *Pereira v. Sessions*, 138 S. Ct. 2105 (2018)) (Donovan)

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[Juvenal Lozano-Fernandez](#), A204 744 031 (BIA Aug. 23, 2018) (remands record because IJ did not explain difference between pre- and post-conclusion voluntary departure and granted pre-conclusion voluntary departure without asking the respondent whether he wished to waive appeal) (Grant)

[Edwin Nunez-Bencosme](#), A206 223 455 (BIA Oct. 4, 2016) (pre-conclusion voluntary departure does not require waiver of right to appeal separate bond determination) (*Grant*, Mann, O'Connor)

[Luis Alberto Perez](#), A095 790 490 (BIA Feb. 27, 2014) (remands record because IJ failed to ascertain whether respondent waived appeal before granting a 120-day period of voluntary departure under INA 240B(a)) (Adkins-Blanch)



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[Roberto Zitlatl-Perez](#), A200 143 102 (BIA Nov. 27, 2015) (orders granting of pre-conclusion voluntary departure where IJ erred in finding respondent revoked waiver of the right to appeal) (*O'Leary*, Grant, Guendelsberger)

[Mario A. Perez Perez](#), A206 550 580 (BIA Aug. 31, 2015) (respondent should be provided renewed opportunity to waive right to appeal on remand if he wished to request pre-conclusion voluntary departure) (O'Leary)

[Jose Lopez Martinez](#), A205 717 934 (BIA May 4, 2015) (IJ erroneously said respondent would have to waive appeal to receive post-conclusion voluntary departure) (*Grant*, Adkins-Blanch, Guendelsberger)

[Juan Martinez-Hernandez](#), A200 778 895 (BIA Jan. 12, 2015) (IJ erroneously denied respondent's request for post-conclusion voluntary departure because he declined to waive his appeal rights) (*Malphrus*, Creppy, Mullane)

[Marcelino Gutierrez-Zavala](#), A206 077 351 (BIA Sept. 19, 2014) (IJ erroneously believed she was precluded from granting post-conclusion voluntary departure because respondent wished to preserve right to appeal) (Guendelsberger)

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[Carmen Dinora Vega-Palomino](#), A200 557 725 (BIA June 25, 2015) (grants withdrawal of voluntary departure where request was filed within voluntary departure period) (*Grant*, Adkins-Blanch, Guendelsberger)

[Raul Bosveli Garcia Perez](#), A076 894 739 (BIA Jan. 18, 2013) (denies request to withdraw acceptance of pre-conclusion voluntary departure because respondent's presence at final hearing was waived and respondent's counsel indicated he would provide required advisals) (*Manuel*, Adkins-Blanch, Hoffman)

### **With Safeguards**

[Renato Andre Romero Ruiz](#), A204 442 747 (BIA Feb. 4, 2016) (grants request for voluntary departure with safeguards where DHS did not oppose before immigration judge or express opposition to request on appeal) (*Grant*, O'Leary, Guendelsberger)

## Waivers of Removability

### INA 211(b)

[Nicholas Jermaine Gumbs](#), A040 159 442 (BIA Jan. 13, 2015) (respondent abandoned request for INA 211(b) waiver because attorney filed the Form I-193 by fax with the immigration court) (Grant)

[Oliver Garcia Guzman](#), A043 144 667 (BIA Aug. 20, 2013) (respondent does not qualify for Section 211(b) waiver where he was continuously outside United States for nearly four years, continued to work in the Dominican Republic for two years after obtaining business degree, and has three children living in the Dominican Republic) (Pauley)

[Mohammad Hashemian Tabriz](#), A046 960 320 (BIA Mar. 17, 2011) (remands to allow respondent to apply for 211(b) waiver before IJ in first instance) (*Grant*, Malphrus, Miller)

### INA 212(c)

[R-M-](#), AXXX XXX 091 (BIA Sept. 4, 2020) (IJ should not have denied application under former INA 212(c) as a matter of discretion without conducting an evidentiary hearing) (*Couch*, Kelly, Pepper)

[Nathaniel Clarke](#), A041 999 888 (BIA Aug. 7, 2020) (former INA 212(c) can waive charge of deportability involving multiple CIMTs even if relief is granted with respect to only one of the convictions) (*Greer*, Goodwin, O'Connor)

[J-L-G-](#), AXXX XXX 932 (BIA May 18, 2020) (upholds discretionary grant of waiver under section 212(c) of the Act despite commission of particularly execrable crime) (Swanwick)

[S-S-A-](#), AXXX XXX 708 (BIA March 19, 2020) (illegal reentry conviction did not preclude respondent from seeking INA 212(c) waiver even if it qualified as an aggravated felony; respondent remained in LPR despite being deported in 1997 because proceedings were reopened in 2012) (*Greer*, Swanwick, Donovan)

[A-M-](#), AXXX XXX 468 (BIA March 18, 2020) (respondent established seven years' lawful domicile where he lived in United States for 8-9 months each year and had filed tax returns for many years; reverses discretionary denial of INA 212(c) where sole adverse factor was 1990 conviction for attempted voluntary manslaughter) (*Wilson*, Swanwick, Gorman)

[Juan Manuel Rolo-Fernandez](#), A023 165 533 (BIA Dec. 20, 2019) (reopens proceedings for respondent to apply for waiver under former INA 212(c) in light of *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014)) (Kendall Clark)

[Victor Jacobo Seni](#), A012 355 252 (BIA July 12, 2019) (reopens proceedings sua sponte for respondent to apply for waiver under former INA 212(c) in light of intervening decision in *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014), and respondent's advance age and medical problems) (*Malphrus*, Creppy, Mullane)

[A-T-L-](#), AXXX XXX 793 (BIA May 2, 2019) (finds respondent eligible for waiver under former INA 212(c) because plea was agreed to prior to effective date of AEDPA even though plea was entered after effective date of AEDPA) (*Greer*, Wendtland, Donovan)

[Freed Mejia De Los Santos](#), A043 147 206 (BIA April 18, 2019) (respondent eligible to apply for waiver under former INA 212(c) because he pleaded guilty in 1995 and conviction did not result in him serving a term of imprisonment of 5 years or more) (Kelly)

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[C-A-W.](#), AXXX XXX 539 (BIA Feb. 1, 2019) (respondent eligible for a waiver under INA 212(c) even if convicted of an aggravated felony because he was not charged and found deportable for having been convicted of an aggravated felony) (Grant)

[Angel Rafael Morel-Uceta](#), A034 538 185 (BIA Dec. 14, 2018) (holds that respondent is not inadmissible based on a conviction for which he was previously granted a waiver under former INA 212(c)) (*Morris*, Liebowitz, Mullane)

[A-A-B.](#), AXXX XXX 180 (BIA Aug. 23, 2018) (reverses discretionary denial of waiver under former INA 212(c) upon finding his 1994 conviction for indecency with a child was outweighed by his residence in the United States of 48 years, his marriage to a U.S. citizen for 16 years, employment history, payment of taxes, and subsequent lack of criminal record) (*Kendall Clark*, Grant, Guendelsberger)

[J-R-T.](#), AXXX XXX 885 (BIA Aug. 18, 2017) (reverses discretionary denial where lengthy criminal history was outweighed by U.S. residence since 1984, LPR status for more than 26 years, and diagnosis with diabetes) (*Kelly*, Adkins-Blanch, Mann)

[V-R-F.](#), AXXX XXX 988 (BIA July 25, 2017) (respondent merited favorable exercise of discretion despite lengthy criminal record in light of marriage to LPR since 1987, possession of LPR status since 1989, and absence of criminal convictions after 1997) (*Pauley*, Adkins-Blanch, Mann)

[M-M-S.](#), AXXX XXX 057 (BIA Feb. 9, 2017) (INA 212(c) waiver for pre-1996 conviction prevents use of offense in same proceeding for charge based on conviction for multiple CIMTs) (*Liebowitz*, Guendelsberger, Malphrus (dissenting))

[J-G.](#), AXXX XXX 110 (BIA Apr. 9, 2014) (per *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014), 212(c) waivers may waive convictions obtained following a jury trial notwithstanding prior contrary decision in *Kellermann v. Holder*, 592 F.3d 700 (6th Cir. 2010)) (*Wendtland*, Pauley, Greer)

[Roger Anthony Simmonds](#), A034 062 738 (BIA Mar. 24, 2014) (reopens proceedings sua sponte in light of decisions making respondent eligible for 212(c) waiver, including *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014)) (Kendall-Clark)

[Hector Diaz-Mendoza](#), A044 371 296 (BIA May 23, 2011) (remands record where IJ failed to adequately address numerous important factors and did not consider motion for leave to file evidence after the filing deadline) (*Pauley*, Cole, Wendtland)

[Aniello Moschillo](#), A011 521 320 (BIA June 17, 2011) (respondent eligible to apply for 212(c) waiver where conviction was secured through a plea agreement entered prior to April 24, 1996) (Pauley)

[Yan Zhen Hu](#), A042 729 871 (BIA Apr. 7, 2011) (remands for consideration of eligibility for 212(c) waiver despite prior abandonment of application where DHS did not object to prior remand order to consider such relief) (*Malphrus*, Creppy, Liebowitz)

[Gumaro Huerta-Cruz](#), A092 735 405 (BIA Jan. 25, 2011) (reverses finding of ineligibility for 212(c) waiver where respondent was charged under ground of deportability rather than ground of inadmissibility; follows *Matter of Moreno-Escobosa*, 25 I&N Dec. 114 (BIA 2009)) (Miller)

**INA 212(d)(3)**

[S-S-K.](#), AXXX XXX 872 (BIA July 22, 2020) (reverses denial of nonimmigrant visa waiver upon

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finding respondent's drug trafficking convictions from 2001 and 2005 were outweighed by passage of time, remorse for his actions, and stable employment for more than a decade) (*Kelly*, Adkins-Blanch, Couch (dissenting))

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**Aggravated Felony/Seven-Year Residence Bars**

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[A-H-A](#), AXXX XXX 626 (BIA Aug. 14, 2019) (adjustment from refugee to LPR status under INA 209 does not qualify as an "admission" for purposes of the aggravated felony bar notwithstanding contrary decision in *Spacek v. Holder*, 688 F.3d 536 (8th Cir. 2012)) (Cole)

[M-Y](#), AXXX XXX 668 (BIA May 9, 2019) (respondent was not "admitted" as LPR by adjusting status following grant of parole, or by returning from travel abroad after committing a CIMT because DHS did not regard him as an applicant for admission at the time) (*Greer*, O'Connor, Wendtland)

[Zhong Qin Yang](#), A093 408 583 (BIA April 10, 2019) (reopens proceedings sua sponte in light of intervening decision in *Matter of J-H-J*, 26 I&N Dec. 563 (BIA 2015), rendering respondent eligible for waiver under INA 212(h) despite aggravated felony conviction) (Grant)

[C-L-L-M](#), AXXX XXX 095 (BIA Feb. 8, 2019) (reopens proceedings sua sponte to let respondent who illegally reentered United States apply for adjustment of status with a waiver under INA 212(h) in light of intervening decision in *Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014)) (*Grant*, Guendelsberger, Kendall Clark)

[Gennadiy Zheleznyak](#), A071 100 953 (BIA Oct. 29, 2018) (aggravated felony bar in INA 212(h) does not apply to applicants who were admitted as refugees before adjusting to LPR status) (*Kendall Clark*, Guendelsberger, Grant)

[Denise Alves-Casanova](#), A022 508 525 (BIA June 26, 2018) (grants joint motion to reopen in light of intervening decision in *Matter of J-H-J*, 26 I&N Dec. 563 (BIA 2015) that renders respondent eligible to apply for a waiver under INA 212(h)) (Mann)

[Corey Quan](#), A071 438 430 (BIA Feb. 27, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status with a waiver under INA 212(h) in light of *Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014)) (*Greer*, Wendtland, Cole)

[S-N](#), AXXX XXX 992 (BIA Jan. 8, 2018) (adjustment from refugee to LPR status under INA 209 does not qualify as an "admission" for purposes of the aggravated felony bar notwithstanding contrary decision in *Spacek v. Holder*, 688 F.3d 536 (8th Cir. 2012)) (Pauley)

[Michael Ade Ajiboye](#), A023 708 185 (BIA Jan. 8, 2018) (reopens proceedings sua sponte to allow respondent to apply for adjustment of status in light of intervening decisions rendering him eligible to apply for a waiver inadmissibility under INA 212(h)) (Kendall Clark)

[Ruben Masson-Orta](#), A025 408 267 (BIA Nov. 9, 2017) (reopens proceedings sua sponte in light of the intervening decision in *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1361 (11th Cir. 2011), rendering him eligible to seek waiver under INA 212(h)) (Grant)

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[Gennadiy Zheleznyak](#), A071 100 953 (BIA Nov. 1, 2017) (reopens proceedings sua sponte to consider respondent's eligibility for a waiver under INA 212(h) in light of intervening case law holding that the aggravated felony bar does not apply to applicants who adjusted to LPR status after entering the United States) (Kendall Clark)

[Mohammad Jashim Reza](#), A0093 304 084 (BIA July 18, 2016) (reentry following travel abroad does not qualify as "admission" as LPR for purposes of aggravated felony bar) (*Mullane*, Malphrus, Creppy)

[B-V-N-](#), AXXX XXX 618 (BIA July 5, 2017) (adjustment from refugee to LPR status under INA 209 does not qualify as an "admission" for purposes of the aggravated felony bar) (*Pauley*, Greer, Wendtland)

[T-V-R-](#), AXXX XXX 286 (BIA May 26, 2017) (reentry by LPR after commission but not conviction of CIMT not an "admission" for purposes of aggravated felony bar) (*Wendtland*, Cole, Pauley (dissenting))

[Dorina I. Peduri](#), A071 302 021 (BIA May 19, 2017) (adjustment from refugee to LPR status under INA 209 does not qualify as an "admission" for purposes of the aggravated felony bar) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

[Patricia Lino](#), A077 152 460 (BIA Feb. 25, 2014) (remands record sua sponte in light of intervening decision in *Negrete-Ramirez v. Holder*, No. 10-71322 (9th Cir. 2014) (holding that 212(h) aggravated felony bar does not apply to applicants who adjusted to LPR status post-entry)) (*Pauley*, Cole, Greer)

[Ricardo Mata-Rosas](#), A076 404 712 (BIA Apr. 20, 2011) (under *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), lawful permanent residents who were admitted on a conditional basis are not subject to the aggravated felony bar in INA 212(h)) (Adkins-Blanch)—**KEY DECISION**

### **"Lawfully Resides Continuously"**

[Roberson Joseph](#), A078 360 606 (BIA Nov. 18, 2013) (time spent pursuant to a grant of parole under INA 212(d)(5)(A) counts as time respondent "lawfully resided continuously" in United States) (*Wendtland*, Pauley, Greer)

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[K-R-D-](#), AXXX XXX 981 (BIA Sept. 26, 2019) (upholds discretionary grant of waiver under INA 212(h) despite conviction for possession of marijuana and arrest for DUI) (Grant)

[N-J-M-](#), AXXX XXX 225 (BIA Jan. 3, 2019) (reverses discretionary denial of waiver upon finding mail fraud conviction for which respondent was sentenced to 71 months imprisonment and ordered to pay \$1.3 million in restitution was outweighed by three decades of residency, U.S. citizen wife and three U.S. citizen children, and level of rehabilitation) (*Kendall Clark*, Adkins Blanch, Kelly)

### **Extreme Hardship**

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[Alejandro Hernandez-Garcia](#), A091 097 894 (BIA Mar. 10, 2011) (reopens proceedings and remands records in light of new evidence indicating respondent's daughter has learning disability) (Miller)

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**Heightened Discretionary Standard For Violent or Dangerous Crimes**

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**Simple Possession of 30 Grams or Less of Marijuana**

[Jose Adan Zavala](#), A095 049 781 (BIA April 1, 2019) (vacates finding that respondent was ineligible for INA 212(h) waiver for failing to demonstrate that amount of marijuana was less than 30 grams because IJ failed to consider respondent's testimony that bag contained only marijuana residue) (Liebmann)

[Moses Mendy](#), A096 598 212 (BIA Nov. 21, 2014) (remands for consideration of eligibility for waiver under INA 212(h) for conviction for drug paraphernalia related to possession of only 1.5 grams of marijuana) (Manuel)

[Nyaken Ansumana Gamanga](#), A077 615 717 (BIA Apr. 29, 2014) (reopens proceedings and remands record in light of evidence submitted on appeal indicating that respondent's drug conviction involved less than 30 grams of marijuana, making him eligible for 212(h) waiver) (Miller)

[Daniel Sierra](#), A074 026 895 (BIA June 1, 2011) (reopens proceedings for consideration of 212(h) waiver after vacatur of one of respondent's two marijuana convictions) (*Cole*, Filppu, Pauley)

**INA 212(i)**

[Philip Kenneth Shirley](#), A087 066 710 (BIA Jan. 21, 2011) (upholds extreme hardship finding in light of U.S. citizen wife's employment, family ties, and potential adverse health consequences) (Pauley)

**INA 212(k)**

[Jin Hee Shin](#), A047 415 708 (BIA Feb. 4, 2014) ("admission" for purposes of 212(k) is date of original entry on immigrant visa, not date of re-entry as returning LPR; failure to disclose that green card may have been fraudulently obtained not adverse discretionary factor) (*Wendtland*, Greer, Pauley)—**KEY DECISION**

[Lee Soon Park](#), A072 972 500 (BIA Mar. 31, 2011) (persons who entered on invalid visas unknowingly procured through a conspiracy involving former INS officer eligible for waiver under INA 212(k), per *Kyong Ho Shin v. Holder*, 607 F.3d 1213 (9th Cir. 2010)) (Miller)

**INA 216(c)(4)(A)**

[F-H-A-](#), AXXX XXX 029 (BIA Jan. 17, 2020) (IJ should have allowed USCIS to initially adjudicate waiver under INA 216(c)(4)(A) based on extreme hardship because USCIS' initial decision only denied waiver under INA 216(c)(4)(B) based on lack of good faith marriage) (*O'Connor*, Wendtland, Noferi)

[Anita Janeth Cubero](#), A074 771 617 (BIA Feb. 4, 2015) (remands for further consideration of hardship waiver where prior attorney erroneously told respondent that divorce certificate did not



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exist) (Grant)

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[Anne Laetitia Karen Kouandi](#), A086 907 679 (BIA Feb. 28, 2019) (reverses finding that respondent did not marry former husband in good faith because she testified that she married for love and IJ did not render adverse credibility finding) (*Baird*, Liebowitz, Mullane)

[Vera Valeryevna Putro](#), A099 280 517 (BIA March 21, 2017) (remands record where petition to remove conditions on permanent residency due to death of spouse was misconstrued as discretionary waiver based on bona fides of the marriage) (Malphrus)

[Tafari St. Aubyn Lewis](#), A210 109 301 (BIA Jan. 5, 2016) (IJ violated 8 CFR 1240.11(b) by failing to advise respondent of right to file a renewed Form I-751) (Grant)

[Mi Hwang Huh](#), A045 809 070 (BIA Jan. 9, 2013) (denies respondent's request for remand where no evidence was submitted demonstrating that marriage was entered in good faith or that respondent merited favorable exercise of discretion) (Guendelsberger)

[Shadi Jamal Almikdad](#), A047 852 543 (BIA Apr. 4, 2011) (remands record where IJ failed to consider testimony of respondent's ex-wife) (Pauley)

**INA 237(a)(1)(H)**

[Joan Arturo Castillo](#), A099 240 709 (BIA Jan. 15, 2020) (notes that there is no specific form or filing fee to apply for a waiver under INA 237(a)(1)(H)) (*Cassidy*, Liebowitz, Hunsucker)

[J-E-C-A-](#), AXXX XXX 073 (BIA Dec. 30, 2019) (INA 237(a)(1)(H) can be used to waive deportability under INA 237(a)(1)(D) if charge is related to alleged marriage fraud) (Guendelsberger)

[Hyung Ho Park](#), A098 702 258 (BIA Dec. 6, 2019) (remands for respondent found deportable under INA 237(a)(1)(B) to apply for waiver under INA 237(a)(1)(H)) (*Liebowitz*, Creppy, Malphrus)

[O-G-L-](#), AXXX XXX 919 (BIA May 3, 2019) (reverses discretionary denial of INA 237(a)(1)(H) waiver where positive equities outweighed IJ's disbelief of respondent's testimony that he believed he was permitted to get married after his immigrant visa was issued but before he was admitted to the United States) (*Greer*, Donovan, Rosen)

[German Perez Sanchez](#), A086 934 625 (BIA April 5, 2019) (IJ erroneously required respondent to file Form I-601 to pursue waiver under INA 237(a)(1)(H)) (*Grant*, Guendelsberger, Clark)

[G-J-B-](#), AXXX XXX 285 (BIA Feb. 1, 2019) (IJ erroneously found respondent ineligible for waiver under INA 237(a)(1)(H) based on post-adjustment fraud for which he was not deportable under INA 237(a)(1)(A)) (*Wendtland*, Greer, Donovan)

[D-N-K-](#), AXXX XXX 250 (BIA Sept. 7, 2018) (respondent was not required to seek waiver under INA 212(i) to overcome purportedly false testimony provided in support of application for waiver under INA 237(a)(1)(H)) (*Mullane*, Creppy, Geller)

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[Tam Thu Thi Nguyen](#), A055 472 145 (BIA June 29, 2018) (holds INA 237(a)(1)(H) can waive removability under INA 237(a)(1)(D) for termination of conditional resident status where termination relates to marriage fraud) (Pauley, O'Connor, Wendtland)

[Flor de Maria Sangama](#), A055 592 110 (BIA May 31, 2018) (holds that whether respondent abandoned permanent residency after admission not relevant to whether she qualifies for waiver under INA 237(a)(1)(H)) (*O'Connor*, Wendtland, Pauley (dissenting))

[J-B-](#), AXXX XXX 033 (BIA Oct. 19, 2017) (respondent who committed fraud in connection with initial admission as nonimmigrant and subsequent adjustment to LPR status eligible to apply for waiver) (*Liebowitz*, Malphrus, Cole (concurring))

[L-V-B-](#), AXXX XXX 430 (BIA July 26, 2017) (reverses discretionary denial of waiver upon finding respondent's failure to disclose marriage on adjustment and naturalization applications was outweighed by his ties to U.S., long service as state corrections officer, and civic involvement) (*Pauley*, Wendtland, O'Connor)

[Rogelio Picazo Romero](#), A074 083 669 (BIA Feb. 18, 2016) (remands to consider application in light of holding in *Matter of Agour*, 26 I&N Dec. 556 (BIA 2015), that adjustment of status constitutes an "admission") (*Pauley*, Wendtland, Cole)

[Kolapo Lateef Soretire](#), A098 255 214 (BIA Nov. 20, 2014) (respondent not prohibited from seeking a waiver under INA 237(a)(1)(H) for having submitted fraudulent divorce document in connection with adjustment application) (*Guendelsberger*, Adkins-Blanch, Manuel)

[B-S-](#), AXXX XXX 454 (BIA Mar. 27, 2014) (upholds grant of waiver where DHS failed to preserve argument that respondent was statutorily barred based on possible involvement in Srebrenica Massacre; finds respondent merits favorable exercise of discretion) (*Pauley*, Wendtland, Donovan)

[Brenda Dumlao Pumaras](#), A044 943 630 (BIA Mar. 10, 2014) (grants motion to remand to apply for waiver despite withdrawal of request before IJ) (Hoffman)

[Ali Fares](#), A047 654 200 (BIA Apr. 30, 2013) (waiver under INA 237(a)(1)(H) cannot be used to overcome failure to comply with two-year home residency requirement for noncitizens admitted on J visas) (Creppy)

[Sunipha Damouni](#), A029 235 328 (BIA Jan. 10, 2013) (waiver under INA 237(a)(1)(H) available for fraud committed in connection with an application for adjustment of status, citing prior decisions holding that an adjustment of status constitutes an "admission") (*Cole*, Greer, Pauley (dissenting))—**KEY DECISION**

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[Blanca Estela Martinez Cruz](#), A206 912 104 (BIA Nov. 19, 2015) (DHS withdraws appeal of IJ decision allowing respondent to withdraw application for admission in the interest of justice) (Cole)

### III. PROSECUTORIAL DISCRETION AND ADMINISTRATIVE REMEDIES

#### Administrative Closure

##### Authority to Administratively Close Proceedings

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[Mauricio Hernandez Santiago](#), A206 706 192 (BIA April 22, 2016) (administratively closes proceedings pending determination of whether respondent merits favorable exercise of prosecutorial discretion, noting that joint motion had been filed while case was before IJ) (O’Leary)

[J. Santos Serrano-Chavez](#), A200 564 867 (BIA Jan. 8, 2016) (grants joint motion to reopen and administratively close proceedings) (Holiona)

[Jose Laurentino Vasquez-Chavez](#), A088 8778 376 (BIA Nov. 20, 2015) (administratively closes proceedings pending appeal of decision denying motion to reopen in absentia order) (O’Leary)—**KEY DECISION**

[Aracely Del Carmen Mendoza-Robles](#), A095 724 672 (BIA Oct. 26, 2015) (reopens and administratively closes proceedings pending determination of whether respondent merits favorable exercise of prosecutorial discretion) (Miller)

[Sumiko Furui](#), A095 723 429 (BIA June 24, 2015) (administratively closes proceedings sua sponte pending DHS determination of whether respondent merits a favorable exercise of prosecutorial discretion) (Guendelsberger)—**KEY DECISION**

[Benito Peredo-Ramirez](#), A076 507 852 (BIA June 22, 2015) (administratively closes proceedings sua sponte pending DHS determination of whether respondent merits a favorable exercise of prosecutorial discretion) (Holmes)—**KEY DECISION**

[J-A-L-G-](#), AXXX XXX 971 (BIA June 11, 2015) (administratively closes proceedings sua sponte pending DHS determination of whether respondent merits a favorable exercise of prosecutorial discretion) (Miller)—**KEY DECISION**

[E-A-P-](#), AXXX XXX 852 (BIA Apr. 17, 2015) (administratively closes proceedings sua sponte pending DHS determination whether respondent merits favorable exercise of prosecutorial discretion) (Holmes)—**KEY DECISION**

[Flora Obushere Amwayi](#), A205 133 952 (BIA Oct. 28, 2014) (grants joint motion for administrative closure based on favorable exercise of prosecutorial discretion for respondent who was ineligible to adjust status because she falsely claimed to be a U.S. citizen on numerous Form I-9s) (Manuel)

[Joan Mwaniki](#), A200 224 423 (BIA May 29, 2014) (grants joint appeal of IJ decision to terminate proceedings without prejudice rather than grant joint request for administrative closure) (*Holmes*, Miller, Kendall-Clark)

[Abel Garcia-Jimenez](#), A205 489 791 (BIA Feb. 28, 2014) (administratively closes proceedings after DHS agrees to favorably exercise prosecutorial discretion on appeal against respondent who entered

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without inspection in 2003 but was not otherwise eligible for relief) (Guendelsberger)

[Magdalena Pietryszcz](#), A098 236 466 (BIA Oct. 31, 2013) (grants joint motion to administratively close proceedings in the exercise of prosecutorial discretion following remand from First Circuit, which retained jurisdiction over respondent's petition) (Kendall-Clark)

[Jose Juan Garcia-Aguirre](#), A094 985 673 (BIA Oct. 25, 2013) (grants joint motion to reopen and administratively close proceedings as exercise of prosecutorial discretion for respondent who entered country in 2004 and is father of 8-year-old U.S. citizen child and a 20-year-old DACA grantee) (Holmes)

[Kaydian Arielle Rose](#), A300 321 202 (BIA Sept. 30, 2013) (grants DHS motion to reopen and administratively close proceedings against respondent subject to final order of removal) (Grant)

[Guadalupe Rondin-Nieves](#), A087 756 633 (BIA Aug. 30, 2013) (grants DHS motion for administrative closure in exercise of prosecutorial discretion for respondent with LPR mother and four U.S. citizen children) (Grant)

[Bernabe Roman Castillo](#), A205 587 621 (BIA June 19, 2013) (grants joint motion for administrative closure based on exercise of prosecutorial discretion despite respondent having previously been convicted of CIMT) (Holmes)

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[Jessica Lisseth Lara-Merino](#), A097 318 914 (BIA July 12, 2016) (rescinds in absentia order, reopens proceedings, and grants request for administrative closure following approval of DACA application) (*Grant*, Adkins-Blanch, O'Leary)—**KEY DECISION**

[Wendy Mosqueda](#), A096 814 323 (BIA Nov. 19, 2015) (administratively closes proceedings in light of approval of DACA application) (O'Leary)

[Nicolas Flores-Aragon](#), A205 789 923 (BIA May 26, 2015) (administratively closes proceedings in light of approval of respondent's DACA application) (Grant)

[Noe Asael Serna-Lara](#), A201 070 135 (BIA Apr. 2, 2015) (grants joint motion to reopen and administratively closes proceedings in light of grant of DACA application) (Holmes)

[Axel Omar Angel-Zapet](#), A205 570 975 (BIA Jan. 12, 2015) (administratively closes proceedings in light of approval of respondent's DACA application) (Guendelsberger)

[Uffot Emem Williams](#), A079 011 172 (BIA Dec. 31, 2014) (reopens and administratively closes proceedings following grant of DACA application; says "[a]dministratively closing proceedings while the respondent holds an immigration status which permits him to lawfully be present in this country and obtain employment is an efficient use of this Board's resources") (Hoffman)—**KEY DECISION**

[Francisco Javier Soto-Cruz](#), A205 760 690 (BIA Dec. 30, 2014) (reopens and administratively closes proceedings sua sponte following the grant of DACA application) (Holmes)—**KEY DECISION**

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[Maurilio Perez-Cante](#), A087 459 483 (BIA Aug. 11, 2014) (administratively closes proceedings following grant of DACA application) (Grant)

[Juan Manuel Martinez-Montoya](#), A201 234 395 (BIA June 16, 2014) (administratively closes proceedings in light of potential eligibility for DACA or provisional waiver) (Guendelsberger)

[Daniela Gonzalez](#), A096 813 955 (BIA Feb. 21, 2014) (administratively closes proceedings after respondent granted DACA relief) (*Manuel*, Hoffman, Guendelsberger)

[Rony Abidail Pimentel Giron](#), A205 120 942 (BIA Feb. 5, 2014) (vacates prior decision sua sponte and administratively closes proceedings after respondent granted DACA relief)

[Ivan Meza-Jurado](#), A200 821 185 (BIA Nov. 21, 2013) (administratively closes proceedings after respondent granted DACA relief) (Hoffman)

[Noe Jesus Ascencio-Hernandez](#), A200 819 649 (BIA Aug. 6, 2013) (grant of DACA relief to respondent's son not valid basis for administrative closure; request for prosecutorial discretion should be sought from DHS) (Grant)

[Ernesto Gonzalez-Valencia](#), A088 063 861 (BIA May 14, 2013) (grant of DACA relief does not warrant administrative closure) (Holmes)

[Nilesh Hasmukhbhai Ahir](#), A096 348 639 (BIA Nov. 16, 2012) (eligibility for DACA a factor to consider in request for administrative closure under *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012)) (Guendelsberger)

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[Gilberto Aguilera](#), A093 006 263 (BIA Aug. 14, 2013) (declines to consider interlocutory DHS appeal challenging administrative closure for detained respondent awaiting adjudication of Form I-130) (Holmes)—**KEY DECISION**

[Safraz Khan](#), A043 452 893 (BIA Aug. 14, 2013) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings against detained respondent to await adjudication of U visa application filed with USCIS) (Holmes)

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priority date) (Kelly)

[Roxana Guadalupe Galindez Villalba Garriga](#), A099 163 817 (BIA July 18, 2017) (administratively closes proceedings pending adjudication of application under Cuban Refugee Adjustment Act) (*Pauley*, Greer, O'Connor)

[Herick Joel Vallecillo-Castillo](#), A200 557 547 (BIA Jan. 19, 2017) (denies DHS motion to reconsider decision administratively closing proceedings pending adjudication of application for derivative asylum status; rejects DHS argument that proceedings cannot be administratively closed during appeal of denial of motion to reopen) (Guendelsberger)—**KEY DECISION**

[Dario Galvan Gutierrez](#), A098 035 686 (BIA Feb. 25, 2016) (reopens and administratively closes proceedings in light of USCIS failure to forward record in separate appeal challenging denial of visa petition) (Holmes)

[Daniel Lopez Ramirez](#), A089 082 649 (BIA Jan. 12, 2016) (administratively closes proceedings against detained respondent pending adjudication of Form I-360) (O'Leary)

[Y-A-L-L-](#), AXXX XXX 594 (BIA Oct. 29, 2015) (reopens and administratively closes proceedings in light of pending application for derivative U nonimmigrant status) (*Greer*, Holmes, O'Herron)

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[M-E-P-C-](#), AXXX XXX 389 (BIA Sept. 2, 2015) (administratively closes proceedings pending adjudication of prima facie approvable petition for SIJ status (Form I-360)) (Grant)

[Francis Ndegwa Nyaga](#), A205 286 616 (BIA Aug. 27, 2015) (administratively closes proceedings pending resolution of pending separate appeal of denial of visa petition where USCIS had yet to forward the record to the Board) (*Guendelsberger*)

[Socorro Menendez](#), A078 111 837 (BIA July 8, 2015) (administratively closes proceedings pending adjudication of adjustment application by USCIS) (Grant)

[Jane Oroni Moore](#), A099 816 638 (BIA Feb. 3, 2015) (administratively closes proceedings in light of USCIS delay in forwarding record of visa petition proceedings in separate appeal of denial of Form I-360) (Grant)

[Jihyun Kim](#), A089 245 712 (BIA Dec. 15, 2014) (administratively closes proceedings in light of two-year delay by USCIS in forwarding record of visa petition proceedings in separate appeal of denial of Form I-130) (Hoffman)—**KEY DECISION**

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[Jilmar Espinoza Rivera](#), A097 149 155 (BIA July 14, 2014) (remands for consideration of administrative closure in light of respondent's status as the beneficiary of an approved Form I-140 and fact that U.S. citizen daughter would soon turn 21 and be able to file a Form I-130 on his behalf) (Holmes)

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[Jose Antonio Soto Moran](#), A078 744 043 (BIA Nov. 14, 2013) (reverses denial of administrative closure and remands for consideration of adjustment application where priority date for employment-based visa became current while appeal was pending) (Grant)

[Domingo Pacheco Garcia](#), A205 062 933 (BIA Aug. 29, 2013) (construes DHS non-opposition to motion for continuance as motion to administratively close proceedings) (Holmes)

[Omar Ciro Cruz-Rodriguez](#), A200 885 026 (BIA July 12, 2013) (grants joint motion for administrative closure to allow respondent to pursue a provisional unlawful presence waiver (Form I-601A)) (Holmes)

[Edgar Camacho-Infanzan](#), A089 956 952 (BIA Aug. 6, 2013) (remands to consider request for administrative closure while respondent pursued provisional unlawful presence waiver (Form I-601A) based on newly approved visa petition) (Hoffman)

[Joao Silva Laudelino](#), A088 268 610 (BIA Dec. 14, 2012) (denies a DHS motion to reinstate proceedings that had been administratively closed where the respondent submitted *prima facie* evidence that labor certification was approvable when filed, grandfathering him under Section 245(i)) (Miller)

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[Vamsidhar Vurimindi](#), A096 689 764 (BIA Oct. 10, 2017) (reopens and administratively closes proceedings pending outcome of direct appeal of criminal conviction) (Guendelsberger)

[Tony Alphonsus A. Clarke](#), A086 931 015 (BIA July 13, 2016) (denies cross-appeals filed by both parties and upholds order administratively closing proceedings pending resolution of direct appeal) (*O'Leary*, *Adkins-Blanch*, *Guendelsberger*)

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[Blanca Adelita Ventura Santizo](#), A208 178 426 (BIA June 9, 2020) (remands for consideration of request for administrative closure in light of intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019), to seek provisional unlawful presence waiver) (Donovan)

[Blanca Esmerelda Cortez-Hernandez](#), A206 806 626 (BIA Jan. 20, 2016) (administratively closes proceedings to let respondent pursue asylum before USCIS) (Holmes)

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[Ismael Gomez Fuentes](#), A209 883 476 (BIA Aug. 26, 2020) (remands to consider request for administrative closure under intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019)) (Kelly)

[Julio Cesar Valdez-Ramirez](#), A206 491 343 (BIA Aug. 13, 2020) (upholds denial of continuance but remands for consideration of administrative closure pending appeal of denial of visa petition filed by respondent's wife) (Riley)

[Douglas Ordonez](#), A095 096 110 (BIA Aug. 11, 2020) (remands to consider request for administrative closure under intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019)) (Grant)

[A-D-A-R-](#), AXXX XXX 705 (BIA July 6, 2020) (remands to consider request for administrative closure in light of approval of respondent's Form I-360 while case was on appeal) (*Hunsucker*, Creppy, Morris)

[K-A-O-F-](#), AXXX XXX 490 (BIA June 2, 2020) (remands for consideration of request for administrative closure in light of intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019), for respondents with SIJ status) (Cassidy)

[Maria Elena Montano Gonzalez](#), A072 172 022 (BIA Oct. 18, 2019) (deadlines for filing motions to reopen do not apply to motions to reinstate an appeal that was administratively closed) (Grant)

[Francisco Garcia-Hernandez](#), A205 152 120 (BIA Dec. 17, 2015) (states that Board possesses "independent authority" to administratively close proceedings) (Cole)

[Frandy Frederic](#), A205 503 631 (BIA Sept. 10, 2014) (administratively closes proceedings in light of potential eligibility for TPS following redesignation of Haiti) (Grant)

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[V-B-C-](#), AXXX XXX 289 (BIA Sept. 10, 2018) (dismissal of pending criminal charge and reinstatement of DACA qualifies as material change in circumstances for purposes of obtaining new bond hearing) (*Snow*, Geller, Kelly)

[Melissa Rincon Hernandez](#), A079 492 482 (BIA June 7, 2018) (reopens proceedings sua sponte to let respondent apply for adjustment of status in light of her lengthy residence in the United States and prior grant of DACA) (Guendelsberger)

[Francisco Villagrana-Robles](#), A094 984 254 (BIA March 27, 2017) (reopens proceeding sua sponte to pursue adjustment of status where respondent was granted relief under DACA and was beneficiary of approved visa petition filed by U.S. citizen spouse) (Guendelsberger)

[Yessica Mayeli Colotl-Coyotl](#), A200 599 796 (BIA Oct. 6, 2016) (reopens proceedings sua sponte to allow DACA beneficiary to travel abroad pursuant to grant of advance parole) (*Cole*, Wendtland, Pauley (dissenting))—**KEY DECISION**

[Kewin Arcenio Martinez-Cruz](#), A077 794 158 (BIA July 15, 2016) (reopens and administratively closes proceedings following the grant of DACA application) (*Grant*, O'Leary, Mann (dissenting))

[Jessica Liseth Lara-Merino](#), A097 318 914 (BIA July 12, 2016) (rescinds in absentia order, reopens proceedings, and grants request for administrative closure following approval of DACA application) (*Grant*, Adkins-Blanch, O'Leary)—**KEY DECISION**

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[Axel Omar Angel-Zapet](#), A205 570 975 (BIA Jan. 12, 2015) (administratively closes proceedings in light of approval of respondent's DACA application) (Guendelsberger)

[Uffot Emem Williams](#), A079 011 172 (BIA Dec. 31, 2014) (reopens and administratively closes proceedings following grant of DACA application; says “[a]dministratively closing proceedings while the respondent holds an immigration status which permits him to lawfully be present in this country and obtain employment is an efficient use of this Board’s resources”) (Hoffman)—**KEY DECISION**

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[Francisco Javier Soto-Cruz](#), A205 760 690 (BIA Dec. 30, 2014) (reopens and administratively closes proceedings sua sponte following grant of DACA application) (Holmes)—**KEY DECISION**

[Juan Luis Avalos-Avalos](#), A205 834 943 (BIA Dec. 31, 2013) (remands for entry of more complete decision on motion to reopen to apply for provisional waiver or DACA) (*Hoffman*, Guendelsberger, Adkins-Blanch)

[Ivan Meza-Jurado](#), A200 821 185 (BIA Nov. 21, 2013) (administratively closes proceedings after respondent granted DACA relief) (Hoffman)

[Noe Jesus Ascencio-Hernandez](#), A200 819 649 (BIA Aug. 6, 2013) (grant of DACA relief to respondent's son not valid basis for administrative closure; request for prosecutorial discretion should be sought from DHS) (Grant)

[Celeste Ramirez-Perez](#), A205 672 704 (BIA June 4, 2013) (pending application for DACA relief not good cause for a continuance) (Miller)

[Sheila Sofia Diaz-Aulis](#), A205 131 206 (BIA May 16, 2013) (upholds order of removal against respondent with pending DACA application; states that proceedings need not have been continued while application was pending) (Guendelsberger)

[Ernesto Gonzalez-Valencia](#), A088 063 861 (BIA May 14, 2013) (grant of DACA relief does not warrant administrative closure) (Holmes)

### **Provisional Unlawful Presence Waivers (Form I-601A)**

[Jesus Ramirez Flores](#), A202 091 231 (BIA June 11, 2020) (remands for consideration of request for administrative closure in light of intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019), to pursue provisional unlawful presence waiver) (Donovan)

[Blanca Adelita Ventura Santizo](#), A208 178 426 (BIA June 9, 2020) (remands for consideration of request for administrative closure in light of intervening decision in *Zuniga Romero v. Barr*, 937 F.3d 282 (4th Cir. 2019), to seek provisional unlawful presence waiver) (Donovan)

[Alejandro Benitez Marin](#), A205 495 241 (BIA Aug. 31, 2018) (upholds decision terminating proceedings for respondent to pursue provisional waiver where DHS did not object to termination and raised arguments on appeal that were not raised before the IJ) (Kelly)

[Carlos Hidalgo-Perez](#), A205 299 752 (BIA June 7, 2018) (dismisses DHS appeal and upholds termination of proceedings against respondent who was granted provisional waiver and obtained LPR status abroad while appeal was pending) (Guendelsberger)

[Ismael Perini-Pomarolli](#), A098 898 354 (BIA May 31, 2018) (reopens and terminates proceedings sua sponte over DHS opposition given that respondent was beneficiary of approved visa petition and provisional unlawful presence waiver) (Kendall Clark)

[Fernando Crespo-Quiroz](#), A200 581 901 (BIA March 19, 2018) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue provisional waiver) (Kendall Clark)

[Jonathan Jeison Espinoza-Reyes](#), A214 421 907 (BIA March 13, 2018) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue provisional waiver) (Kendall Clark)

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[Ruben Guzman-Arroyo](#), A205 297 496 (BIA March 5, 2018) (dismisses as moot DHS appeal challenging termination of proceedings for respondent to apply for provisional waiver where respondent was issued immigrant visa and admitted as LPR while the appeal was pending) (Guendelsberger)

[Hugo Hernandez Gomez](#), A205 118 518 (BIA Feb. 28, 2018) (declines to consider interlocutory DHS appeal challenging the denial of motion to recalendar proceedings that were administratively closed for respondent to apply for provisional waiver) (Kendall Clark)

[F-O-F-](#), AXXX XXX 151 (BIA Feb. 27, 2018) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue provisional waiver) (Kendall Clark)

[Felix Padilla-Aguilar](#), A206 156 821 (BIA Feb. 26, 2018) (declines to consider interlocutory DHS appeal challenging the denial of motion to recalendar proceedings that were administratively closed for respondent to apply for provisional waiver) (Kendall Clark)

[Jose Gomez Cruz](#), A205 631 760 (BIA Feb. 26, 2018) (declines to consider interlocutory DHS appeal challenging the denial of motion to recalendar proceedings that were administratively closed for respondent to apply for provisional waiver) (Kendall Clark)

[Marco Antonio Casas](#), A216 302 114 (BIA Feb. 23, 2018) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue a provisional waiver) (Kendall Clark)

[Lilian Del Carmen Galdamez](#), A088 966 361 (BIA Feb. 9, 2018) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue a provisional waiver) (Guendelsberger)

[Lazaro Ramos Aparicio](#), A206 717 626 (BIA Dec. 29, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings for respondent to pursue provisional waiver) (Grant)

[Felipe de Jesus Serna-Rojas](#), A205 634 861 (BIA Dec. 29, 2017) (orders further consideration of motion to reopen because IJ failed to consider whether respondent would be eligible for provisional waiver or would merit a continuance or administrative closure) (Wendtland)

[Mei Jiang](#), A089 173 687 (BIA Dec. 21, 2017) (grants interlocutory appeal and reverses denial of motion to terminate following grant of provisional waiver) (*Guendelsberger*, Kendall Clark, Liebowitz (dissenting))—**KEY DECISION**

[Wilmer Jaldon Orosco](#), A205 008 796 (BIA Dec. 7, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure to allow respondent to pursue provisional waiver) (Liebowitz)

[Felipe Turrubiates-Alegria](#), A206 491 082 (BIA Dec. 4, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure to allow respondent to pursue provisional waiver) (Kendall Clark)

[Jesus Humberto Zuniga Romero](#), A205 215 795 (BIA Dec. 1, 2017) (reverses denial of administrative closure to seek provisional waiver where DHS' opposition was only based on assertion that respondent was an "enforcement priority") (*Grant*, Mann, Adkins-Blanch)—**KEY DECISION**



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[Blanca Doris Barnes](#), A094 293 314 (BIA Dec. 1, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure to allow respondent to pursue provisional waiver) (Kendall Clark)

[Antonio Alvarez-Valencia](#), A094 380 709 (BIA Nov. 20, 2017) (grants motion to reinstate and terminate proceedings following approval of provisional waiver) (Kendall Clark)

[Jose De Jesus Hernandez-Cid](#), A200 277 242 (BIA Sept. 5, 2017) (dismisses interlocutory DHS appeal of denial of motion to recalendar proceedings previously administratively closed to let respondent pursue provisional unlawful presence waiver (Form I-601A)) (Kendall Clark)

[Nestor Vicente Loera Arellano](#), A208 023 034 (BIA July 26, 2017) (orders further consideration of motion to reopen of respondent seeking to apply for provisional waiver) (*Cole*, Greer, Wendtland)

[Felipe de Jesus Serna-Rojas](#), A205 634 861 (BIA May 26, 2017) (orders further consideration of motion to reopen to seek provisional waiver because IJ failed to consider factors relating to administrative closure) (*Greer*, O'Connor, Wendtland)

[Juan Ruiz-Medina](#), A200 954 354 (BIA April 18, 2017) (orders further consideration of request to administratively close proceedings to pursue provisional waiver because IJ did not address the factors specified in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012)) (*Guendelsberger*, Kendall Clark, Pauley)

[Merlin Lacayo-Ordonez](#), A098 490 213 (BIA April 17, 2017) (grants motion to reinstate and terminate proceedings following approval of a provisional waiver) (*Guendelsberger*)

[Natividad de Jesus Ramirez-Sibrian](#), A09 713 951 (BIA March 31, 2017) (grants joint motion to reopen and terminate proceedings to allow respondent to pursue provisional waiver) (*Guendelsberger*)

[Leonel Olmedo Avalos](#), A208 484 533 (BIA Jan. 31, 2017) (grants motion to reopen to pursue provisional waiver in light of approval of visa petition and acquittal on criminal charges pending at the time appeal was dismissed) (Kendall-Clark)

[Victoria Sapon-Ordonez](#), A072 681 560 (BIA Oct. 24, 2016) (grants joint motion to reopen and administratively close proceedings for respondent to pursue provisional waiver) (Kendall-Clark)

[Eromarcos Da Silva Ramos](#), A200 030 627 (BIA Aug. 3, 2016) (reopens and administratively closes proceedings sua sponte to let respondent seek provisional waiver) (Kendall-Clark)

[Erika Yesenia Acencio-Lopez](#), A200 065 661 (BIA April 19, 2016) (grants joint motion to reopen and terminate proceedings to pursue provisional unlawful presence waiver) (Kendall-Clark)—**KEY DECISION**

[Rosa Flor Bonilla-Santos](#), A094 923 164 (BIA March 23, 2016) (rescinds in absentia order in light of approval of visa petition enabling respondent to obtain immigrant visa with provisional unlawful presence waiver) (O'Leary)—**KEY DECISION**

[Juliano Cristiano Pizzetti](#), A096 176 126 (BIA March 22, 2016) (reopens and terminates proceedings sua sponte to let respondent pursue provisional waiver) (Holmes)—**KEY DECISION**

[Paula de Jesus Obando de Miranda](#), A095 724 673 (BIA March 9, 2016) (grants motion to recalendar



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and terminate proceedings to let respondent pursue immigrant visa abroad with provisional unlawful) (Holmes)

[Julio Lopez-De Dios](#), A206 011 402 (BIA March 1, 2016) (remands for consideration of request for a continuance for his wife to file visa petition based on potential eligibility for provisional waiver) (Pauley)

[Eder Vagner Ribeiro](#), A205 154 797 (BIA Jan. 15, 2016) (reopens proceedings following vacatur of criminal conviction and remands to allow respondent to seek provisional waiver) (Holmes)

[Andres Gonzalez-Murcia](#), A077 532 371 (BIA Dec. 31, 2015) (administratively closes proceedings to allow respondent to pursue a provisional waiver in light of OIL motion to remand while case was at Fifth Circuit) (*Adkins-Blanch*)

[Sergio Pedro Villafana](#), A087 749 264 (BIA Oct. 27, 2015) (remands to consider administrative closure for respondent to apply for provisional waiver) (Grant)

[Diana Garcia-Vargas](#), A200 668 352 (BIA Oct. 19, 2015) (remands record to determine likelihood that respondent would qualify for provisional waiver and whether proceedings should be administratively closed) (Grant)

[Jorge Perez](#), A205 406 702 (BIA Oct. 1, 2015) (remands for further consideration of administrative closure to pursue provisional waiver; sole basis for IJ denial was that administrative closure was not “judicially economical”) (Miller)

[Radamez Sanchez-Luciano](#), A098 373 359 (BIA Sept. 14, 2015) (remands to consider eligibility for provisional waiver in light of evidence submitted on appeal of approval of visa petition filed by U.S. citizen spouse) (Guendelsberger)

[Hector Manuel Sanchez-Garcia](#), A205 632 066 (BIA Aug. 26, 2015) (remands to consider eligibility for provisional waiver in of filing of visa petition by U.S. citizen spouse while case was on appeal) (Guendelsberger)

[Dermith Orlando Barrientos-Vivas](#), A205 164 292 (BIA June 25, 2015) (reopens proceedings and remands for consideration of administrative closure to let respondent apply for provisional waiver) (*Geller*, *Creppy*, *Mullane* (dissenting))—**KEY DECISION**

[Noe Govea-Recendiz](#), A206 841 626 (BIA June 24, 2015) (denies interlocutory DHS appeal challenging order administratively closing proceedings to let respondent apply for provisional waiver) (Holmes)

[Juan Salvador Martinez-Polanco](#), A205 159 407 (BIA March 23, 2015) (reopens proceedings sua sponte and terminates without prejudice to let respondent pursue provisional waiver) (Holmes)

[Antonio Figueroa](#), A094 495 476 (BIA Feb. 5, 2015) (administratively closes proceedings to let respondent pursue provisional waiver based on an approved Form I-130) (Guendelsberger)

[Maria Jose Ilheus](#), A200 564 852 (BIA Jan. 21, 2015) (administratively closes proceedings to let respondent pursue provisional waiver in light of bona fides of marriage to U.S. citizen) (*Adkins-Blanch*)

[Gisela Vargas Albarracin](#), A097 168 593 (BIA Dec. 30, 2014) (orders further consideration of whether respondent is likely to qualify for a provisional waiver and if so whether to administratively close

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proceedings; respondent's request denied by IJ because of recent DUI conviction) (Hoffman)

[Wellington Pereira-Mota](#), A200 133 947 (BIA Dec. 23, 2014) (grants joint motion to reopen and terminate proceedings to let respondent apply for provisional waiver) (Holmes)

[Jesus Felix Carrillo](#), A087 765 342 (BIA Nov. 24, 2014) (reopens and administratively closes proceedings to let respondent apply for provisional waiver; DHS did not oppose reopening for limited purpose of seeking waiver) (Holmes)

[Jose Luis Cruz-Ortiz](#), A205 308 999 (BIA Nov. 21, 2014) (remands for consideration of administratively closure to let the respondent apply for provisional waiver in light of approval of Form I-130 filed by U.S. citizen spouse) (Grant)

[Hector Arteaga Ochoa](#), A205 653 001 (BIA Nov. 20, 2014) (administratively closes proceedings to let respondent apply for provisional waiver because spouse recently naturalized and filed an immediate relative petition (Form I-130) on his behalf) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Hermelinda Alonzo de Carrasco](#), A203 114 022 (BIA June 26, 2014) (remands record to consider eligibility for provisional waiver in light of intervening promulgation of regulations) (*Guendelsberger*)

[Cosijoeza Andrade-Zamora](#), A200 580 631 (BIA June 25, 2014) (remands record in part to determine whether potential eligibility for provisional waiver warrants sua sponte reopening and administrative closure) (Grant)

[Yury Emmanuel Morales-Abrego](#), A099 534 776 (BIA June 24, 2014) (remands for further consideration of request for administrative closure to apply for a provisional waiver because IJ failed to consider all factors under *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012)) (Hoffman)

[Juan Manuel Martinez-Montoya](#), A201 234 395 (BIA June 16, 2014) (administratively closes proceedings in light of potential eligibility for DACA or provisional waiver) (*Guendelsberger*)

[Luisa Margarita Cruz-Molina](#), A077 048 260 (BIA June 11, 2014) (grants joint motion to reopen to allow respondent to apply for adjustment of status or a provisional waiver) (Holmes)

[Benjamin Ayemoba Ayebae](#), A073 602 922 (BIA May 1, 2014) (remands record for consideration of request for administrative closure to pursue a provisional waiver) (Wendtland)

[Sandra Elizabeth Paredes-Avila](#), A088 139 120 (BIA Mar. 24, 2014) (remands to determine whether respondent is likely to qualify for provisional waiver and if so whether administrative closure would be appropriate) (Grant)

[Enereo Mederos-Sanchez](#), A205 132 022 (BIA Feb. 3, 2014) (IJ erred in denying continuance to await promulgation of provisional waiver regulations) (Grant)—**KEY DECISION**

[Juan Luis Avalos-Avalos](#), A205 834 943 (BIA Dec. 31, 2013) (remands for entry of more complete decision on motion to reopen to apply for provisional waiver or DACA) (*Hoffman*, *Guendelsberger*, Adkins-Blanch)

[Martin Gerardo Velasco-Garcia](#), A089 850 114 (BIA Nov. 14, 2013) (remands to consider whether to administratively close proceedings against respondent to seek provisional waiver despite prior convictions for theft and driving under the influence) (Grant)—**KEY DECISION**

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[Constantino Santel-Montes](#), A094 090 659 (BIA Oct. 21, 2013) (remands for further consideration of request for administrative closure following publication of regulations during pendency of appeal permitting issuance of provisional waivers) (Adkins-Blanch)—**KEY DECISION**

[Edgar Camacho-Infanzan](#), A089 956 952 (BIA Aug. 6, 2013) (remands to consider request for administrative closure while respondent pursued provisional waiver based on newly approved visa petition) (Hoffman)

[Lucero Pulido-Aguirres](#), A095 784 426 (BIA July 29, 2013) (remands proceedings “in an abundance of caution” to consider eligibility for provisional waiver) (Adkins-Blanch)

[Omar Ciro Cruz-Rodriguez](#), A200 885 026 (BIA July 12, 2013) (grants joint motion for administrative closure to allow respondent to pursue a provisional waiver) (Holmes)

[Immacula Presmy](#), A095 517 631 (BIA June 13, 2013) (grants joint motion to reopen and terminate proceedings to allow respondent to apply for a provisional waiver) (Kendall-Clark)

### Termination of Proceedings

[R-G-H-M-](#), AXXX XXX 972 (BIA Aug. 9, 2017) (reverses IJ decision terminating proceedings at request of DHS in lieu of allowing respondents to apply for non-LPR cancellation of removal) (*Mann*, Grant, Kelly)

[Sergio Ponciano-Pacheco](#), A097 681 655 (BIA Dec. 8, 2014) (reopens and terminates proceedings based on DHS exercise of prosecutorial discretion; respondent previously overstayed period of voluntary departure and was encountered by ICE while incarcerated for DUI) (Holmes)

## IV. MOTIONS TO REOPEN

### To Pursue Relief from Removal

[Guillermo Federico Spiers](#), A099 142 401 (BIA March 18, 2020) (reverses denial of motion to reopen to seek adjustment of status in light of approval of Form I-130 during pendency of appeal) (*Creppy*, Liebowitz, Morris)

[A-M-A-H-](#), AXXX XXX 916 (BIA Feb. 10, 2020) (grants motion to reopen based on approved Form I-360 to seek adjustment of status under the VAWA) (Noferi)

[Dwain Lloid Thorpe](#), A208 132 855 (BIA Nov. 15, 2019) (reconsiders prior decision sua sponte and reopens proceedings to seek adjustment of status in light of additional evidence of bona fides of marriage, including pregnancy-related medical records) (Kendall Clark)

[Glady Fuentes-Lozano](#), A200 947 133 (BIA Nov. 26, 2018) (reopens proceedings for respondent to apply for adjustment of status under INA 245(i)) (Grant)

[Nixon Saintelmi](#), A078 356 199 (BIA Nov. 8, 2018) (reopens proceedings for respondent to apply for cancellation of removal because conviction no longer qualified as an aggravated felony under *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)) (Kendall Clark)

[O-P-S-](#), AXXX XXX 565 (BIA Dec. 6, 2017) (reopens proceedings for respondent to pursue adjustment of status as VAWA self-petitioner) (Grant)

[Nishanthkumar Patel](#), A073 546 027 (BIA July 11, 2017) (reopens proceedings after respondent submitted evidence that he married a U.S. citizen who filed a Form I-130 visa petition on his behalf) (Guendelsberger)

[Jose Israel Chavarria-Reyes](#), A206 274 376 (BIA April 10, 2017) (reopens proceedings sua sponte where IJ did not notify pro se respondent of potential eligibility for pre- or post-conclusion voluntary departure) (Guendelsberger)

[Eyal Misha Aharon](#), A086 992 514 (BIA March 31, 2017) (reopens proceedings for respondent to pursue adjustment of status based on a visa petition filed by his U.S. citizen wife with whom he has two U.S. citizen children) (Kendall Clark)

[Giles Chibuzor Mbonu](#), A057 731 341 (BIA Feb. 27, 2017) (reopens proceedings for further consideration of 212(h) waiver following submission of additional medical evidence relating to child's skeletal dysplasia) (Kendall Clark)

[Ivan Amador Olivares Abarca](#), A096 560 171 (BIA Nov. 3, 2016) (reopens proceedings for respondent to apply for adjustment of status based on pending Form I-130) (Kendall-Clark)

[Kemanit Butrad](#), A205 701 814 (BIA Oct. 17, 2016) (orders further consideration of motion to reopen because IJ failed to consider the factors under *Matter of Hashmi*, 25 I&N Dec. 785 (BIA 2009), when denying prior unopposed motion for continuance) (Grant)

[Riyade Nafee](#), A089 616 155 (BIA Oct. 17, 2016) (reopens proceedings to pursue adjustment application in light of bona fides of the marriage including child's birth certificate) (Kendall-Clark)

[Einstein Markov Dauphin](#), A099 508 343 (BIA Aug. 24, 2016) (reverses denial of motion to reopen where IJ overlooked that respondent was beneficiary of a pending visa petition and record

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demonstrated bona fides of marriage) (*Cole*, O'Herron, Pauley)

[Alexander Alvarez-Medina](#), A200 233 359 (BIA March 31, 2016) (reopens proceedings in light of filing of visa petition by LPR spouse) (*Guendelsberger*)

[Adan Ramirez-Rios](#), A088 658 419 (BIA Feb. 29, 2016) (reopens proceedings in light of submission of U visa application supported by a signed law enforcement certification and remands for consideration of whether to continue proceedings) (Miller)

[Javier Alejandro Rosales De La Cruz](#), A088 806 933 (BIA Feb. 18, 2016) (reopens and remands record for consideration of whether to continue proceedings pending adjudication of U visa application filed by spouse) (Holmes)

[Alejandro Cruz-Cruz](#), A205 393 424 (BIA Dec. 23, 2015) (reverses denial of motion to reopen based on filing of visa petition filed one month after hearing at which respondent was ordered removed) (*Guendelsberger*, O'Leary, Grant)

[Dorcas Nangila Wanyonyi](#), A097 683 041 (BIA Sept. 4, 2015) (reopens proceedings in light of filing of visa petition (Form I-130) on respondent's behalf as well as the submission of completed adjustment application and evidence of bona fides of the marriage) (Holiona)

[Martha Romero-Duran](#), A201 221 138 (BIA Aug. 24, 2015) (reopens proceedings for pursuit of adjustment application and notwithstanding fact that visa petition was not yet approved) (Miller)

[C-C-G-](#), AXXX XXX 045 (BIA May 11, 2015) (reopens proceedings in light of filing of Form I-360 and pending VAWA self-petition as battered spouse of a U.S. citizen) (Miller)

[Luis Muniz](#), A200 141 905 (BIA Jan. 26, 2015) (grants motion to reopen to let respondent apply for voluntary departure in light of intervening marriage to U.S. citizen and birth of U.S. citizen child) (Holmes)

[Stylianios Bitzos](#), A205 019 980 (BIA Jan. 15, 2015) (grants motion to reopen over DHS opposition in light of recent marriage to U.S. citizen and filing of visa petition) (Holmes)

[Richard Letts](#), A201 110 997 (BIA Dec. 1, 2014) (reopens proceedings over DHS opposition in light of the totality of circumstances, including approved Form I-130 and medical issues of respondent's U.S. citizen wife) (Holmes)

[Frankie Eduardo Rendon-Zambrano](#), A206 037 021 (BIA May 12, 2014) (remands for further consideration of motion to reopen in light of evidence submitted on appeal indicating that respondent is beneficiary of pending visa petition filed by U.S. citizen spouse) (*Guendelsberger*)

[Enrique Reyes-Francisco](#), A075 418 435 (BIA Jan. 24, 2014) (reopens proceedings in light of evidence showing respondent was prima facie eligible to adjust status prior to dismissal of appeal) (Holmes)

[Juan Rodriguez Martinez](#), A096 355 621 (BIA Aug. 14, 2013) (reopens proceedings to allow respondent to pursue adjustment application despite previous grant of pre-conclusion voluntary departure) (*Guendelsberger*)

[Fazliddin Bahronov](#), A088 748 664 (BIA July 29, 2013) (reopens proceedings over DHS objection to let respondent seek adjustment after visa petition granted while appeal was pending) (Holmes)

[Francisco Ruiz-Witchar](#), A087 951 655 (BIA July 17, 2013) (reopens proceedings to permit

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respondent to apply for adjustment based on pending visa petition filed by spouse) (Holmes)

[Tatiana Johns](#), A046 791 561 (BIA June 4, 2013) (reopens proceedings sua sponte over DHS objection to allow respondent to pursue adjustment based on marriage to U.S. citizen) (Kendall-Clark)

[Arsalan Azeem](#), A099 030 766 (BIA May 20, 2013) (reopens proceedings over DHS opposition to allow adjudication of visa petition filed by U.S. citizen spouse) (Holmes)

[Damion Robinson](#), A088 009 491 (BIA Jun. 5, 2012) (reopens proceedings to permit respondent to pursue adjustment of status under *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002); finds decision opposition to motion not persuasive) (Kendall-Clark)—**KEY DECISION**

[Raunel Arroyo](#), A087 309 888 (BIA May 25, 2012) (reopens proceedings in light of respondent's potential eligibility to adjust under INA 245(i) and despite fact that respondent held himself out as single prior to the filing of the motion) (Miller)

[Moises Martinez-Hernandez](#), A089 476 569 (BIA Jan. 31, 2012) (reopens proceedings over DHS opposition and remands record to let respondent apply for voluntary departure so he may obtain immigrant visa based on recent marriage to LPR) (Holmes)

## Equitable Tolling

[Josue Israel Santiago](#), A055 117 635 (BIA June 10, 2020) (equitably tolls MTR deadline and terminates proceedings against respondent whose convictions were vacated in April 2017 due to misconduct by a chemist working in the state drug lab) (*Monsky*, Creppy, Hunsucker)

[Man A Dang](#), A025 028 785 (BIA May 7, 2020) (equitably tolls MTR deadline and terminates proceedings where respondent filed MTR more than two years after Ninth Circuit decision holding that conviction did not qualify as an aggravated felony) (*Grant*, Mann, Mullane (dissenting))

[Jose Leonardo Ramirez-Perez](#), A029 277 936 (BIA Feb. 4, 2020) (equitably tolls deadline to reopen proceedings where respondent learned of prior attorney's ineffectiveness in March 2014 and filed motion in July 2014) (Mann)

[Roque Antonio Sanchez-Meza](#), A014 646 599 (BIA June 28, 2019) (equitably tolls deadline and reopens proceedings upon finding that respondent's conviction for possession of cocaine under Texas Health & Safety Code 481.115(b) is not an aggravated felony under *Lopez v. Gonzales*, 549 U.S. 47 (2006)) (Grant)

[Carlos R. Arbaiza Cabrera](#), A070 915 375 (BIA June 3, 2019) (IJ improperly applied equitable tolling analysis in denying motion to rescind in absentia order based on lack of notice because such motions are not subject to any deadline) (*Noferi*, Wendtland, Donovan)

[M-Z-M-](#), AXXX XXX 760 (BIA May 23, 2019) (equitably tolls deadline and reopens proceedings based on ineffective assistance where attorney provided incorrect address of respondent to the Board and did not notify respondent that appeal was dismissed until time to file petition for review and motion to reopen had expired) (Kendall Clark)

[Rafael Gomes](#), A088 446 067 (BIA May 17, 2019) (equitably tolls deadline and reopens proceedings in light of ineffective assistance where counsel failed to submit country conditions evidence and respondent could not have discovered ineffective assistance until two months after prior attorney ended representation) (Grant)



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[Miguel Aguilar Elias](#), A041 765 696 (BIA May 15, 2019) (equitably tolls motion to reopen deadline and terminates proceedings against respondent ordered removed in 2001 where motion was filed with diligence after *Dimaya v. Sessions*, 138 S. Ct. 1204 (2018)) (*Guendelsberger*, Grant, Kendall Clark)

[Javier Hector Plata-Herrera](#), A044 964 825 (BIA April 30, 2019) (equitably tolls deadline and reopens proceedings based on vacatur of criminal conviction approximately ten years after entry of order of removal) (*Greer*, Cole, Donovan)

[M-V-J.](#), AXXX XXX 287 (BIA Nov. 15, 2018) (equitably tolls deadline and reopens proceedings for respondent who filed his motion within one month after decision in *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017)) (*Creppy*, Malphrus, Mullane)

[Francisco Segundo Velasquez-Marin](#), A021 582 415 (BIA Nov. 9, 2018) (equitably tolls deadline and grants motion to reopen for respondent living abroad whose conviction under Texas Penal Code 22.011 no longer qualifies as sexual abuse of a minor under *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017)) (Grant)

[Santos Daniel Gonzalez Hernandez](#), A043 733 591 (BIA Sept. 11, 2018) (grants motion to reconsider and holds that respondent exercised diligence in seeking reopening where motion to reopen was filed approximately one month after learning of intervening circuit court authority that had been issued nine months before) (*Grant*, Kendall Clark, Guendelsberger)

[J-B-M.](#), AXXX XXX 853 (BIA April 19, 2018) (equitably tolls deadline where respondent was ordered removed in 2007 during hearing conducted in language he did not speak and pursued his rights diligently after learning of Fifth Circuit decisions allowing the deadline to be equitably tolled) (*Crossett*, Wendtland, Pauley)

[A-A-B.](#), AXXX XXX 292 (BIA Jan. 22, 2018) (equitably tolls deadline for filing motion to reopen where respondent was suffering from undiagnosed medical condition following entry of removal order and acted with diligence following release from detention) (*Wendtland*, O'Connor, Pauley (dissenting))

[Sergio Lugo-Resendez](#), A034 450 500 (BIA Dec. 28, 2017) (equitably tolls deadline for respondent who was ordered removed in 2003 and did not learn of Supreme Court's decision in *Lopez v. Gonzalez*, 549 U.S. 47 (2006), until 2014) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

[Saul Rincon-Garcia](#), A034 338 426 (BIA Nov. 27, 2017) (equitably tolls filing deadline where respondent had been LPR since 1973, suffered from mental illness, and acted with reasonable diligence following issuance of *Gomez-Perez v. Lynch*, 829 F.3d 323 (5th Cir. 2016)) (*Kendall Clark*, Guendelsberger, Kelly)

[Roy Alberto Ramirez-Calderon](#), A200 423 316 (BIA March 9, 2017) (equitably tolls deadline and reopens proceedings where respondent's prior attorney provided ineffective assistance of counsel by erroneously indicating date by which he would need to marry in order to reopen proceedings) (Kendall Clark)

[Sergio Luis Del Fierro-Garcia](#), A043 791 852 (BIA Dec. 19, 2016) (equitably tolls deadline for respondent ordered removed in 2000 where prior attorney failed to advise of eligibility for LPR cancellation) (*Wendtland*, Cole, Pauley (dissent))—**KEY DECISION**

[Sergio Lugo-Resendiz](#), A034 450 500 (BIA Nov. 21, 2016) (remands for further fact-finding regarding

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equitable tolling claim by respondent who filed motion to reopen in 2014 based on *Lopez v. Gonzales*, 549 U.S. 47 (2006)) (Guendelsberger)

[Einstein Markov Dauphin](#), A099 508 343 (BIA Aug. 24, 2016) (equitable tolling warranted to submit additional evidence in support of timely filed motion to reopen) (*Cole*, O'Herron, Pauley)—**KEY DECISION**

[Juvenal Valdovinos-Lopez](#), A200 684 816 (BIA June 29, 2016) (finds respondent entitled to equitable tolling of deadline in light of allegations that hearing conducted in 2011 violated due process) (Kendall-Clark)

[Maria Guadalupe Silva-Ramirez](#), A205 527 911 (BIA Feb. 11, 2016) (equitably tolls 90-day deadline in light of ineffective assistance of prior attorney and lack of DHS opposition) (Holmes)

[Antonio Medina Leon](#), A090 919 097 (BIA Feb. 8, 2016) (remands for IJ to consider in first instance whether deadline to file motion to reopen should be equitably tolled) (Cole)

[Jose Guerrero-Soto](#), A091 225 150 (BIA Nov. 17, 2015) (request for equitable tolling is separate from request for sua sponte reopening under *Mata v. Lynch*, 135 S. Ct. 2150 (2015)) (Miller)

[Kim Stevens](#), A035 172 124 (BIA Oct. 12, 2011) (deadline for motion to reopen to seek 212(c) waiver equitably tolled in light of respondent's mental incompetency) (Greer)

## In Absentia Orders of Removal

### Evidence of Removability

[Heriberto Chavez Trejo](#), A215 573 855 (BIA Sept. 28, 2020) (remands for further consideration of motion to reopen in absentia order in light of evidence that respondent may be a U.S. citizen) (Liebowitz)

[Ana Maria Trejo Zubiate](#), A204 943 312 (BIA Sept. 28, 2020) (remands for further consideration of motion to reopen in absentia order in light of evidence potentially demonstrating that respondent was not subject to the charge lodged in the NTA) (Liebowitz)

[Olwayne Basil Dunkley](#), A073 779 308 (BIA Sept. 14, 2020) (grants motion to reopen in absentia order because IJ failed to determine removability prior to entering order) (Greer)

[Jorge Ronaldo Perez-Natareno](#), A077 398 964 (BIA June 13, 2018) (reopens proceedings because record did not contain any evidence of removability) (*Kelly*, Adkins-Blanch, Pauley)

[Jordan Omar Nunez-Zepeda](#), A097 315 824 (BIA Sept. 29, 2017) (in absentia order not supported by clear, unequivocal, and convincing evidence because the Form I-213 contained unreliable information) (*Kendall Clark*, Greer, Kelly)—**KEY DECISION**

[Felix Agbor Anyior Nkongho](#), A096 112 440 (BIA March 31, 2017) (remands record because IJ decision removing respondent in absentia was not based on evidence regarding respondent's removability) (Pauley)—**KEY DECISION**

[Marie Boubboy](#), A091 779 680 (BIA April 29, 2016) (rescinds in absentia order in light of possibility that respondent was not removable because offense was not a CIMT) (*Grant*, Mann, O'Leary)

[Leonel Hernandez-Medina](#), A206 015 042 (BIA March 14, 2016) (remands record for further

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proceedings because the Form I-213 in the record related to a different respondent and was thus not sufficient to establish removability) (O'Leary)—**KEY DECISION**

### **Exceptional Circumstances**

#### **180-Day Deadline**

[Berlin Enriquez-Godinez](#), A097 816 969 (BIA June 24, 2020) (equitably tolls 180-day time limit on motion to rescind in absentia order based on ineffective assistance of counsel) (Grant)

[Evert Lopez](#), A090 271 792 (BIA Nov. 6, 2019) (equitably tolls 180-day deadline to rescind in absentia order based on exceptional circumstances in light of respondent's severe health conditions) (*Cole*, Baird, Geer)

[Martiniano Patricio-Ojeda](#), A205 324 832 (BIA Aug. 9, 2019) (equitably tolls time and number limitations on motion to reopen in absentia order where first attorney provided ineffective assistance by failing to notify respondent of hearing, second attorney provided ineffective assistance by not complying with *Matter of Lozada*, and third motion to reopen was filed within eight months of order) (*O'Connor*, Donovan, Wendtland)

[Yomari Maldonado-Escobar](#), A209 144 693 (BIA July 11, 2019) (reverses finding that motion to rescind in absentia order was untimely because in absentia order was not served on respondent or his attorney) (*Adkins-Blanch*, Mann, Morris)

#### **Awaiting Return After Removal**

[Maria Filipa Monteiro Barbosa](#), A099 213 542 (BIA July 26, 2019) (reverses entry of in absentia order against respondent based on exceptional circumstances because she had been removed before a prior Board decision reopening proceedings but had not yet been returned) (*Guendelsberger*, Kelly, Kendall Clark)

#### **Confusion/Inadvertent Mistake**

[G-G-A-](#), AXXX XXX 514 (BIA May 18, 2020) (rescinds in absentia order due to exceptional circumstances where respondent mistakenly believed hearing was at 1:00 p.m. rather than 8:00 a.m., diligently obtained counsel and filed a motion to reopen, and submitted an asylum application on appeal) (*Grant*, Mann, Mullane)

[Veronica Mendez Diaz](#), A209 120 229 (BIA Dec. 31, 2019) (rescinds in absentia order due to exceptional circumstances in light of respondent's diligence in obtaining counsel and seeking reopening, fact that nonappearance was due to an inadvertent mistake, and submission of application for relief from removal) (*Kelly*, Guendelsberger, Grant)

[Isaias Sanchez](#), A202 049 962 (BIA July 19, 2018) (rescinds in absentia order where respondent misunderstood attorney's instruction to appear at the hearing, his attorney could not reach him on the day of his hearing, he had no incentive to not appear at the hearing, and he filed his motion to reopen with diligence) (*Snow*, Kelly, Adkins-Blanch)

[Jose Israel Quinonez-Leyva](#), A038 838 933 (BIA April 27, 2018) (rescinds in absentia order where respondent made mistake about date of hearing, regularly reported to DHS, and had resided in the country for more than three decades) (*Pauley*, Kelly, Adkins-Blanch)

[Kelvy Valle Cardona](#), A206 434 992 (BIA Feb. 2, 2018) (rescinds in absentia order where neither

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respondent nor attorney were aware proceedings had been recalendared and attorney did not receive notice of rescheduled hearing) (*Greer*, Cole, Wendtland)

[Wilson Eduardo Pena-Yungasaca](#), A200 826 015 (BIA Dec. 30, 2016) (rescinds in absentia order in light of respondent's sworn affidavit, attendance at prior hearings, filing of an application for withholding of removal, and inadvertent mistake leading to nonappearance at hearing) (*Grant*, Mann, O'Connor)

[Miriam Awuku](#), A206 266 819 (BIA Sept. 20, 2017) (rescinds in absentia order where respondent and her attorney appeared on correct date but at incorrect time) (*Kelly*, Grant, Mann)

[Raymond Kosschuk](#), A072 858 139 (BIA Oct. 26, 2016) (rescinds in absentia order where respondent had appeared at ten prior hearings, had several potential avenues for relief, and missed hearing due to inadvertent mistake) (*O'Connor*, Neal, Mann)

[Hector Fransua Mach-Chavez](#), A206 888 919 (BIA March 14, 2016) (reopens proceedings where respondent mistakenly believed the location of the hearing had changed) (*Grant*, Guendelsberger, Adkins-Blanch)

[Faustino Perez Mote](#), A205 934 720 (BIA March 9, 2016) (reopens proceedings under the totality of the circumstances where respondent's failure to appear was the result of a good faith mistake and he was the beneficiary of a pending visa petition) (*Guendelsberger*, Grant, O'Leary)

[Orlando Antonio Bonilla-Molina](#), A094 246 276 (BIA Sept. 2, 2015) (confusion regarding date of hearing constituted exceptional circumstances in light of respondent's attendance at all prior hearings and potential eligibility to adjust status) (*Grant*, Holiona, O'Leary)

[Esvin Escobar Diaz](#), A201 238 048 (BIA July 24, 2015) (respondent's confusion regarding date of hearing, appearance at prior hearings, and potential eligibility for withholding of removal constitute "exceptional circumstances") (*Grant*, Guendelsberger, Holiona)

[Maria Carmela Flores](#), A205 136 055 (BIA June 19, 2014) (finds exceptional circumstances where respondent inadvertently failed to appear due to good faith mistake arising from loss of hearing notice during a move and misinformation from her counsel's office) (*Adkins-Blanch*, Manuel, Guendelsberger)

[Fernando Placencia Castellanos](#), A205 285 337 (BIA Sept. 16, 2013) (confusion regarding dates of his criminal and removal hearings constitutes exceptional circumstances) (*Kendall-Clark*, Neal, Adkins-Blanch)

[Marie N. Peli](#), A099 273 416 (BIA May 31, 2013) (unawareness of new hearing date constitutes exceptional circumstances) (*Manuel*, Guendelsberger, Hoffman)

#### **Erroneous Failure to Change Venue**

[Gicely Sarai Fores-Velasquez](#), A205 277 572 (BIA April 24, 2015) (rescinds in absentia order where IJ erroneously denied prior motion to change venue) (*Adkins-Blanch*, Grant, Guendelsberger)—**KEY DECISION**

#### **Family Illness/Trauma**

[F-A-F-P.](#), AXXX XXX 470 (BIA March 8, 2018) (rescinds in absentia order where daughter of respondent's sponsor experienced medical emergency on day of master calendar hearing) (*Greer*,

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Cole, Wendtland)

[Ranjeet Singh](#), A208 191 523 (BIA March 21, 2017) (rescinds in absentia order where respondent's family members suffered injuries in automobile accident in India) (*Grant*, Adkins-Blanch, O'Connor)

[Juan Alejandro Herrera Huerta](#), A200 709 587 (BIA Sept. 26, 2016) (rescinds in absentia order where respondent failed to appear because he had lost his job, his home was in foreclosure, and his wife was experiencing health problems) (*Adkins-Blanch*, Mann, O'Connor)

[Seidi Elda Sandoval-Landero](#), A088 056 174 (BIA Nov. 20, 2015) (finds ongoing physical and mental trauma inflicted by father of respondent's children constitutes exceptional circumstances) (O'Leary)

[Otoniel Rincon-Velasquez](#), A089 284 279 (BIA Oct. 21, 2015) (kidnapping of respondent's relatives and murder of father constitutes exceptional circumstances) (*Malphrus*, Cole, Geller)

[Joefry F. Noble](#), A200 574 891 (BIA Sept. 13, 2012) (wife's serious illness constitutes exceptional circumstances) (*Guendelsberger*, Adkins-Blanch, Hoffman)

### **Fault of Attorney/Representative**

[Dolores Elena Guillen Rosa](#), A206 689 897 (BIA Feb. 18, 2020) (rescinds in absentia order due to exceptional circumstances because paralegal mis-calendared the scheduled hearing ate) (*Kelly*, Adkins-Blanch, Couch)

[Baldemar Salas](#), A200 895 232 (BIA Sept. 27, 2019) (rescinds in absentia order based on ineffective assistance of counsel in light of evidence that respondent's prior attorney was suspended by state bar and was found to have committed professional misconduct in his representation of the respondent) (*Mann*, Kelly, Mullane)

[Jose Luis Martinez Parra](#), A202 154 622 (BIA Aug. 10, 2018) (rescinds in absentia order where respondent's attorney mistakenly told him that the IJ had granted a continuance) (*Kelly*, Mann, Snow)

[Y-N-O-N-](#), AXXX XXX 227 (BIA June 21, 2018) (rescinds in absentia order because IJ had previously waived the respondent's presence at future proceedings and because her attorney's failure to appear qualified as an exceptional circumstance) (*Geller*, Creppy, Malphrus)

[Yolanda Chavez Vicente](#), A208 417 438 (BIA May 25, 2018) (rescinds in absentia order where attorney mistakenly advised respondent that her hearing was scheduled for 1:00 pm rather than 8:00 am) (*Adkins-Blanch*, Pauley, Snow)

[Camilo Aguirre-Gachuz](#), A205 490 978 (BIA April 11, 2018) (rescinds in absentia order where attorney admitted to miscalendaring date of hearing) (*Snow*, Adkins-Blanch, Mann)

[Vianney Tellez Jiminez](#), A089 782 319 (BIA March 1, 2018) (rescinds in absentia order of removal where hearing notice was sent to respondent's attorney but attorney conceded that he failed to notify the respondent) (*Greer*, Cole, Wendtland)

[Edgar Ediberto Ramos-Herrera](#), A208 173 755 (BIA Feb. 6, 2018) (rescinds in absentia order where former attorney failed to notify respondent of hearing at which he himself failed to appear and did not learn of in absentia order until receiving it in the mail) (Pauley)

[Juan Xue](#), A206 683 080 (BIA Oct. 17, 2017) (rescinds in absentia order where attorney's legal

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assistant mistakenly told respondent that IJ would order a change in venue) (*Grant*, Adkins-Blanch, Mann)

[Ana Guadalupe Landaverde-Morales](#), A206 722 187 (BIA Oct. 17, 2017) (rescinds in absentia order where attorney mistakenly advised respondent that she did not need to appear) (*Pauley*, Kelly, Grant)

[Jorge Ezequiel-Cruz](#), A202 132 224 (BIA July 19, 2017) (respondents need not demonstrate prejudice to rescind in absentia order where failure to appear was due to ineffective assistance of counsel) (*Mann*, Grant, Kelly)—**KEY DECISION**

[Andrine Waruguru Wambui](#), A089 313 705 (BIA April 26, 2017) (rescinds in absentia order where prior attorney mistakenly advised respondent of incorrect time of hearing) (*Malphrus*, Leibowitz, Mullane)

[Alejandro Gonzalo Trejo](#), A205 215 507 (BIA March 10, 2017) (equitably tolls 180-day deadline and rescinds in absentia order where prior attorney provided ineffective assistance of counsel by failing to notify respondent of hearing) (*Adkins-Blanch*, Mann, O'Connor)

[Santiago Gonzalez-Alonzo](#), A200 883 832 (BIA March 6, 2017) (rescinds in absentia order where respondent claimed to have not received hearing notice from prior attorney and exhibited reasonable level of diligence in seeking reopening) (*Grant*, Adkins-Blanch, Mann)

[Catalina Ramirez-Pablo](#), A202 067 149 (BIA April 11, 2016) (failure to appear was result of exceptional circumstances where respondent argued that attorney did not receive notice of hearing) (*Mann*, O'Leary, Grant)

[Juan Antonio Alvarenga](#), A206 233 826 (BIA March 15, 2016) (rescinds in absentia order because respondent was incorrectly advised by legal services organization that motion to change venue would be granted and he did not need to appear for his hearing) (*Guendelsberger*, Adkins-Blanch, O'Leary)

[Bernabe Cun-Balan](#), A205 305 480 (BIA Feb. 10, 2016) (attorney's erroneous advice not to attend hearing in light of pending motion to change venue constitutes exceptional circumstances) (*Adkins-Blanch*, Grant, Guendelsberger)

[Adama Kebe](#), A206 705 958 (BIA Jan. 29, 2016) (attorney's confusion regarding date of hearing constitutes exceptional circumstances) (*Grant*, O'Leary, Guendelsberger)

[Luis Alfredo Castro](#), A200 226 899 (BIA Oct. 29, 2015) (finds ineffective assistance constituted exceptional circumstances; holds that 180-day deadline is subject to equitable tolling) (*Grant*, Adkins-Blanch, O'Leary)—**KEY DECISION**

[Sandra Yaneth Fuentes Majano](#), A202 120 724 (BIA Oct. 27, 2015) (ineffective assistance by former attorney constitutes failure to appear) (*Grant*, O'Leary, Guendelsberger)

[Lesy Erenio Sanchez-Matute](#), A205 458 848 (BIA May 14, 2015) (attorney erroneously advised respondent that change of venue would be granted) (*Adkins-Blanch*, Grant, Guendelsberger)

[Ricardo de Hoyos-Neaves](#), A205 955 704 (BIA March 19, 2015) (respondent's prior attorney had been suspended from the practice of law) (*Grant*, Adkins-Blanch, Guendelsberger)

[Cirilo Hernandez-Pacheco](#), A200 280 956 (BIA Nov. 26, 2014) (attorney who represented respondent had been suspended from practicing before the Board) (*Manuel*, Adkins-Blanch, Hoffman)



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[Mirkhond Mirorifovich Kabilov](#), A205 379 500 (BIA June 3, 2014) (former attorney's failure to answer telephone calls or notify respondent of time and date of hearing constitutes exceptional circumstances) (*Hoffman*, Guendelsberger, Manuel)

[Jermaine St. Aubin Foster](#), A088 444 744 (BIA Apr. 3, 2014) (failure to send hearing notice to former attorney constitutes exceptional circumstances; respondent was seeking to adjust to LPR status acted diligently after learning he was ordered removed in absentia) (*Grant*, Guendelsberger, Adkins-Blanch)

[Sergio Alberto Macal-Ventura](#), A200 589 069 (BIA Feb. 20, 2014) (attorney's advice not to appear in court constitutes exceptional circumstances) (*Guendelsberger*, Adkins-Blanch, Grant)

[Jorge Eduardo Araiza](#), A201 221 422 (BIA Aug. 12, 2013) (attorney's inability to notify respondent of hearing notice constitutes exceptional circumstances) (*Manuel*, Hoffman, Guendelsberger)—**KEY DECISION**

[Cuauhtemoc Jesus Morales](#), A095 949 625 (BIA Oct. 18, 2012) (receiving erroneous advice from immigration consultant that appearance was not required constitutes exceptional circumstances) (*Hoffman*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Mahamadou Cisse](#), A097 981 226 (BIA Oct. 5, 2012) (being misinformed of time of hearing by prior attorney constitutes exceptional circumstances) (*Adkins-Blanch*, Manuel, Guendelsberger)

### **Illness or Physical Impairment**

[Gaurav Bhardwaj](#), A201 284 694 (BIA May 28, 2020) (rescinds in absentia order due to exceptional circumstances where respondent was admitted to emergency room on morning of final hearing due to sudden onset of chest pain) (*Grant*, Mullane, Mann)

[Rocio Alida Valencia Barragan](#), A209 138 515 (BIA Feb. 5, 2018) (rescinds in absentia order where respondent gave birth via caesarian section 10 days before hearing) (*Grant*, Adkins-Blanch, Mann)

[R-D-G-](#), AXXX XXX 498 (BIA Nov. 3, 2017) (rescinds in absentia order where the respondent, a minor, was seriously ill at the time of the hearing and was diagnosed with cancer and hospitalized the following month) (*Kendall Clark*, Greer, Kelly)

[Manuela Hernandez-Pasqual](#), A206 026 422 (BIA June 7, 2017) (rescinds in absentia order where respondent underwent emergency Caesarian section five weeks prior to hearing and was unable to drive to hearing) (*Pauley*, Grant, Mann)

[Aman Kumar](#), A079 075 984 (BIA Oct. 17, 2016) (rescinds in absentia order in light of respondent's sworn affidavit, attendance at prior hearings, diligence in pursuing reopening, and medical evidence documenting impaired judgment at time of hearing) (Mann, Grant, O'Connor)

[Jorge Luis Solis](#), A088 590 199 (BIA Aug. 8, 2016) (rescinds in absentia order where respondent saw a doctor on day of hearing and was advised to rest and given prescription) (*Mann*, Grant, O'Leary)

[Maria Grave-Ortiz](#), A206 884 152 (BIA March 29, 2016) (ineffective assistance of prior counsel constituted exceptional circumstances despite failure to comply with requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988)) (*Grant*, O'Leary, Mann)

[Sandra Alcantar-Vega](#), A205 717 119 (BIA May 5, 2015) (IJ failed to consider claim that respondent

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was delayed because she was pregnant and became sick on her way to the hearing) (Grant)

**Inability to Decipher Hearing Notice**

[Manuel Ramos Perez](#), A205 711 051 (BIA April 19, 2016) (unclear handwritten date on hearing notice constitutes exceptional circumstances) (*O'Leary*, Guendelsberger, Grant)

**Inability to Travel**

[Ernesto Mora Lomeli](#), A095 893 438 (BIA Sept. 22, 2020) (remands for further consideration of whether failure to appear was justified by exceptional circumstances in light of evidence submitted on appeal substantiating claim that respondent was subject to a mandatory evacuation order because of a hurricane at the time of the hearing) (*Donovan*, Greer, Monsky)

[Ophelia Salazar Ellison](#), A200 185 139 (BIA Nov. 21, 2017) (rescinds in absentia order where respondent had to depart country due to family emergency and could not board return flight because LPR card was expired) (*Kelly*, Adkins-Blanch, Mann)

[A-P.](#), AXXX XXX 411 (BIA Oct. 24, 2017) (rescinds in absentia order where prior motion to change venue was accompanied by letter from psychologist stating that respondent could not travel out of state due to Post-Traumatic Stress Disorder) (*Greer*, Kelly, Kendall Clark)

[Sunil Kumar Bains](#), A209 154 541 (BIA Oct. 10, 2017) (rescinds in absentia order where respondent was unable to travel to hearing in Atlanta because he was under an order of supervision in Fresno, California) (*Grant*, Guendelsberger, Mann)

[Jose Manuel Oliva-Ramirez](#), A206 700 849 (BIA Dec. 22, 2015) (finds inability to secure transportation to out-of-state hearing constitutes exceptional circumstances) (*Holmes*, Neal, O'Herron)

[Simran Dholasania](#), A200 006 948 (BIA Aug. 19, 2015) (respondent demonstrates exceptional circumstances where she assumed venue would be changed to Texas and was unable to arrange transportation to the immigration court in Seattle) (*Grant*, Holiona, Guendelsberger)

[Laila Shabudin Maknoija](#), A205 115 978 (BIA March 20, 2015) (respondent was unable to travel from Texas to Seattle by air or bus because she lacked valid identification documents and was unable to make any safe arrangements to travel by car) (*Grant*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[William Noe Perez-Cortez](#), A205 383 123 (BIA Sept. 25, 2013) (inability of New York resident to travel to Texas due to Hurricane Sandy constitutes exceptional circumstances) (*Holmes*)

[Varinder Singh](#), A201 156 040 (BIA July 23, 2013) (inability to board plane due to lack of photo identification constitutes exceptional circumstances) (*Manuel*, Adkins-Blanch, Hoffman)

[Sulakhan Singh-Lubana](#), A087 489 770 (BIA Apr. 18, 2011) (initial rejection of identity documents by TSA agents at airport constitutes exceptional circumstances) (*Adkins-Blanch*, Guendelsberger, Kendall-Clark)

**Lateness**

[Keno Bashae Jumpp](#), A087 145 628 (BIA Jan. 31, 2013) (rescinds order of removal issued in absentia where respondent was 11 minutes late for 8:00 a.m. hearing due to exceptional circumstances)

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### Minors

[Y-A-C-M-](#), AXXX XXX 973 (BIA July 16, 2020) (rescinds in absentia order against 4-year-old respondent where hearing notice was returned as undeliverable and motion was filed less than 20 days after entry of order) (*Kelly*, Adkins-Blanch, Couch)

[C-R-S-](#), AXXX XXX 025 (BIA Feb. 28, 2019) (rescinds in absentia order due to exceptional circumstances because respondent was a minor, her guardian mistakenly entered the wrong date of her hearing on his phone, the hearing notice was returned due to the lack of a mail receptacle, and the motion to reopen was filed promptly after the entry of the order) (*Cole*, Donovan, Greer (dissenting))

[Wilbert Alexander Anaya-Murcia](#), A205 472 424 (BIA April 13, 2018) (rescinds in absentia order where respondent was 15-year-old unaccompanied minor and mother failed to file a change of address form on his behalf) (*Kendall Clark*, Kelly, Greer (dissenting))

[K-A-B-V-](#), AXXX XXX 317 (BIA June 27, 2017) (rescinds in absentia order against infant whose mother mistakenly thought his presence at the hearing was excused) (*Kelly*, Kendall Clark, Greer)

[Juana Esperanza Romero-Gonzalez](#), A097 739 329 (BIA Jan. 8, 2016) (parent providing incorrect address upon minor's release from custody constitutes exceptional circumstance) (*Greer*, Neal, O'Herron)

[Vitalina Bautista-Perez](#), A202 079 302 (BIA Oct. 7, 2015) (uncle's mistaken belief that minor did not need to attend hearing constituted exceptional circumstances) (*Greer*, Holmes, O'Herron)

### Miscellaneous

[Jose Juan Antonio Flores Contreras](#), A208 114 742 (BIA Sept. 25, 2020) (rescinds in absentia order based on exceptional circumstances where respondent was given wrong time for his hearing, the IJ was still on the bench when he arrived, his attorney was present with evidence of the reason for his delay, and he had an incentive to appear due to a pending U visa petition) (*Kelly*, Grant, Mann)

[Carolyn Opondo](#), A089 365 877 (BIA May 21, 2020) (rescinds in absentia order where EOIR hotline did not reflect the existence of a hearing and DHS attorney confirmed that respondent was not on its docket on the date he was ordered removed) (*Wilson*, Greer, Donovan)

[Elva Maricsa Martinez-Polio](#), A208 748 822 (BIA May 22, 2020) (rescinds in absentia order due to exceptional circumstances in light of affidavits submitted on appeal, appearance at prior hearings, and fact that respondent reported to DHS the day after being ordered removed in absentia) (*Kelly*, Couch, Adkins-Blanch)

[Yulia Arturovna Mukharinova](#), A205 287 118 (BIA March 28, 2019) (rescinds in absentia order due to exceptional circumstances in light of respondent's appearance at eight prior hearings, prompt filing of motion, mental health diagnosis, and loss of close family member shortly before scheduled hearing) (*Mann*, Morris, Liebmann)

[Ana Silvia Velasquez Castellon](#), A205 016 240 (BIA Nov. 2, 2017) (rescinds in absentia order where respondent's family became homeless as a result of a robbery in which she lost the contact information for her attorney and attorney moved office location without informing her) (*Malphrus*, Creppy, Mullane)

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[Ninfa Rosa Aguilera-Galeas](#), A098 986 522 (BIA Oct. 17, 2016) (rescinds in absentia order in light of delay in filing NTA with immigration court, respondent's claim to have appeared on the date of the hearing, and potential eligibility for relief) (*Grant*, Mann, O'Connor)

[Javier Ortiz Villegas](#), A200 975 995 (BIA July 1, 2016) (rescinds in absentia order for respondent who claimed inability to locate or contact court on day of hearing) (*Grant*, Mann, O'Leary)

[Jorge Alberto Batres-Romero](#), A206 189 330 (BIA March 17, 2016) (former roommate's failure to advise respondent that hearing notice arrived in the mail constitutes exceptional circumstances) (*O'Leary*, Grant, Guendelsberger)

[Otoniel Rincon-Velasquez](#), A089 284 279 (BIA Aug. 27, 2014) (on remand from Seventh Circuit, remands to consider whether totality of the circumstances test for assessing motion to rescind in absentia removal order based upon exceptional circumstances involves consideration of the merits of the underlying claim for relief) (Malphrus)

[Paulino Gaspar-Sanchez](#), A200 836 708 (BIA July 15, 2014) (rescinds in absentia order where hearing notice did not draw attention to change in location of the hearing, respondent submitted letter the day after his hearing, and respondent had history of prior appearances) (*Grant*, Adkins-Blanch, Guendelsberger)

[Ana Maria Scaranni](#), A089 118 049 (BIA Aug. 13, 2013) (daughter's failure to provide hearing notices constitutes exceptional circumstances) (*Guendelsberger*, Manuel, Miller)

**Misinformation from DHS or Immigration Court**

[Marco Antonio Esparza-Frausto](#), A089 981 198 (BIA July 12, 2016) (rescinds in absentia order where respondent claimed to have been told by immigration officer upon release from custody that hearing would be rescheduled) (*Grant*, Adkins-Blanch, O'Leary)

[Sara Del Carmen Guzman](#), A202 125 309 (BIA May 7, 2015) (ICE officer advised respondent that she had to move to Massachusetts and could change venue after being released from custody) (*Miller*, Holiona, Holmes)—**KEY DECISION**

[Aminadad Natanael Mendez-Perez](#), A099 623 872 (BIA Oct. 30, 2013) (alleged clerical error by immigration court advising respondent to appear day after his hearing constitutes exceptional circumstances) (*Guendelsberger*, Hoffman, Manuel)

[Oscar Antonio Pando Uribe](#), A044 355 610 (BIA Apr. 30, 2013) (immigration court personnel directing respondent to wrong waiting area and attorney's failure to timely appear constitutes exceptional circumstances) (Guendelsberger, Adkins-Blanch, Hoffman)

[Adayn Gonzalez Riola](#), A094 931 009 (BIA Apr. 18, 2013) (federal customs officers declining to direct respondent to location of immigration court constitutes exceptional circumstances) (*Guendelsberger*, Hoffman, Adkins-Blanch)

**Misunderstood Date of Hearing**

[Oscar Moreno-Gomez](#), A206 653 438 (BIA March 29, 2017) (rescinds in absentia order where respondent mistakenly believed that hearing was scheduled for January 4, 2016, based on comment by IJ at end of prior hearing) (*Mann*, Kelly, Grant)

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### Traffic/Transportation Problems

[Juan Francisco Lopez](#), A095 805 348 (BIA Aug. 10, 2016) (rescinds in absentia order following submission of evidence on appeal demonstrating mechanical work on vehicle that malfunctioned on day of hearing) (*O'Leary*, Grant, Mann (dissenting))

[Maria Vega-Vargas](#), A079 189 914 (BIA March 9, 2016) (reopens proceedings under totality of the circumstances, including respondent's claim to have arrived late because of a flat tire) (*Grant*, Guendelsberger, O'Leary)

[Jorge Antonio Haro Pena](#), A095 727 770 (BIA Dec. 17, 2013) (no "per se" rule against car difficulties constituting exceptional circumstances) (*Grant*)—**KEY DECISION**

[Jacks-Guy Nkouna Chattuais](#), A098 063 263 (BIA May 15, 2013) (traffic accident that caused late arrival constitutes exceptional circumstances) (*Hoffman*, Adkins-Blanch, Guendelsberger)

### Failure to Appear

[Candelaria Tercero Jacinto De Lopez](#), A215 639 704 (BIA Aug. 24, 2020) (respondent did not fail to appear where she arrived 40 minutes late and IJ was still on the bench) (*Cassidy*)

[S-M-B-V](#), AXXX XXX 486 (BIA July 7, 2020) (rejects DHS argument that respondent subject to Migrant Protection Protocols (MPP) should have been ordered removed in absentia where record contained no copy of instructions for how he could be transported from Mexico to the San Diego immigration court) (*Kelly*, Adkins-Blanch, Kelly)

[Jesus Flores-Lopez](#), A209 946 545 (BIA July 2, 2020) (respondent did not fail to appear where he arrived 20 minutes late to hearing and IJ was still on the bench) (*Kelly*, Cassidy, Pepper)

[Adriana Lizeth Sarabia Ciru](#), A201 426 621 (BIA May 21, 2020) (remands for IJ to consider whether 1:00 p.m. arrival for hearing scheduled to begin at 8:00 a.m. qualified as failure to appear) (*Pepper*)

[Artemio Hernandez-Yanez](#), A205 841 720 (BIA May 8, 2020) (respondent did not fail to appear for hearing where he arrived 25 minutes late due to unexpectedly heavy traffic and was in communication with his attorney who was in the courtroom) (*Grant*, Mullane, Mann)

[Frida Solis Valero](#), A204 965 006 (BIA Jan. 9, 2020) (respondent's late arrival did not constitute a failure to appear because the IJ was still on the bench when she arrived) (*Liebmann*, Mullane, Adkins-Blanch)

[Lucas Hernandez-Domingo](#), A200 277 081 (BIA Sept. 19, 2019) (respondent did not fail to appear where he was less than an hour late to his hearing because he did not realize his case was transferred to a different courthouse) (*Rosen*, Wendtland, Greer)

[Suzy Glendory Argueta-Pineda](#), A206 797 688 (BIA Aug. 1, 2018) (rescinds in absentia order of removal upon finding that the respondent's late arrival did not constitute a failure to appear at the hearing) (*Wendtland*, Cole, Greer)

[Abu Sufiyan](#), A088 003 019 (BIA Oct. 20, 2017) (respondent did not fail to appear by arriving at 9:30 a.m. for hearing at 8:00 a.m. where IJ was still on bench conducting master calendar hearings) (*Grant*, Kelly, Adkins-Blanch)

[Sukhdev Singh](#), A209 154 612 (BIA Aug. 25, 2017) (respondent did not fail to appear where he was in

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the waiting room at the time of removal and IJ was still on bench when he entered courtroom) (*Wendtland*, Cole, Pauley (concurring))

[Higinio Rivas-Diaz](#), A208 362 593 (BIA July 18, 2017) (respondent who arrived at 10:45 am for 9:00 am hearing after vehicle experienced mechanical failure did not fail to appear) (*Adkins-Blanch*, Grant, Mann)

[Mingyue Hu](#), A205 625 592 (BIA May 19, 2017) (respondent did not fail to appear where she was waiting for attorney outside courtroom at 9:00 am and entered courtroom at 9:40 am while IJ was still on bench) (*Adkins-Blanch*, Grant, Mann)

[Qiang Fu](#), A205 717 346 (BIA Jan. 5, 2017) (30-minute delay in arriving due to delay with bus did not qualify as failure to appear) (*Grant*, Adkins-Blanch, Mann)

[Victor Manuel Carreiro](#), A203 159 537 (BIA March 24, 2016) (rescinds in absentia order issued by IJ more than 30 minutes before respondent was scheduled to appear) (Miller)

[Gabino Rolando Cortez-Talavera](#), A095 748 656 (BIA July 10, 2015) (respondent who arrived only 30 minutes late did not fail to appear for hearing) (*Grant*, Guendelsberger, Miller)—**KEY DECISION**

### **Fugitive Disentitlement Doctrine**

[Agnieska Herrell](#), A075 790 304 (BIA Dec. 11, 2017) (reverses IJ decision finding that respondent was barred from reopening case under the fugitive disentitlement doctrine) (*Grant*, Adkins-Blanch, Kelly)

### **Lack of Notice**

#### **Change of Address**

[Oscar Francisco Flores-Martinez](#), A099 518 538 (BIA Sept. 10, 2019) (rescinds in absentia order because respondent was not served a complete NTA and thus had no notice of his obligations to report any change of address to the immigration court) (*Noferi*, Cole, O'Connor)

[Liliia Kelenikova](#), A202 188 709 (BIA Aug. 15, 2019) (rescinds in absentia order under *Fuentes-Pena v. Barr*, 917 F.3d 827 (5th Cir. 2019), where respondent informed DHS of change of address after service but prior to filing of NTA with immigration court) (*Cole*, Greer, Donovan)

[Francis Kipkoskei Rop](#), A087 411 165 (BIA June 28, 2018) (rescinds in absentia order because respondent was no longer obligated to appraise the immigration court of any change of address after proceedings were terminated to allow him to adjust status before USCIS) (*Wendtland*, Crossett, Pauley (dissenting))

[T-O-](#), A206 982 895 (BIA April 27, 2018) (rescinds in absentia order where NTA was not filed with the immigration court until after the respondent filed a change of address form) (*Pauley*, Snow, Neal)

[Jeny Suyapa Ramirez-Javier](#), A208 994 100 (BIA Dec. 20, 2017) (rescinds in absentia order where respondent provided updated address to DHS officer before mailing of NTA) (*Grant*, Adkins-Blanch, Mann)

[Osmilda Bonilla-Martinez](#), A077 670 908 (BIA May 15, 2017) (rescinds in absentia order where respondent submitted EOIR-33 after being served but before NTA was filed with immigration court) (*Grant*, Adkins-Blanch, Mann)



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[Luis Fernando Gomez Otoya](#), A087 245 163 (BIA Nov. 15, 2016) (rescinds in absentia order sua sponte where prior attorney did not receive the hearing notice because he failed to notify the immigration court of his change of address) (*Adkins-Blanch*, Grant, Mann)

[Patricia Yanira Guzman-Deras](#), A099 678 562 (BIA March 15, 2016) (rescinds in absentia order where respondent was unable to notify court of new address because she moved before the filing of the NTA) (*Guendelsberger*, Adkins-Blanch, O'Leary)—**KEY DECISION**

[Jardan Levin](#), A087 084 094 (BIA Aug. 4, 2015) (reopens proceedings where respondent submitted affidavit corroborating claim that he moved two months before NTA was mailed) (*Grant*, Guendelsberger, Holiona)

[Ramon Zamorano-Mendez](#), A205 656 586 (BIA July 15, 2015) (orders further consideration of motion to reopen in light of confusion surrounding validity of address provided by the respondent to which the hearing notice was sent) (Grant, Guendelsberger, Holiona)

[Jose Manuel Zapata Laguna](#), A090 916 088 (BIA May 21, 2015) (rescinds in absentia order where respondent moved before NTA was mailed and thus was not responsible for advising immigration court of any future change of address) (*Greer*, Pauley, O'Herron)

[Amalia Georgios Frazi](#), A046 880 198 (BIA Aug. 29, 2014) (rescinds in absentia order because NTA and hearing notice were not mailed to most recently provided address; notes that obligation to file change of address form does not arise until respondent can be charged with receiving warnings in NTA) (*Creppy*, Mullane, Liebowitz)

[Gloria Monica Price](#), A089 410 415 (BIA June 20, 2011) (pro se respondent filed change of address form with USCIS rather than immigration court) (*Adkins-Blanch*, Guendelsberger, Kendall-Clark)

### **Delivery by Regular Mail**

[Arturo Geronimo](#), A092 998 434 (BIA Sept. 1, 2020) (respondent overcame presumption of delivery where he submitted a declaration stating that he submitted a change of address form after being released from DHS custody and sought to renew his permanent resident card prior to the hearing at which she was ordered removed in absentia) (*Pepper*, Donovan, Monsky)

[A-C-R-R-](#), AXXX XXX 876 (BIA July 10, 2020) (respondent rebutted presumption of delivery in light of sworn declaration that she did not receive hearing notice and submission of motion within 30 days of receiving in absentia order accompanied by asylum application) (*Cassidy*, Adkins-Blanch, Kelly)

[Natalia Suilma-Andrade](#), A201 712 323 (BIA July 9, 2020) (rescinds in absentia order where respondent filed motion within 15 days and submitted affidavit disavowing receipt of hearing notice) (*Kelly*, Adkins-Blanch, Cassidy)

[Rolando Javier Chavez-Mejia](#), A208 287 366 (BIA July 2, 2020) (respondent rebutted presumption of delivery where he submitted affidavits from himself and former attorney attesting to non-receipt of hearing notice and he had previously submitted an adjustment application) (*Grant*, Mann, Gorman (dissenting))

[Jhon Jairo Ramos-Salazar](#), A209 422 460 (BIA June 12, 2020) (respondent rebutted presumption of delivery where both hearing notice and in absentia order were returned as undeliverable) (*Grant*, Mullane, Gorman)

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[Thomas Kiss](#), A096 783 295 (BIA June 2, 2020) (respondent rebutted presumption of delivery in light of uncontested evidence that NTA was sent to UPS mailbox that he was no longer renting) (*Grant*, Mann, Riley)

[J-P-L-G-](#), AXXX XXX 345 (BIA March 26, 2020) (respondent rebutted presumption of delivery where he affirmatively applied for asylum, was the beneficiary of an approved visa petition, and submitted an affidavit averring that he did not receive notice of his rescheduled hearing) (*Grant*, Mann, Mullane (dissenting))

[Armando Uyu Cotzoyay](#), A072 525 341 (BIA Nov. 12, 2019) (respondent rebutted presumption of delivery by regular mail in light of declaration submitted on appeal stating that he did not receive hearing notice despite efforts to remain in contact with property manager at prior address and immigration consultant handling his asylum application) (*Kelly*, Mann, Mullane)

[J-N-H-R-](#), AXXX XXX 682 (BIA Nov. 7, 2019) (respondent rebutted presumption of delivery by regular mail in light of declaration from himself and former spouse attesting to non-receipt of NTA and submission of multiple applications for relief) (*Liebmann*, Kelly, Mullane (dissenting))

[Siomara Elizabeth Bustillo-Marquez](#), A206 725 426 (BIA June 19, 2019) (respondents rebutted presumption of delivery where they displayed diligence in filing motion to reopen, submitted affidavits attesting to nonreceipt of hearing notice, and regularly reported to ICE after being released on recognizance) (*Kelly*, Adkins-Blanch, Liebman)

[N-Y-V-M-](#), AXXX XXX 345 (BIA May 10, 2019) (rescinds in absentia order in light of respondent's diligence in seeking reopening, request for asylum at a port of entry, and affidavit averring to not receiving hearing notice) (*Kelly*, Adkins-Blanch, Guendelsberger)

[Ammar Alaa Oleiwi](#), A201 005 985 (BIA Nov. 28, 2018) (respondent rebutted presumption of delivery where he affirmatively applied for asylum and appeared for an interview before being placed in proceedings and his mail was being sent to an acquaintance who moved shortly before the hearing notice was sent) (*Crossett*, Greer, Donovan)

[Franklin Emigdio Alfaro-Carcamo](#), A205 476 015 (BIA Oct. 12, 2018) (respondent rebutted presumption of delivery where hearing notice contained the wrong zip code and he reported to ICE after being ordered removed in absentia) (*Snow*, Kelly, Geller)

[Armengil Ambrocio-Mendez](#), A209 238 030 (BIA Oct. 9, 2018) (rescinds in absentia order in light of respondent's affidavit averring that she received no mail from the immigration court and describing the regular mail delivery problems at the apartment complex and diligence in seeking reopening) (*Adkins-Blanch*, Snow, Geller)

[Zao Chen](#), A200 185 351 (BIA Oct. 1, 2018) (respondent rebutted presumption of delivery in light of affidavits from he and his wife claiming non-receipt of hearing notice, fact that he had a powerful incentive to attend the hearing as an LPR who had applied for naturalization, and diligence in seeking reopening) (*Snow*, Adkins-Blanch, Mann)

[Ricky Rolando Ramos-Moreno](#), A078 323 842 (BIA Sept. 17, 2018) (rescinds in absentia order where IJ overlooked affidavits demonstrating that respondent did not receive hearing notice) (*Kelly*, Adkins-Blanch, Mann)

[Ana Maria Yamileth Zaldivar-Martinez](#), A209 443 124 (BIA Aug. 30, 2018) (rescinds in absentia order upon finding respondent rebutted presumption of delivery of notice changing time of hearing from 1:00 pm to 8:30 am given that she had previously attended hearings, was pursuing relief from

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removal, and appeared at original hearing time) (*Snow, Kelly, Geller*)

[Revedlare Diego Garma Davis](#), A097 160 555 (BIA Aug. 6, 2018) (rescinds in absentia order in light of respondent's submission of affidavit and other evidence she did not receive hearing notice) (*Kendall Clark, Guendelsberger, Grant*)

[Dolores Candelaria Esteban-Manuel](#), A206 462 884 (BIA July 30, 2018) (rescinds in absentia order where respondent submitted sworn affidavit that she never received the hearing notice, willingly presented herself to ICE before and after being ordered removed, and exercised due diligence in retaining counsel and seeking to reopen proceedings) (*Snow, Adkins-Blanch, Mann*)

[Wayne Anthony Panton](#), A096 608 861 (BIA July 26, 2018) (rescinds in absentia order where respondent was pursuing application with DHS before and after issuance of the NTA, provided new address to DHS several years before NTA was filed with immigration court, and had incentive to appear for hearing) (*Kelly, Adkins-Blanch, Mann*)

[Mamadou Sidibe](#), A097 588 811 (BIA April 17, 2018) (respondent rebutted presumption of delivery through submission of affidavit stating he had problems receiving mail at address to which NTA was sent and Form I-797C from USCIS stating that post office could not deliver form to address listed on NTA) (*Pauley, Kelly, Snow*)

[M-R-G-](#), AXXX XXX 770 (BIA Oct. 12, 2017) (rescinds in absentia order where respondent rebutted presumption of delivery by regular mail by submitting affidavits that hearing notice was not received, was the beneficiary of an approved Form I-360, and attended previous hearing) (*Greer, Kelly, Kendall Clark*)

[D-N-R-D-](#), AXXX XXX 351 (BIA Sept. 29, 2017) (rescinds in absentia order upon finding that the respondent rebutted the presumption of delivery by regular mail by acting with diligence in seeking reopening and having incentive to appear to pursue asylum claim) (*Greer, Kelly, Neal*)

[M-C-C-](#), AXXX XXX 436 (BIA Sept. 29, 2017) (rescinds in absentia order where respondent rebutted the presumption of delivery by regular mail by acting with diligence in seeking reopening and submitting sworn affidavits that they did not receive hearing notice) (*Kelly, Greer, Kendall Clark*)

[Pedro Antonio Avalos Jarquin](#), A208 285 701 (BIA Sept. 29, 2017) (rescinds in absentia order where respondent rebutted the presumption of delivery by regular mail, states that respondent was not required to submit application for relief in connection with motion) (*Cole, Greer, Pauley (dissenting)*)

[P-R-S-](#), AXXX XXX 503 (BIA Sept. 13, 2017) (respondent rebutted presumption of delivery by regular mail where abusive spouse forced her to move to different address) (*Greer, Wendtland, Cole (dissenting)*)

[Roberto Manuel Ortega-Anaya](#), A209 245 963 (BIA Aug. 17, 2017) (respondent rebutted presumption of delivery by regular mail where he averred not receiving hearing notice until two days after hearing occurred, had substantial incentive to appear, and filed motion to reopen less than two weeks after hearing) (*Pauley, Grant, Kelly*)

[Eulalia Gaspar-Tomas](#), A206 462 892 (BIA June 22, 2017) (respondent rebutted presumption of delivery by regular mail where she willingly presented herself to ICE officers before and after *in absentia* order) (*Guendelsberger, Kendall Clark, Malphrus*)—**KEY DECISION**

[Leticia Aparecida Barbosa Santos](#), A206 803 700 (BIA June 9, 2017) (respondent rebutted presumption of delivery by regular mail where she provided address of attorney and bond obligor

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during credible fear interview) (*Wendtland*, Pauley, Greer)

[Jesus Omar Turcios-Castellanos](#), A200 005 691 (BIA March 17, 2017) (rescinds in absentia order where evidence was sufficient to overcome presumption of delivery by regular mail, including that respondent inquired about the status of his case 18 days after release from custody and hired counsel to seek reopening shortly after receiving in absentia order) (*Kelly*, Adkins-Blanch, Grant)

[Fidel Gonzalez](#), A205 754 142 (BIA March 3, 2017) (IJ failed to consider whether respondent overcame presumption of delivery by regular mail and respondent routinely reported to ICE officials and acted with due diligence in seeking reopening) (*Mann*, O'Connor, Adkins-Blanch)

[Sindy Marbella Galeas Ochoa](#), A208 258 661 (BIA Dec. 15, 2016) (rescinds in absentia order of removal in light of the respondent's assertion that she never received hearing notice sent by regular mail) (*Mann*, Grant, O'Connor)

[Josefa Carrillo-Pablo](#), A202 097 908 (BIA Sept. 21, 2015) (orders further consideration because IJ enunciated but did not actually apply factors set forth in *Matter of M-R-A*, 25 I&N Dec. 665 (BIA 2008)) (*Wendtland*, O'Herron, Pauley (dissenting))—**KEY DECISION**

[Jenine Tameka Jones](#), A206 501 154 (BIA Sept. 21, 2015) (rescinds in absentia order in light of affidavits from respondent and third parties averring that she did not receive hearing notice) (*O'Leary*, Grant, Guendelsberger)

[Daniel Duarte-Mendez](#), A205 208 430 (BIA Aug. 5, 2015) (rescinds in absentia order where respondent presented sufficient evidence to overcome presumption of delivery of hearing notice) (*Grant*, Guendelsberger, Holiona)

[Moises Alfonso Rodriguez](#), A205 458 035 (BIA May 29, 2015) (rescinds in absentia order in light of sworn affidavit stating he did not receive hearing notice, noting that "the presumption of regularity in the delivery of the mail, standing alone, is not sufficient to render an alien's sworn affidavit incredible" (*Grant*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Mohammed Jammeh](#), A205 274 106 (BIA Feb. 23, 2015) (reopens proceedings where IJ did not properly consider whether respondent overcame the presumption of delivery of hearing notice sent by regular mail, and in light of totality of the circumstances, including fact that respondent entered the country lawfully and is married to a U.S. citizen) (*Guendelsberger*, Holmes, Miller)

[Juan Carlos Soto-Hernandez](#), A076 395 660 (BIA Mar. 15, 2013) (respondent overcame presumption of delivery of documents sent by regular mail) (*Mann*, Adkins-Blanch, Guendelsberger)

**Erroneous or Incomplete Address**

[Bineyam Asefa Woldemichael](#), A203 193 231 (BIA Sept. 28, 2020) (rescinds in absentia order where hearing notice was sent to incorrect address and returned as undeliverable) (*Wilson*, Greer, Gorman)

[Olga Rybicki Sayevych](#), A200 142 210 (BIA April 1, 2020) (rescinds in absentia order due to lack of notice where respondent's attorney was not present when next hearing date was announced and address listed on hearing notice omitted word "street") (Cassidy)

[R-C-](#), AXXX XXX 582 (BIA March 6, 2020) (rescinds in absentia order where NTA was sent to address obtained from Form I-360 but at which the respondent never lived) (*Grant*, Mullane, Mann)

[Maria Nieves Hernandez-Flores](#), A200 064 049 (BIA Dec. 12, 2019) (rescinds in absentia order

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because notice of hearing was addressed to Crystal Avenue rather than Kester Avenue) (*Grant*, Guendelsberger, Kendall Clark)

[Alejandrina Orozco-De La Paz](#), A201 179 368 (BIA Sept. 19, 2019) (rescinds in absentia order where hearing notice contained wrong apartment number) (*Mann*, Kelly, Mullane (dissenting))

[Ali Sarila Seyyidi](#), A206 263 984 (BIA Aug. 6, 2019) (rescinds in absentia order in light of declaration from prior attorney that he did not receive hearing notice and possibility that notice was sent to wrong address) (*Wendtland*, Cole, Donovan)

[Seema Patel](#), A098 940 008 (BIA July 15, 2019) (rescinds in absentia order in light of evidence that hearing notice was sent to wrong address and despite denial of prior motion in which respondent mistakenly stated that the address was correct) (*Liebowitz*, Baird, Creppy)

[Carin Idiana Rodriguez-Enamorado](#), A209 338 632 (BIA July 1, 2019) (rescinds in absentia order where address listed on NTA was incorrect because street numbers were transposed and hearing notice was returned as undeliverable) (*Donovan*, Greer, Cole (dissenting))

[Jocinto Ruiz-Ruiz](#), A097 702 282 (BIA June 21, 2019) (rescinds in absentia order where DHS sent NTA to address obtained during a fugitive operation at a location where a group of farmworkers were apprehended and the accuracy of the address was unclear) (*Kelly*, Mann, Morris)

[Keylin Vanessa Ramos-Amaya](#), A209 842 386 (BIA Oct. 29, 2018) (rescinds in absentia order where hearing notice mistakenly used postal code for South Carolina (“SC”) rather than California (“CA”)) (*Kelly*, Adkins-Blanch, Geller)

[L-E-M-A-](#), AXXX XXX 043 (BIA Aug. 28, 2018) (rescinds in absentia order where hearing notice misspelled name of street as “Fallsbrook” rather than “Fallbrook”) (*Snow*, Mann, Kelly)

[Flavio Cesar Molina-Mejia](#), A209 292 510 (BIA Aug. 6, 2018) (rescinds in absentia order where Form I-830E mistakenly listed Respondent’s address in North Carolina rather than Indiana) (*Creppy*, Liebowitz, Geller)

[Kedil Edixon Mejia-Guales](#), A208 451 046 (BIA April 25, 2018) (rescinds in absentia order where address on hearing notice differed from address on Form I-830) (*Greer*, Cole, Crossett)

[Rigoberto Osiris Sorto-Orellana](#), A078 971 293 (BIA Nov. 16, 2017) (rescinds in absentia order where hearing notice failed to include “care of” notation of sponsor with whom respondent was living) (*Kelly*, Adkins-Blanch, Grant)

[L-L-J-C-](#), AXXX XXX 378 (BIA July 19, 2017) (respondent rebutted presumption of delivery by regular mail where immigration officer misrecorded apartment number and motion to reopen was diligently filed) (*Kelly*, Adkins-Blanch, Mann)

[Rosa Mansia Hernandez](#), A201 103 160 (BIA May 9, 2017) (rescinds in absentia order in light of respondent’s sworn affidavit that she did not receive hearing notice and documentary evidence that immigration officer incorrectly recorded her address) (*Adkins-Blanch*, Grant, Mann (dissenting))

[Luis Octavio Avelar-Ramirez](#), A205 151 099 (BIA Jan. 18, 2017) (rescinds in absentia order because immigration court mistyped name of street and hearing notice was returned as undeliverable) (Grant)

[Michael Hiraldo Arias](#), A057 150 954 (BIA Aug. 31, 2016) (rescinds in absentia order because NTA



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was mailed to address lacking internal apartment number) (*O'Leary*, Adkins-Blanch, O'Connor)

[Sandra Lisseth Amaya-Banegas](#), A206 886 601 (BIA March 3, 2016) (respondent could not be charged with receiving NTA where ICE officer failed to record apartment number) (*Mann*, Malphrus, Mullane)

[Luis Reyes-Rojo](#), A201 185 006 (BIA Sept. 8, 2015) (rescinds in absentia order where address was correct but did not include lot number) (*Grant*, Guendelsberger, O'Leary)

[Marcelo Nunez-Rodriguez](#), A076 516 026 (BIA Feb. 25, 2015) (rescinds in absentia order where hearing notice did not state that it was mailed to the address listed in the NTA) (Guendelsberger)

[Eddie Miguel Centeno-Valle](#), A088 017 849 (BIA Dec. 19, 2014) (rescinds in absentia order where hearing notice used incorrect zip code and was mailed on day of the hearing) (*Hoffman*, Malphrus, Mann)

[Javier Hernandez Roderiguez](#), A037 518 812 (BIA June 4, 2014) (reopens proceedings where address listed on NTA misspelled name of street on which respondent resided) (*Guendelsberger*, Holmes, Grant)

[Odalis Cabreja-Arias](#), A087 771 705 (BIA Sept. 5, 2013) (hearing notice listed incorrect zip code) (Grant)

[Rony Rene Anariba](#), A095 094 694 (BIA Nov. 16, 2012) (hearing notice addressed to wrong apartment) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Blanca Lidia Alfaro-Serrano](#), A098 121 479 (BIA Oct. 25, 2012) (respondent provided address in "Chantille" (rather than Chantilly) Virginia) (*Hoffman*, Adkins-Blanch, Manuel)

[Assetou Doumbia](#), A089 952 722 (BIA Jun. 28, 2012) (envelope containing hearing notice misspelled word "Road" in respondent's address) (*Hoffman*, Adkins-Blanch, Manuel)

[Musa Imeri](#), A088 740 874 (BIA Sep. 8, 2011) (hearing notice mailed to incorrect address provided by bond obligor rather than respondent) (*Holmes*, Guendelsberger, Miller)

[Shahilia Reid Goldson](#), A087 095 113 (BIA Aug. 5, 2011) (address on NTA did not include respondent's apartment number) (*Hoffman*, Adkins-Blanch, Guendelsberger)

[Pedro Larios-Quixan](#), A077 007 158 (BIA June 28, 2011) (hearing notice misspelled name of city in which respondent resided; respondent not required to overcome presumption that notice was properly delivered by Postal Service) (*Adkins-Blanch*, Guendelsberger, Holmes)—**KEY DECISION**

**Erroneous or Incomplete Time or Location of Hearing**

[Francisca Marrero Soca](#), A076 996 804 (BIA June 5, 2020) (rescinds in absentia order entered by Orlando immigration court where NTA indicated that hearing would be held in Miami) (*Mann*, Grant, Mullane)

[Erick Edenilson Gomez-Mendoza](#), A099 527 249 (BIA Oct. 18, 2019) (rescinds in absentia order based on lack of notice where order was issued the day after the date listed on the hearing notice) (*Baird*, Liebowitz, Creppy)

[Luisito Santos Ramos](#), A098 957 655 (BIA Feb. 9, 2018) (rescinds in absentia order because NTA did



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not specify particular immigration court at which respondent was required to appear) (*Kelly*, Adkins-Blanch, Grant)

[Agustin Hernandez Zuniga](#), A205 721 753 (BIA July 10, 2015) (rescinds in absentia order because hearing notice listed wrong courtroom) (*Grant*, Guendelsberger, Mann)—**KEY DECISION**

[Javier Escamilla](#), A076 534 101 (BIA June 25, 2013) (NTA issued on November 20, 1997, ordered respondent to appear on February 24, 1997) (*Guendelsberger*, Hoffman, Manuel)

### **Erroneous or Incomplete Name**

[Michael Salomon Mejia-Flores](#), A206 548 763 (BIA Feb. 15, 2018) (rescinds in absentia order because hearing notice did not include “in care of” notation listed on respondent’s last change of address form) (*Guendelsberger*, Grant, Kendall Clark)

[Sandra Carolina Alvarenga-Torres](#), A099 536 077 (BIA Dec. 17, 2015) (NTA did not provide proper notice because it contained wrong name and A-number) (Miller)

[Ramon Zamorano-Mendez](#), A205 656 586 (BIA July 15, 2015) (orders further consideration of motion to reopen in light of confusion surrounding validity of address provided by the respondent to which the hearing notice was sent) (*Grant*, Guendelsberger, Holiona)

### **Fault of Attorney/Representative**

[Mauro Espinosa-Hernandez](#), A205 212 567 (BIA Oct. 16, 2018) (reopens proceedings where record did not demonstrate that respondent’s prior attorney provided notice of the next hearing prior to withdrawing from the case) (*Snow*, Adkins-Blanch, Mann)

[Yanmei Liu](#), A205 027 434 (BIA Feb. 12, 2018) (rescinds in absentia order where hearing notice was mailed to former address of attorney because attorney failed to update address with immigration court after moving offices) (*Mann*, Grant, Snow)

[Jasmen Basambekyan](#), A075 665 907 (BIA Nov. 28, 2017) (rescinds in absentia order because attorney to whom hearing notice was sent either did not represent respondent or did not notify her of hearing) (*O’Connor*, Adkins-Blanch, Pauley (dissenting))

[Juan Godoy-Arrenondo](#), A205 131 326 (BIA Nov. 21, 2017) (rescinds in absentia order where hearing notice was sent to attorney’s prior address and returned as undeliverable) (*Kelly*, Mann, Adkins-Blanch)

[Gurwinder Singh](#), A208 751 159 (BIA Sept. 25, 2017) (rescinds in absentia order where hearing notice was served on respondent but not attorney) (*Kelly*, Grant, Mann)

[Menoush Ghazarian](#), A097 870 514 (BIA Sept. 13, 2017) (rescinds in absentia order where hearing notice was allegedly served on attorney on date on which he was still unrepresented) (*Kelly*, Greer, Kendall Clark)

[Ala Abdel Muhsen Rafati](#), A087 969 447 (BIA Dec. 22, 2016) (rescinds in absentia order because record did not contain entry of appearance from attorney who received hearing notice) (*Grant*, Adkins-Blanch, Mann)

[Jose Manuel Zamora-Rosas](#), A018 509 728 (BIA July 18, 2016) (rescinds in absentia order because attorney to whom hearing notice was mailed did not submit entry of appearance following prior

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remand from Board) (*Holiona*, Guendelsberger, Kendall-Clark)

[Josefa Carrillo-Pablo](#), A202 097 908 (BIA June 2, 2016) (rescinds in absentia order against respondent who alleged she was not advised of hearing by notario who received hearing notice) (*Wendtland*, O'Herron, Pauley (dissenting))

[Juan Hinojosa](#), A098 239 282 (BIA May 5, 2015) (rescinds in absentia order where respondent's attorney failed to advise him of the hearing and IJ erred in finding respondent was present with counsel when hearing notice was issued) (*Guendelsberger*, Grant, Adkins-Blanch)

[Rakesh Kumar Natvarbhai Patel](#), A200 961 784 (BIA Dec. 18, 2014) (remands record where IJ failed to consider sworn affidavit from respondent that he did not receive attorney letter informing him of hearing date or psychological evaluation addressing respondent's mental competency) (*Guendelsberger*)

[Karla Figueroa Briceno](#), A095 084 539 (BIA May 30, 2014) (reopens proceedings where respondent asserted she missed her hearing because a paralegal filed a change of address form without her consent) (*Manuel*, Adkins-Blanch, Hoffman)

[Felix Musembi Kyalo](#), A200 578 009 (BIA Sept. 6, 2013) (hearing notice sent to attorney for whom no EOIR-28 was on file) (*Manuel*, Adkins-Blanch, Hoffman)

[Eden Francois](#), A075 442 065 (BIA June 6, 2013) (former counsel conceded failure to advise respondent of hearing at which he was ordered removed) (*Guendelsberger*, Adkins-Blanch, Hoffman)

**Lack of Interpreter at Hearing**

[Emilia Hernandez Gomez](#), A205 403 862 (BIA Nov. 30, 2015) (respondent may not have received proper notice of hearing due to lack of Quiche interpreter at hearing at which the notice was given) (Grant)—**KEY DECISION**

**Minors**

[Yanira Sanchez-Flores](#), A099 648 663 (BIA April 10, 2020) (rescinds in absentia order where NTA was issued when respondent was 7 years old and signed for by her father) (*Mann*, Grant, Mullane (dissenting))

[W-L-G-L-](#), AXXX XXX 013 (BIA April 3, 2018) (rescinds in absentia order because NTA did not contain sufficient detail to demonstrate conformance with regulations governing service on minors under 14 years of age) (*Greer*, Kelly, Kendall Clark)

[Brenda Yamileth Bonilla-Mejia](#), A078 277 418 (BIA Oct. 26, 2017) (rescinds in absentia order because NTA was not properly served on respondent who was then a 12-year-old minor) (*Kelly*, Adkins-Blanch, Mann)

[Jordan Omar Nunez-Zepeda](#), A097 315 824 (BIA Sept. 29, 2017) (rescinds in absentia order where respondent was 7 years old at time of hearing and NTA was not served on mother) (*Kendall Clark*, Greer, Kelly)

[Justo Rojop-Hernandez](#), A205 147 894 (BIA Apr. 23, 2014) (reopens proceedings under *Flores-Chavez v. Ashcroft*, 362 F.3d 1150 (9th Cir. 2004), which held that notice in cases involving juveniles must be provided to adult into whose custody they have been released) (*Hoffman*, Guendelsberger, Manuel)

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### Miscellaneous

[Luis A. Medina Lozano](#), A201 426 085 (BIA May 20, 2020) (rescinds in absentia order due to lack of notice in light of diligence in filing motion and fact that respondent's spouse appeared for hearing in separate proceedings 10 days prior) (*Cassidy*, Couch, Kelly)

[L-F-A-](#), AXXX XXX 919 (BIA Dec. 18, 2019) (IJ improperly denied motion to reopen for failure to establish eligibility for relief where respondent established that he never received notice of hearing before being ordered removed in absentia) (*Gorman*, Couch, Kelly)

[M-C-C-](#), AXXX XXX 591 (BIA April 1, 2019) (rescinds in absentia order given that respondent acted with diligence in filing motion to reopen, reported to ICE office, submitted affidavit from husband attesting to non-receipt of hearing notice, and had incentive to appear to pursue asylum application) (*Kendall Clark*, Adkins-Blanch, Mann)

[Julio Neftaly Abarca](#), A098 855 524 (BIA Dec. 6, 2018) (rescinds in absentia order because DHS did not file NTA with immigration court prior to originally scheduled hearing and respondent thus had no obligation to inform court of change of address) (*Grant*, Guendelsberger, Kendall Clark)

[Odilia Pablo-Velasquez](#), A209 479 975 (BIA Oct. 9, 2018) (rescinds in absentia order under totality of the circumstances based on lack of notice where respondent continually checked in with ICE following release from detention and acted with diligence in filing motion to reopen) (*Adkins-Blanch*, Kelly, Grant)

[Felix Alberto Marquez Padilla](#), A076 376 736 (BIA Oct. 5, 2018) (rescinds in absentia order because hearing notice contained a separate notice stating "PARKING DATE ONLY. CASE WILL BE RESET") (*Guendelsberger*, Kendall Clark, Grant)

[Samuel David Gutierrez-Serrano](#), A206 799 902 (BIA July 19, 2018) (rescinds in absentia order where respondent continued to receive hearing notices and appeared in court after being ordered removed) (*Snow*, Kelly, Adkins-Blanch)

[Sandra Orellana-Bonilla](#), A216 302 277 (BIA March 16, 2018) (rescinds in absentia order where NTA was purportedly served by custodial officer the day after respondent was released from detention) (*Grant*, Kelly, Mann)

[Juan Alberto Mata-Siciliano](#), A094 790 928 (BIA May 11, 2017) (respondent did not waive right to notice of hearing by providing address of relative with whom he was not residing) (*Kelly*, Grant, Mann)—**KEY DECISION**

[David Matehuala-Grimaldo](#), A028 889 405 (BIA April 26, 2017) (rescinds in absentia order in light of affidavits from respondent's brother and brother's former wife corroborating respondent's assertion that he did not receive NTA) (*Grant*, Neal, Mann (dissenting))

[Lorne Allan Semrau](#), A022 201 177 (BIA April 19, 2017) (rescinds in absentia order in light of uncertainty over whether respondent was notified of immigration court's new address) (*Adkins-Blanch*, Grant, Mann)

[Milagro Isolina Mulatillo-Arrue](#), A200 060 538 (BIA Nov. 3, 2016) (rescinds in absentia order under totality of the circumstances in light of ambiguities over whether hearing notice was sent to respondent at address he provided) (*Grant*, Mann, O'Connor)

[Rodolfo Huerta-Martinez](#), A205 294 294 (BIA Aug. 30, 2016) (remands record for IJ to initially

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consider attorney affidavit submitted on appeal claiming not to have received hearing notice) (*O'Leary, Mann, Grant*)

[Maria Berlinda Bonilla-Chacon](#), A096 179 693 (BIA July 24, 2015) (rescinds in absentia order because hearing notice did not reflect manner of service and because of other irregularities in the record) (*Grant, Guendelsberger, Holiona*)

[Rodolfo Castillo-Lozano](#), A097 398 041 (BIA July 22, 2015) (rescinds in absentia order where respondent advised DHS of current address during 10-year period in which case was administratively closed) (*Guendelsberger, Grant, Holiona*)

[Magda Esperanza Cordova-Ramirez](#), A205 485 321 (BIA June 12, 2015) (rescinds in absentia order in light of affidavit attesting that respondent received other documents sent by immigration court but not hearing notice) (*Grant*)

[Leandro de Souza](#), A098 891 606 (BIA Sept. 2, 2014) (removal does not deprive immigration courts of jurisdiction over motions to reopen in absentia orders that are premised upon lack of notice) (*Holmes*)

[Mahmoud Nabeel Hamdan](#), A087 240 107 (BIA June 9, 2014) (remands under *Smykiene v. Holder*, 707 F.3d 785 (7th Cir. 2013), for evidentiary hearing where respondent attested to nonreceipt of the hearing notice in an affidavit and no conclusive evidence of evasion existed) (*Guendelsberger*)

[Jose Maria Sanchez-Cazarez](#), A205 943 262 (BIA Feb. 10, 2014) (proceedings reopened where respondent submitted detailed affidavits disavowing receipt of the hearing notice, acted diligently in seeking reopening, and was eligible to seek cancellation of removal for nonpermanent residents) (*Grant, Guendelsberger, Manuel*)

[Juan Roberto Guzman](#), A044 466 955 (BIA Nov. 25, 2013) (DHS failed to serve copy of appeal notice when challenging prior decision terminating proceedings against respondent) (*Manuel, Adkins-Blanch, Hoffman*)

[Nana Antwi Boasiako](#), A096 835 772 (BIA Sept. 9, 2013) (respondent plausibly claimed that he did not receive actual notice of hearing, had an incentive to appear at future hearings in light of pending visa petition filed on his behalf) (*Grant, Adkins-Blanch, Hoffman*)

[Sumithra Keerthi Prasanna Fernando Conganige](#), A088 035 796 (BIA May 28, 2013) (IJ overlooked affidavits supporting respondent's claim to have not received hearing notice) (*Grant*)

[Sydney Okine](#), A097 168 058 (BIA May 10, 2013) (respondent submitted sworn affidavits corroborating assertion he never received NTA and had an incentive to appear at hearing to pursue affirmative application for relief) (*Hoffman, Manuel, Guendelsberger*)

[Jorge Sulbaran](#), A087 075 003 (BIA Feb. 23, 2011) (respondent submitted sworn affidavit on appeal stating he did not live at address to which NTA and hearing notice were sent) (*J. King, Adkins-Blanch, Guendelsberger*)

[Alex Gamboa](#), A075 924 620 (BIA Feb. 22, 2011) (respondent did not receive NTA or hearing notice and had been experiencing problems with mail delivery) (*C. King, Guendelsberger, J. King*)

[Braulio Lituma](#), A077 027 270 (BIA Feb. 11, 2011) (respondent bears burden of demonstrating he did not receive NTA or that he changed addresses before NTA was mailed) (*C. King*)

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[Jorge Enrique Torres](#), A099 925 343 (BIA Jan. 11, 2011) (IJ failed to consider evidence indicating respondent did not receive hearing notice) (*Kendall-Clark*, Adkins-Blanch, Guendelsberger)

### **Notice Delivered But Not Received By Respondent**

[Karla de Jesus Alfaro-Martinez](#), A202 076 417 (BIA May 6, 2015) (rescinds in absentia order where respondent was unaware of hearing because grandmother had misplaced the hearing notice) (*O'Herron*, Neal, Adkins-Blanch)

[Wilson Orlando Escobar](#), A095 082 121 (BIA Aug. 14, 2013) (respondent's mother intentionally hid NTA and hearing notices and forged respondent's signature on EOIR-28) (Pauley)

[Loan Nguyen Thu Pham](#), A095 245 758 (BIA June 11, 2012) (respondent was visiting her mother abroad when NTA and hearing notice were sent; landlord received but did not forward some immigration-related mail) (*Adkins-Blanch*, Hoffman, Manuel)

### **Notice Not In Record**

[N-C-L-Z-](#), AXXX XXX 083 (BIA May 27, 2020) (rescinds in absentia order where hearing notice was not contained in record) (*Creppy*, Hunsucker, Liebowitz)

[Alissen Lopez-Perez](#), A201 550 484 (BIA April 30, 2020) (rescinds in absentia order where IJ ordered removal at hearing for which no notice existed in the record) (Cassidy)

### **Notice Not Sent to Respondent and/or Attorney**

[John Michael Kaleel](#), A043, 479 452 (BIA Aug. 6, 2019) (rescinds in absentia order where hearing notice was addressed to respondent's attorney but certificate of service listed address of respondent) (Morris)

[Carlos Roberto Meza-Navarro](#), A088 352 182 (BIA Aug. 22, 2018) (rescinds in absentia order because attorney to whom hearing notice was sent did not submit entry of appearance) (*Mann*, Kelly, Snow)

[Trang Thi Xuan Phung](#), A063 194 835 (BIA Aug. 21, 2018) (rescinds in absentia order because hearing notice was sent to attorney who did not submit entry of appearance with immigration court) (*Mann*, Snow, Adkins-Blanch)

[Christian Avila-Hurron](#), A208 992 577 (BIA July 10, 2018) (rescinds in absentia order because hearing notice was sent to attorney who only entered appearance for bond proceedings) (*Adkins-Blanch*, Mann, Snow)

[Bryan Gerardo Matute-Almendarez](#), A202 190 463 (BIA June 29, 2018) (rescinds in absentia order where respondent was verbally given notice but hearing notice was not sent to respondent's former attorney) (*Mann*, Snow, Kelly)

[Jose Adalid Mendoza-Dias](#), A077 794 526 (BIA June 21, 2013) (hearing notice sent to DHS but not respondent) (Hoffman)

### **Notice Sent to Outdated Address**

[Kimberly Paola Alvarado-Bardales](#), A203 744 072 (BIA Aug. 21, 2020) (rescinds in absentia order where respondent provided updated address to DHS before NTA was filed with immigration court) (*Mann*, Gorman, Grant)

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[Porfirio Alfonso Ascencio](#), A094 320 692 (BIA June 4, 2020) (rescinds in absentia order where NTA was sent to outdated address and notwithstanding substantial delay in seeking reopening) (*Kelly*, Adkins-Blanch, Couch (dissenting))

[Asif Zafar Sheikh](#), A200 419 348 (BIA May 28, 2020) (rescinds in absentia order because NTA was sent to outdated address provided to USCIS and both hearing notices were returned as undeliverable) (*Greer*, Donovan, Wilson)

[Jose Ramiro Mejia](#), A074 011 801 (BIA March 10, 2020) (rescinds in absentia order where DHS mailed NTA and hearing notice to outdated address listed on first TPS application rather than updated address listed on second TPS application) (*Grant*, Mann, Mullane)

[Esmirna Guerra-Chitiquez](#), A201 424 877 (BIA Feb. 24, 2020) (rescinds in absentia order because hearing notice was not sent to respondent's current address) (*Hunsucker*, Creppy, Morris)

[Maria Emiliana Garcia-Tercero](#), A202 014 401 (BIA Jan. 9, 2020) (rescinds in absentia order because hearing notice was sent to address provided upon release from custody rather than address subsequently provided in Form EOIR-33) (*Goodwin*, Liebmann, Mann)

[Cristina Salinas](#), A073 723 469 (BIA Jan. 9, 2020) (rescinds in absentia order based on lack of notice because NTA was sent to address provided to former INS nearly three years prior) (*Hunsucker*, Creppy, Liebowitz)

[Sherlan Clarence Moore](#), A093 460 201 (BIA Dec. 23, 2019) (rescinds in absentia order because NTA was sent to outdated address on adjustment application) (*Grant*, Guendelsberger, Kendall Clark)

[Gideon Kofi Owusu](#), A203 231 371 (BIA Dec. 19, 2019) (rescinds in absentia order where NTA was sent to last address on file with DHS but it was returned as undeliverable) (*Grant*, Guendelsberger, Kendall Clark)

[Zarrar Taimoor Raja](#), A203 042 944 (BIA Dec. 18, 2019) (rescinds in absentia order where NTA was mailed to outdated address obtained from application submitted to USCIS) (*Grant*, Guendelsberger, Kendall Clark)

[Famara Bodian](#), A079 606 306 (BIA Dec. 20, 2018) (rescinds in absentia order because respondent notified DHS of his new address prior to the issuance of the NTA) (*Kelly*)

[David Lorenzo Miranda-Valle](#), A077 241 135 (BIA July 30, 2018) (rescinds in absentia order in light of respondent's affidavit contending that he did not receive hearing notice and that he provided an updated address to the former INS when he applied for TPS more than four months prior to hearing) (*Kelly*, Adkins-Blanch, Snow)

[Rose Bernie Fanfan](#), A209 162 976 (BIA July 26, 2018) (rescinds in absentia order of removal where respondent submitted a sworn affidavit stating she did not receive the hearing notice and the hearing notice was sent to an outdated address) (*Snow*, Kelly, Adkins-Blanch)

[Tony Daniel Makinda](#), A210 219 380 (BIA May 18, 2018) (rescinds in absentia order where notice was sent to address taken from adjustment application filed more than five years prior) (*Pauley*, Cole, Wendtland)

[Qiang Fu](#), A205 717 346 (BIA May 15, 2018) (rescinds in absentia order where hearing notice was returned as undeliverable and change of address form was not contained in record) (*Adkins-Blanch*,



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Snow, Kelly)

[Munsoor Sharan](#), A078 823 708 (BIA May 9, 2018) (reopens proceedings where USCIS sent NTA to outdated address years after respondent left country) (*Kelly*, Mann, Snow)

[Mayra Mendez Carabantes](#), A200 432 209 (BIA March 30, 2018) (rescinds in absentia order because NTA was mailed to address obtained by USCIS through public domain search at which respondent no longer lived) (*Kelly*, Adkins-Blanch, Snow)

[Jose Luis Macchiavello](#), A096 621 015 (BIA Jan. 22, 2018) (rescinds in absentia removal order where NTA was sent to address obtained from adjustment application at which the respondent was no longer living) (*Pauley*, Wendtland, Cole)

[Natalia Nieto Villalobos](#), A206 956 594 (BIA Oct. 24, 2017) (rescinds in absentia order where NTA was sent to address listed on asylum application) (*Kelly*, Grant, Mann)

[Kamleshkumar G. Patel](#), A087 385 865 (BIA Sept. 25, 2017) (rescinds in absentia order where NTA was sent to outdated address and faults IJ for relying on *Dominguez v. United States Att’y Gen.*, 284 F.3d 1258 (11th Cir. 2002), rather than *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001)) (*Grant*, Mann, Adkins-Blanch)

[Nadejda Rapoport](#), A087 183 422 (BIA Sept. 21, 2017) (rescinds in absentia order where NTA was sent by regular mail to address provided on visa petition and adjustment application filed more than two years prior) (*Kelly*, Grant, Mann)

[Yeon Hee Kim](#), A098 871 094 (BIA Sept. 21, 2017) (rescinds in absentia order where DHS sent NTA to an outdated address contained on an adjustment application submitted more than two years prior) (*Grant*, Kelly, Adkins-Blanch)

[Rene Enrique Ascenio Martinez](#), A088 968 133 (BIA Sept. 20, 2017) (rescinds in absentia order because NTA was sent to address of immigration consultant provided on prior TPS application) (*Kelly*, Mann, Adkins-Blanch)

[Carlos Mitchell](#), A073 066 831 (BIA Sept. 11, 2017) (rescinds in absentia order where DHS sent NTA to address provided by respondent’s spouse on visa petition filed in in 1997) (*Mann*, Grant, Kelly)

[Juan Garcia-Garcia](#), A087 175 395 (BIA April 18, 2017) (rescinds in absentia order because the NTA was sent to an outdated address obtained from a previously filed adjustment application) (*Grant*, Adkins-Blanch, Mann)

[Yuwikza Doris Lucero](#), A076 534 637 (BIA Feb. 24, 2017) (rescinds in absentia order under *Matter of G-Y-R-*, 23 I&N Dec. 181 (BIA 2001), where NTA was mailed to address obtained from documents filed with immigration authorities years earlier) (Guendelsberger)

[Long Dang Nguyen](#), A098 526 352 (BIA Jan. 3, 2017) (rescinds in absentia order because NTA was mailed to outdated address provided on Form I-485) (*Mann*, Adkins-Blanch, O’Connor)

[Onyebuchi Ogbonna Irokanulo](#), A099 400 712 (BIA Nov. 7, 2016) (respondent demonstrated lack of notice where NTA was sent to former address and correspondence with USCIS showed respondent had moved prior to issuance of NTA) (*Wendtland*, Greer, Pauley)

[Maureen Ngallo](#), A089 431 155 (BIA Nov. 4, 2016) (rescinds in absentia order where record failed to establish respondent received NTA sent to former address) (*O’Connor*, Mann, Grant)

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[Jean Claude Pierre](#), A087 107 915 (BIA Nov. 2, 2016) (rescinds in absentia order where NTA was sent to address listed on Form I-751) (*O'Connor*, Adkins-Blanch, Mann)

[Gulin Cai](#), A086 994 205 (BIA Oct. 28, 2016) (rescinds in absentia order of removal because record did not demonstrate that respondent was still living at address listed in prior adjustment application to which DHS sent Notice to Appear) (*O'Connor*, Grant, Mann)

[Moises Sanchez-Zaragoza](#), A077 273 744 (BIA July 14, 2016) (rescinds in absentia order because NTA was sent in 2008 to outdated address contained on 1999 adjustment application) (*Grant*, O'Leary, Mann)

[Ennio Edgardo Galvez](#), A095 006 115 (BIA July 5, 2016) (orders further consideration of motion to reopen in light of evidence submitted on appeal that respondent was no longer living at address to which NTA and hearing notice were sent) (*Grant*)

[Sergio Maldonado](#), A078 567 541 (BIA March 21, 2016) (rescinds in absentia order because NTA was sent to an outdated address obtained from documents filed with DHS several years earlier) (*Guendelsberger*, O'Leary, Grant)

[Bladimir Morales](#), A029 376 366 (BIA Aug. 14, 2015) (reopens proceedings because NTA was mailed to outdated address and respondent was thus not notified of obligation to advise court of any change of address) (*Grant*, Guendelsberger, Holiona)

[Mai The Lu](#), A099 049 720 (BIA June 26, 2015) (rescinds in absentia order where NTA and hearing notice were mailed to address at which respondent no longer resided) (*Grant*, Adkins-Blanch, Guendelsberger)

[Lashante Tanotra Jones](#), A088 958 878 (BIA Oct. 23, 2013) (NTA sent to address at which respondent no longer lived) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Julia Catherine Holtzman](#), A072 043 863 (BIA Sept. 30, 2013) (NTA and hearing notice sent to outdated address obtained from files of former INS and returned as undeliverable) (*Greer*, Cole, Pauley)

[Carla Adriana Vazquez Ferrel](#), A099 222 179 (BIA Sept. 9, 2013) (NTA sent to address obtained from adjustment application filed years before by her former husband) (*Greer*, Cole, Pauley)

[Oyekunle Oyeniyi](#), A099 277 993 (BIA June 28, 2013) (NTA and hearing notice sent to an outdated address obtained from 2005 adjustment application) (Manuel)

[Dexter Bernard Richards](#), A098 582 406 (BIA Nov. 16, 2012) (NTA sent to address obtained from documents filed with immigration authorities several years earlier) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Pedro Rivera-Rodriguez](#), A072 801 823 (BIA Sept. 13, 2012) (NTA sent to outdated address obtained from Form I-213 prepared years before the hearing) (*Hoffman*, Adkins-Blanch, Guendelsberger)

[Victor Manuel Gomez-Gomez](#), A099 669 457 (BIA Feb. 10, 2012) (NTA was not filed with immigration court for two years after being served on the respondent; hearing notice not sent to most recent address) (*Adkins-Blanch*, Hoffman, Miller)

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### Notice Returned as Undeliverable

[Weslei De Sousa Santos](#), A097 318 304 (BIA Sept. 2, 2020) (rescinds in absentia order where hearing notice was returned as undeliverable) (*Kelly*, Adkins-Blanch, Couch (dissenting))

[Christian Alejandro Benitez Villegas](#), A209 772 908 (BIA Jan. 23, 2020) (remands for further consideration of motion to rescind in absentia order in light of respondent's declaration stating and evidence confirming that NTA and hearing notice were returned as undeliverable) (Grant)

[Jose Samuel Lozano Alvarado](#), A206 424 071 (BIA Aug. 31, 2018) (rescinds in absentia order because hearing notice was returned as undeliverable and address was not visible through the envelope window) (*Mann*, Adkins-Blanch, Snow)

[Mario Bladimir Ayala Monzon](#), A206 409 571 (BIA Feb. 13, 2017) (rescinds in absentia order where hearing notice was returned as undeliverable and contained with original envelope in record of proceeding) (*Adkins-Blanch*, Guendelsberger, Mann)

[Togosmaa Lkhagva](#), A078 741 934 (BIA Nov. 15, 2016) (remands for further consideration where IJ overlooked that hearing notice was returned as undeliverable and failed to address claim that respondent reported change of address before hearing notice was mailed) (Grant)

[Carmen Elena Hernandez-Rivera](#), A099 524 260 (BIA July 8, 2016) (orders further consideration of motion to reopen in light of evidence that hearing notice was returned as undeliverable) (Grant)

[Andres Pascual Manuel](#), A099 983 058 (BIA July 6, 2016) (rescinds in absentia order in light of sworn affidavit that respondent moved from address listed on asylum application before NTA was sent and that subsequent notice was returned as undeliverable) (*O'Leary*, Mann, Adkins-Blanch)

[Brenda Iriselda Murillo-Velasquez](#), A099 667 090 (BIA Feb. 3, 2014) (remands record and instructs IJ to consider effect of fact that hearing notice was returned as undeliverable) (Grant)

[Jozef Szypulski](#), A099 030 552 (BIA Dec. 30, 2013) (respondent entitled to evidentiary hearing on factual basis for non-receipt of hearing notice where NTA and in absentia order were returned as undeliverable) (Grant)

[Vivian Rosibel Contreras-Santos](#), A097 834 770 (BIA Sept. 16, 2013) (hearing notice returned by postal service; lead respondent had incentive to appear for hearing due to potential eligibility for asylum) (*Hoffman*, Manuel, Guendelsberger)

[Miguel Vazquez Nino](#), A200 676 857 (BIA July 22, 2013) (hearing notice returned as undeliverable despite being sent to the correct address) (*Hoffman*, Manuel, Guendelsberger)

### Oral Warnings

[Caroline Rebecca Ross](#), A087 202 743 (BIA June 20, 2013) (respondent not provided oral warnings when she was served with NTA) (*Hoffman*, Adkins-Blanch, Grant)

### Signature on NTA

[Rodrigo Ancanjo Alves](#), A097 835 973 (BIA June 10, 2013) (signature on NTA did not belong to respondent or his father) (*Hoffman*, Manuel, Guendelsberger)

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### **Timing of Hearing Notice**

[Francisco T. Sanchez](#), A079 134 245 (BIA Oct. 31, 2017) (rescinds in absentia order where hearing notice was not sent until two days before hearing and not received until day of hearing) (*Grant*, Kelly, Mann)

[Mirna Isabel Sorto-Viera](#), A076 316 387 (BIA June 19, 2014) (rescinds in absentia order where record indicated hearing notice was sent on the date of the hearing) (*Hoffman*, Guendelsberger, Manuel)

[Renat Tokbaev](#), A089 274 160 (BIA Aug. 6, 2013) (respondent did not receive second hearing notice advancing date of original master calendar hearing by more than one year) (*Kendall-Clark*, Miller, Holmes)

### **In Federal or State Custody**

[Ronny Ramon Del Rosario Sanchez](#), A079 212 454 (BIA Sept. 24, 2020) (remands for further consideration of motion to reopen in absentia order where IJ failed to address respondent's claim that he was in federal custody at the time of the hearing) (*Gemoets*, Petty, Hunsucker)

[Ismail Adejouma Bouraima](#), A087 219 853 (BIA Jan. 17, 2020) (rescinds in absentia order based on exceptional circumstances in light of evidence that respondent was arrested in another state two days prior to scheduled hearing, his appearance at multiple prior hearings, and his prompt filing of the motion) (*Mann*, Liebmann, Kelly)

[Alfredo Lopez-Felix](#), A022 877 220 (BIA Nov. 7, 2019) (rescinds in absentia order against respondent who was incarcerated at time of hearing in light of sworn affidavit that he never received hearing notice and could not have refused to attend hearing) (*Greer*, Cole, Wilson)

[Jario Noe Gonzalez-Melgar](#), A089 767 719 (BIA Aug. 14, 2019) (rescinds in absentia order in light of evidence showing respondent was detained in county jail at the time of his hearing) (Cole, Greer, Donovan)

[Benjamin Milton Geovani Gale-Vargas](#), A205 718 884 (BIA Oct. 31, 2014) (rescinds in absentia order of removal where evidence submitted on appeal indicates respondent was in state custody at the time of removal hearing) (*Hoffman*, Manuel, Guendelsberger)

### **Pre-IIRIRA**

[Vilma Aurora Acosta](#), A074 151 091 (BIA Aug. 14, 2020) (time and number limitations imposed on MTRs do not apply to motions to reopen and rescind orders of deportation entered in absentia) (*Riley*, Mullane, Grant)

[Bacilio Esteban Gaspar](#), A074 790 236 (BIA July 31, 2020) (DHS failed to demonstrate Order to Show Cause was signed by responsible person at respondent's address where respondent claimed not to know person who signed return receipt) (*Donovan*, Greer, Wilson)

[Victor L. Garcia Reynoso](#), A075 251 318 (BIA July 29, 2020) (time and number limits on motions to reopen do not apply to motions to rescind orders of deportation entered in absentia) (Pepper)

[Juan Francisco Ramirez Flores](#), A070 818 387 (BIA June 16, 2020) (rescinds in absentia order of deportation where signature on return receipt for Order to Show Cause did not belong to respondent or a responsible person at his address) (Kelly)

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[L-E-S-](#), AXXX XXX 431 (BIA Sept. 19, 2019) (respondent established reasonable cause for failure to appear because she was a minor reliant on her aunt and her aunt did not inform her that she was required to appear in court) (*Liebmann, Mann, Kelly*)

[Mukeshkumar Venabhai Patel](#), A075 409 953 (BIA Aug. 2, 2019) (rescinds in absentia order where address on Order to Show Cause slightly differed from address respondent provided to authorities and it was unclear whether post office made actual attempt to deliver hearing notice to address respondent provided) (*Kelly, Adkins-Blanch, Mann*)

[Leopoldo Ayala-Medina](#), A070 826 065 (BIA July 18, 2019) (rescinds in absentia order issued prior to enactment of IIRIRA because record did not establish that either the respondent or one of his parents was served with the hearing notice) (*Greer, Donovan, Wentland*)

[Ramon Olano Lomibao](#), A072 096 602 (BIA June 28, 2019) (rescinds in absentia order because attorney who was served copy of Order to Show Cause represented respondent in separate matter and did not have a current address or contact information for him) (*Malphrus, Noferi, Liebowitz*)

[Wilfrido Baldomero Ruiz Clemente](#), A070 863 891 (BIA April 9, 2019) (rescinds in absentia order because domestic return receipt attached to OSC did not contain any signature from the addressee or a responsible person at the address) (*Liebmann, Morris, Adkins-Blanch*)

[Roberto V. Jose](#), A073 736 515 (BIA Sept. 11, 2018) (rescinds in absentia order based on lack of notice because Order to Show Cause was delivered one month after his hearing and no subsequent hearing notice appeared in the record) (*Adkins-Blanch, Kelly, Mann*)

[Elida Telma Crisostomo Ramos](#), A072 525 903 (BIA Nov. 3, 2017) (rescinds in absentia order where hearing notice could reasonably be read to state that hearing was in 1996 rather than 1995) (*Adkins-Blanch, Kelly, Mann*)

[Silvia Altamirano-Altamirano](#), A071 488 092 (BIA May 4, 2016) (IJ erroneously applied legal standards under INA 240 to in absentia order entered prior to April 1, 1997) (*Adkins-Blanch, Mann, O'Leary*)

[Deborah Eloise Bainton](#), A070 966 647 (BIA Jan. 7, 2016) (rescinds in absentia order because respondent was not served with the Order to Show Cause by certified mail) (*Pauley, Cole, O'Herron*)

### **Sua Sponte/Totality of the Circumstances**

[M-L-T-E-](#), AXXX XXX 907 (BIA Sept. 15, 2020) (rescinds in absentia order pursuant to sua sponte authority where hearing was scheduled for 8:00 a.m., order was entered at 8:05 a.m., and respondent arrived at 8:20 a.m.) (*Kelly, Adkins-Blanch, Couch (dissenting)*)

[Yenis Carrazana Mendoza](#), A098 294 904 (BIA July 27, 2020) (rescinds in absentia order sua sponte in light of DHS filing of non-opposition to motion) (*Wilson, Swanwick, Donovan*)

[Jaswant Singh](#), A073 420 979 (BIA July 16, 2020) (rescinds in absentia order in light of affirmative non-opposition filed by DHS) (*Couch*)

[W-A-F-M-](#), AXXX XXX 451 (BIA May 22, 2020) (rescinds in absentia order sua sponte where respondent was a teenager while his proceedings were pending, was abandoned by his adult sponsor, and removal order was returned to the immigration court as undeliverable) (*Grant, Gorman, Mann*)

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[J-M-M-](#), AXXX XXX 063 (BIA March 26, 2020) (rescinds in absentia order under totality of the circumstances where respondent was 9 nine years old when order was entered and IJ failed to adjudicate motion to appear telephonically prior to hearing) (*Grant*, Mann, Mullane (dissenting))

[Jose Jonathan Santos-Calles](#), A201 720 284 (BIA March 3, 2020) (rescinds in absentia order pursuant to sua sponte authority where respondent was transported to an address different than one listed on the NTA and diligently contacted an attorney shortly after release from custody) (*Kelly*, Adkins-Blanch, Couch (dissenting))

[N-M-M-M-](#), AXXX XXX 588 (BIA Jan. 23, 2020) (rescinds in absentia order given that respondent had a pending asylum application and IJ filed to adjudicate motion to change venue filed five days prior to the hearing) (*Liebmann*, Kelly, Mann)

[M-D-R-D-](#), AXXX XXX 859 (BIA Nov. 21, 2019) (rescinds in absentia order pursuant to sua sponte authority in light of DHS non-opposition stating that respondents did not receive notice after being removed from Migrant Protection Protocols (MPP) and that it should not have sought removal at subsequent hearing) (*Kelly*, Liebmann, Mann)

[Wilson Anibal Bennet](#), A206 067 490 (BIA Sept. 23, 2019) (rescinds in absentia order under totality of the circumstances where respondent was told day prior to the hearing that the immigration court would remain closed due to a government shutdown and was unaware that shutdown ended on day of the hearing) (*Wilson*, Mann, Kelly)

[S-S-B-B-](#), AXXX XXX 816 (BIA Aug. 7, 2019) (rescinds in absentia order under totality of the circumstances, including fact that respondent appeared in court on day he thought hearing was scheduled, had appeared at previous hearings, had a pending asylum application, and exercised diligence in filing motion to reopen) (*Morris*, Kelly, Mullane)

[G-A-G-G-](#), AXXX XXX 654 (BIA July 1, 2019) (rescinds in absentia order issued against respondent where he was six years old at time of hearing and father did not bring him because he was ill and had a fever) (*Kelly*, Mann, Mullane (dissenting))

[O-A-M-A-](#), AXXX XXX 347 (BIA June 4, 2019) (rescinds in absentia order against respondent who was standing in line at Miami Immigration Court at 7:50 am but did not reach courtroom until 8:15 am) (*Kelly*, Liebman, Morris (dissenting))

[Y-B-M-R-](#), AXXX XXX 960 (BIA May 31, 2019) (rescinds in absentia order sua sponte due to ineffective assistance where prior counsel failed to notify respondents of their hearing and second attorney filed deficient motion to reopen) (Kendall Clark)

[Katherine Bonilla-Cortez](#), A097 398 782 (BIA April 25, 2019) (rescinds in absentia order sua sponte given respondent's age when order was entered and subsequent receipt of deferred action) (*Mann*, Adkins-Blanch, Kelly)

[C-C-M-](#), AXXX XXX 781 (BIA Dec. 21, 2018) (reopens proceedings sua sponte following entry of in absentia order because attorney-client relationship did not yet exist when hearing notice was served on qualified representative appointed to represent respondent) (*Morris*, Liebowitz, Mullane)

[Onesimo Martinez-Hernandez](#), A078 610 503 (BIA Oct. 12, 2018) (rescinds in absentia order where respondent arrived 35 minutes late to hearing because he was unfamiliar with new location of immigration court, he had appeared at all hearings held at prior location, and he acted with diligence in seeking reopening) (*Mann*, Adkins-Blanch, Snow)



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[Eduardo Inocente Lopez](#), A018 204 432 (BIA Sept. 5, 2018) (rescinds in absentia order pursuant to sua sponte authority where respondent had been an LPR since 1972, had previously appeared pro se at multiple hearings, was eligible for cancellation of removable, and the hearing at which he was ordered removed had been advanced from a later date) (*Greer*, Cole, Wendtland)

[L-A-M-T-](#), AXXX XXX 861 (BIA Aug. 13, 2018) (rescind in absentia order where the minor respondent was erroneously advised by ICE that venue had been changed to the Newark, submitted a Form EOIR-33 to ICE, reported to ICE on several occasions, and was the beneficiary of an approved petition for SIJ status) (*Kelly*, Adkins-Blanch, Snow)

[S-M-M-C-](#), AXXX XXX 604 (BIA May 4, 2018) (rescinds in absentia order sua sponte where respondent was one year old and in the care of her mother at the time of her hearing and was later granted DACA) (*Kelly*, Mann, Snow)

[Sandra Lorena Balcarcel](#), A074 263 332 (BIA April 13, 2018) (DHS's affirmative non-opposition to motion constitutes exceptional situation warranting sua sponte reopening in absentia order) (*Crossett*, Greer, Cole)

[Edwin Noe Gudiel](#), A071 581 866 (BIA Feb. 16, 2018) (rescinds in absentia order in light of respondent's appearance at more than 15 prior hearings and evidence that his car broke down en route to the final hearing) (*Snow*, Kelly, Adkins-Blanch)

[Bonifacio Guonon-Sajche](#), A073 104 965 (BIA Jan. 31, 2018) (grants second motion to reopen and rescinds an in absentia order sua sponte because respondent was no longer receiving mail at address to which the NTA was sent) (*Mann*, Pauley, Snow)

[J-I-L-D-](#), AXXX XXX 927 (BIA Jan. 31, 2018) (reopens proceedings sua sponte where respondent was 17 years old and living in unstable environment when hearing notice was issued, was now the beneficiary of an approved visa petition, where his wife and son suffered from DiGeorge syndrome, and he and his wife's one-month-old baby died from complications related to DiGeorge syndrome) (*Pauley*, Greer, Wendtland)

[A-A-R-C-](#), AXXX XXX 104 (BIA Dec. 20, 2017) (rescinds in absentia order sua sponte where respondent was five years old when abandoned and potentially eligible for SIJ status) (Grant, Kelly, Mann)

[Dariela Patricia Alvarado-Mendoza](#), A208 448 674 (BIA Nov. 9, 2017) (rescinds in absentia order sua sponte where respondent diligently complied with her reporting obligations to DHS and was likely unaware of obligation to advise Seattle Immigration Court of change of address because NTA was filed with Miami Immigration Court) (*Kelly*, Mann, Grant)

[Flor De Maria Palacios](#), A070 910 219 (BIA Sept. 27, 2017) (rescinds in absentia order sua sponte where respondent had TPS since 2000, had three U.S. citizen children, and was beneficiary of visa petition filed by long-term U.S. citizen spouse) (*Kelly*, Grant, Adkins-Blanch)

[Gabriela Alesandra Pajares-Arcaya](#), A078 508 085 (BIA Sept. 18, 2017) (reopens in absentia order under totality of the circumstances where respondent was prima facie eligible to adjust status and was a 7-year-old minor in mother's custody at the time of proceedings) (*Grant*, Kelly, Adkins-Blanch)

[Reyna Alvarado-Alvarado](#), A077 531 518 (BIA Aug. 23, 2017) (reopens proceedings sua sponte against respondent who had resided in the United States for more than 18 years, was married to a U.S. citizen, had three U.S. citizen children, and had been granted TPS) (*Mann*, Adkins-Blanch, Kelly)

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[S-F-Z-M](#), AXXX XXX 301 (BIA July 19, 2017) (rescinds in absentia order where respondent was under virtual control of others at the time she was provided hearing notice, diligently filed motion to reopen, consistently reported to ICE, and appeared to have viable asylum claim) (*Grant*, Kelly, Mann)

[Hector Antonio Jimenez-Santos](#), A098 489 385 (BIA June 27, 2017) (rescinds in absentia order under totality of the circumstances where respondent was 16 years old at the time of the hearing, attempted to provide an address to the Border Patrol, and was the beneficiary of an approved visa petition) (*Grant*, Mann, Adkins-Blanch)

[Naually Silva-Santos Martins](#), A098 350 369 (BIA June 23, 2017) (rescinds in absentia order pursuant to sua sponte authority against respondent who was served with NTA at age 9 and failed to appear at age 10) (*Grant*, Adkins-Blanch, Mann)

[Keila Isabel Reyes-De Romero](#), A206 698 059 (BIA June 8, 2017) (rescinds in absentia order where respondent acted with diligence in filing motion, provided detailed affidavit with corroborating evidence, and had been diligent regarding obligations to immigration court and DHS) (*Kelly*, Grant, Mann)

[Claudia Carolina Perez-Duran](#), A206 687 577 (BIA May 30, 2017) (rescinds in absentia order pursuant to sua sponte authority whether counsel exhibited due diligence in discovering rescheduled hearing date and respondent had incentive to appear) (*Adkins-Blanch*, Mann, Kelly)

[Argelia Romero-Guerra](#), A078 038 133 (BIA May 18, 2017) (rescinds in absentia order given that respondent was a minor at time she entered the United States, was the beneficiary of an approved visa petition filed by her U.S. citizen spouse, and was the mother of a child with serious health issues) (*Grant*, Kelley, Mann)

[Alicia Noemy Quinteros-Agueta](#), A098 113 685 (BIA April 26, 2017) (rescinds in absentia order where respondent was a minor when served with the NTA and is now beneficiary of approved visa petition filed by U.S. citizen spouse) (*Adkins-Blanch*, Grant, Mann)

[D-R-J-B](#), AXXX XXX 157 (BIA March 16, 2017) (rescinds in absentia order against respondent who established credible fear of torture, posted \$7,500 bond, and filed motion to reopen within four months of learning of in absentia order) (*Adkins-Blanch*, Grant, Mann (dissenting))

[Maria Virginia Mejia-Erazo](#), A200 114 497 (BIA March 9, 2017) (rescinds in absentia order under the totality of the circumstances where the respondent was spouse of U.S. citizen Army veteran, was granted “parole in place,” and was the beneficiary of a pending visa petition) (*Adkins-Blanch*, Grant, Mann)

[Wayne Findlay](#), A041 653 797 (BIA March 3, 2017) (rescinds in absentia order where hearing notice was sent to correct address but respondent averred that he never received it) (*O'Connor*, Mann, Adkins-Blanch)

[Luis Alberto Alcaraz](#), A089 775 377 (BIA Feb. 27, 2017) (rescinds in absentia order sua sponte where attorney misadvised respondent as to the date of the hearing) (*Grant*, Mann, Kelly)

[Jason Mitchell](#), A205 908 063 (BIA Feb. 14, 2017) (rescinds in absentia order sua sponte where respondent arrived late to hearing due to vehicle difficulties, appeared for previous hearings, filed his motion to reopen immediately, and had three U.S. citizen children) (*Guendelsberger*, Adkins-Blanch, Mann)

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[Manuel Aaron Perez Galvez](#), A205 907 274 (BIA Jan. 26, 2017) (rescinds in absentia order where the respondent mistakenly appeared for his hearing one day late, exercised due diligence in seeking reopening, and was in the process of filing U visa application) (*Mann*, Adkins-Blanch, O'Connor)

[Clebson Sousa Carneiro](#), A078 254 701 (BIA Jan. 6, 2017) (rescinds in absentia order where respondent reported to ICE on three separate occasions after being released from custody and attempted to inform ICE of change of address) (*O'Connor*, Adkins-Blanch, Mann)

[Clemilda Alves da Silva](#), A098 401 988 (BIA Dec. 29, 2016) (rescinds in absentia order entered in 2004 where respondent was beneficiary of approved visa petition and daughter's removal proceedings were recently reopened under same circumstances) (Mann)

[Doris Yesenia Garcia-Enamorado](#), A076 317 461 (BIA Dec. 29, 2016) (rescinds in absentia order entered in 1997 given respondent's age at time of hearing and possession of TPS since 2000) (*Adkins-Blanch*, Mann, O'Connor)

[Gerson Adonay Moreno-Reina](#), A077 607 472 (BIA Dec. 22, 2016) (rescinds in absentia order where respondent was a minor and under his father's control at the time he received the NTA) (*Grant*, Adkins-Blanch, Mann)

[C-J-B-F](#), AXXX XXX 418 (BIA Dec. 13, 2016) (rescinds in absentia order where respondent was 14 years old and under mother's control at the time of hearing) (*Grant*, Adkins-Blanch, O'Connor)

[Pedro Amaya-Flores](#), A094 788 974 (BIA Dec. 2, 2016) (reopens in absentia order that IJ improperly denied as untimely where respondent was prima facie eligible for relief and parent of U.S. citizen child) (*Adkins-Blanch*, Grant, Mann)

[Frislid Mejia-Vasquez](#), A206 091 158 (BIA Nov. 21, 2016) (rescinds in absentia order under totality of the circumstances, including respondent's young age at the time of hearing) (*O'Connor*, Grant, Mann)

[Nicolas Parra-Arredondo](#), A205 704 279 (BIA Nov. 18, 2016) (rescinds in absentia order in light of allegation that security guards at the immigration court misadvised respondent regarding date of rescheduled hearing) (*O'Connor*, Grant, Mann)

[Armando Aparicio Sanchez](#), A206 132 700 (BIA Nov. 15, 2016) (reopens proceedings where bond company failed to include respondent's apartment number when reporting address to immigration court) (*O'Connor*, Mann, Grant)

[Ronald Ayala-Mejia](#), A098 885 532 (BIA Oct. 27, 2016) (rescinds in absentia removal order under sua sponte authority based on totality of the circumstances, including respondent's young age at the time of the hearing) (*Guendelsberger*, Kendall-Clark, Holiona)

[J-T-M-G](#), AXXX XXX 080 (BIA Oct. 21, 2016) (rescinds in absentia order in light of respondent's young age at time of hearing, mother's admission of calendaring error, and pendency of petition for SIJ status) (*Greer*, Kendall-Clark, O'Herron)

[Adeliya Mubarika Ahmad](#), A096 297 241 (BIA Oct. 14, 2016) (remands for further consideration where IJ failed to address ineffective assistance claim or request for sua sponte reopening) (Mann)

[Jesus Alberto Garcia Nava](#), A205 721 176 (BIA Oct. 13, 2016) (remands for further consideration in light of attorney's proffer on appeal that he and respondent appeared on date of hearing but in the

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wrong courtroom) (Grant)

[A-J-E-P-](#), AXXX XXX 498 (BIA Oct. 3, 2016) (reopens proceedings sua sponte for respondent who was one year old at time of in absentia order where ICE failed to provide Court with correct address after release from custody) (O'Connor, Grant, Mann)

[Janet Gertrudis Casillas](#), A045 627 330 (BIA Aug. 30, 2016) (rescinds in absentia order sua sponte over DHS opposition where prior attorney failed to notify respondent of hearing) (Holiona)

[Idalia Esmeralda Blanco-Mejia](#), A077 665 955 (BIA Aug. 29, 2016) (rescinds in absentia order under totality of circumstances where respondent was a minor when served with the NTA and was now the beneficiary of an approved Form I-130) (*O'Leary*, Adkins-Blanch, Grant)

[Cecilia Elizabeth Arias-Reyes](#), A206 234 448 (BIA Aug. 25, 2016) (reopens proceedings under totality of the circumstances, including discrepancy in address between hearing notice and IJ order, diligence in seeking reopening, and non-opposition of DHS) (*Mann*, Grant, O'Leary)

[Yossi Galimidi](#), A040 177 019 (BIA Aug. 24, 2016) (rescinds in absentia order under totality of the circumstances where DHS was not opposed to motion to appear telephonically and IJ waited until day before hearing to deny change of venue) (*O'Leary*, O'Connor, Mann)—**KEY DECISION**

[Jose Osmar De Figueiredo](#), A200 029 818 (BIA Aug. 23, 2016) (rescinds in absentia order sua sponte where DHS had joined motion to reopen) (*O'Leary*, Adkins-Blanch, Grant)

[Sara Yamileth Rodriguez-Garcia](#), A206 760 038 (BIA Aug. 22, 2016) (rescinds in absentia order under totality of the circumstances) (*Mann*, Adkins-Blanch, O'Connor)

[Maricela Jacquelin Madrid-Gomez](#), A206 254 226 (BIA Aug. 11, 2016) (rescinds in absentia order pursuant to sua sponte authority) (*O'Leary*, Adkins-Blanch, O'Connor)

[Roniel Antonio Capellan Cruz](#), A060 955 082 (BIA Aug. 4, 2016) (rescinds in absentia order under totality of the circumstances, including confusion surrounding hearing date, attendance at numerous prior hearings, and status as beneficiary of approved visa petition) (*Grant*, O'Leary, O'Connor)

[Sergio Amilcar Lemus-Sola](#), A200 069 257 (BIA July 20, 2016) (rescinds in absentia order where respondent was DACA grantee and beneficiary of approved Form I-360) (*Adkins-Blanch*, Grant, O'Leary)

[Jose Manuel Conejo-Caceres](#), A205 867 937 (BIA July 19, 2016) (rescinds in absentia order where respondent confused date of removal hearing with date of ICE check-in) (*O'Leary*, Adkins-Blanch, Mann)

[Rodolfo Hernandez Dominguez](#), A099 093 764 (BIA July 19, 2016) (rescinds in absentia order where respondent did not open envelope containing the hearing notice because it appeared to have already been opened and did not become aware of hearing until going to his attorney's office the next day) (*O'Leary*, Adkins-Blanch, Mann (dissenting))

[Daniel Antonio Perez](#), A206 719 389 (BIA July 14, 2016) (rescinds in absentia order under totality of the circumstances where DHS did not oppose motions to change venue or appear telephonically that were denied by IJ) (*O'Leary*, Mann, Grant)

[E-A-R-C-](#), AXXX XXX 125 (BIA June 30, 2016) (rescinds in absentia order sua sponte in light of totality of circumstances presented in case, including respondent's age) (Kendall-Clark)

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[Nelson Rene Bueso-Guerra](#), A077 799 300 (BIA June 30, 2016) (reopens proceedings sua sponte under totality of circumstances presented in case) (*O'Leary*, Grant, Adkins-Blanch)

[J-R-S-](#), AXXX XXX 803 (BIA June 27, 2016) (rescinds in absentia order and terminates proceedings for beneficiary of approved Special Immigrant Juvenile visa) (*Greer*, Kendall-Clark, O'Herron)

[Jose Ramos-Menjivar](#), A098 979 537 (BIA June 27, 2016) (rescinds in absentia order under totality of the circumstances including respondent's young age at time of hearing) (*O'Leary*)

[Ajla Vricic](#), A071 727 572 (BIA June 22, 2016) (reopens proceedings sua sponte for respondent who failed to appear because of troubles with brother who suffers from schizophrenia, husband's disability caused by a stroke, appointment at a methadone clinic, moving to a new residence, and demands of being a working mother with three small children) (*O'Leary*, Grant, Mann)

[Oneyda Carolina Sierra-Manca](#), A206 835 344 (BIA June 17, 2016) (reopens proceedings sua sponte for mother and son where mother assumed immigration officer monitoring her case would inform the court of her change of address) (*O'Leary*)

[Adriana Elizabeth Arevalo-Lopez](#), A098 121 311 (BIA June 14, 2016) (reopens proceedings sua sponte for respondent ordered removed in 2004 who claimed her immigration documents were destroyed by a former abusive boyfriend prior to the hearing) (*Guendelsberger*, Holiona, Kendall-Clark)

[Felipe Mendez-Garcia](#), A089 818 449 (BIA June 13, 2016) (rescinds in absentia order under sua sponte authority in light of totality of the circumstances) (*O'Leary*, Grant, Mann)

[Ruben Fabian-Andres](#), A205 604 280 (BIA June 13, 2016) (rescinds in absentia order under sua sponte authority in light of totality of the circumstances) (*Kendall-Clark*, Greer, O'Herron)

[Claudia Patricia Claros-Garcia](#), A097 742 486 (BIA June 7, 2016) (rescinds in absentia order under sua sponte authority in light of totality of the circumstances) (*Grant*, O'Leary, Adkins-Blanch)

[Arley Max Dos Santos](#), A200 068 519 (BIA May 27, 2016) (reopens proceedings in light of "the cumulative evidence in this particular case" even though IJ decision did not contain any errors of law or fact) (*Kendall-Clark*, Guendelsberger, Holiona)

[Kalolaine Taunaholo](#), A073 974 004 (BIA May 25, 2016) (rescinds in absentia order sua sponte under totality of the circumstances presented in the case where respondent lost hearing notice and misremembered date of hearing) (*O'Leary*, Grant, O'Connor)

[Edilberto Aguilar-Garcia](#), A206 472 568 (BIA May 4, 2016) (rescinds in absentia order under totality of the circumstances, including respondent's diligence in filing motion to reopen) (*O'Leary*, Grant, Mann)

[Leili Guerra Villeda](#), A206 310 445 (BIA April 29, 2016) (rescinds in absentia order in light of respondent's affidavit that she did not receive hearing notice, incentive to appear, filing of change of address form with DHS, and diligence in seeking reopening) (*O'Leary*, Grant, Mann)

[Jose Miguel Iracheta Gonzales](#), A208 279 037 (BIA April 18, 2016) (rescinds in absentia order where legal assistant of respondent's prior attorney erroneously advised him that his hearing date would be changed after he bonded out of custody) (*Grant*, Mann, O'Leary)



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[Noemi Espinal](#), A075 928 918 (BIA April 15, 2016) (rescinds in absentia order and reopens proceedings sua sponte under totality of the circumstances) (*Kendall-Clark*, Guendelsberger, Holiona)

[Bibek Neupane](#), A206 424 962 (BIA April 13, 2016) (rescinds in absentia order in light of totality of the circumstances, including diligence in filing a motion to reopen and ineffective assistance by former counsel) (O’Leary, Mann, Grant)

[Maria Isabel Alfaro-Sorto](#), A206 759 599 (BIA April 11, 2016) (rescinds in absentia order because respondent attended scheduled appointment with ICE after entry of the order and promptly filed motion to reopen after learning of the order) (*Grant*, Guendelsberger, O’Leary)

[Henry Noe Hernandez Diaz](#), A088 347 822 (BIA April 11, 2016) (reopens proceedings sua sponte under totality of the circumstances, including that respondent was abandoned by sponsor at age 17) (O’Leary, Guendelsberger, Grant)

[Olivio Oliveira-Gondinho](#), A097 337 592 (BIA March 8, 2016) (rescinds in absentia order under totality of the circumstances, including absence of DHS opposition) (*Grant*, O’Leary, Mann (dissenting))

[Nancy Ocampo-Ulloa](#), A205 227 706 (BIA April 5, 2016) (rescinds in absentia order under totality of the circumstances, including that respondent was beneficiary of approved Form I-360 and had filed an adjustment application) (O’Leary, Mann, Grant)

[Howard Alexander Wilson](#), A205 165 410 (BIA April 5, 2016) (rescinds in absentia order under totality of the circumstances, including that the respondent was homeless, lacked financial means to attend hearing, and appeared eligible for adjustment of status) (O’Leary, Mann, Grant)

[Samuel Perez Hernandez](#), A200 155 042 (BIA April 4, 2016) (rescinds in absentia order under totality of the circumstances, including that respondent alleged having received a phone call from the immigration court cancelling his hearing) (O’Leary, Mann, Guendelsberger)

[Ana Maria Herrera-Figueroa](#), A202 138 702 (BIA March 31, 2016) (rescinds in absentia order under totality of the circumstances where respondent argued she did not receive notice of hearing that was sent to a prior attorney) (O’Leary, Grant, Mann)

[Christian Rudolf Pflugler](#), A095-721-949 (BIA March 31, 2016) (rescinds in absentia order under totality of the circumstances, including respondent’s diligence in filing motion and absence of DHS opposition) (O’Leary, Guendelsberger, Grant)

[Deuk Su Kim](#), A098 156 260 (BIA March 23, 2016) (rescinds in absentia order where respondent failed to appear due to a good faith mistake and was the beneficiary of an approved visa petition) (O’Leary, Grant, Adkins-Blanch)

[Rosa Flor Bonilla-Santos](#), A094 923 164 (BIA March 23, 2016) (rescinds in absentia order in light of approval of visa petition enabling respondent to obtain immigrant visa with provisional unlawful presence waiver) (O’Leary)—**KEY DECISION**

[Iris Yessenia Reyes-Zavala](#), A206 775 262 (BIA March 22, 2016) (rescinds in absentia order pursuant to sua sponte authority) (O’Leary, Grant, Guendelsberger)

[Jairo Carrera-Reyes](#), A074 259 776 (BIA March 21, 2016) (rescinds in absentia order pursuant to sua sponte authority) (O’Leary, Grant, Guendelsberger)



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[Israel Francisco Lagunas](#), A200 154 729 (BIA March 21, 2016) (rescinds in absentia order where IJ should have exercised sua sponte authority to reopen proceedings) (*O'Leary*, Grant, Guendelsberger)

[Jose Orlando Matute-Delarca](#), A205 723 875 (BIA March 18, 2016) (rescinds in absentia order where respondent may not have been provided hearing notice by prior attorney) (*O'Leary*, Grant, Guendelsberger)

[Yuris Ismary Herrera](#), A098 559 063 (BIA April 8, 2016) (rescinds in absentia order where IJ should have exercised sua sponte authority to reopen proceedings) (*O'Leary*, Grant, Guendelsberger)

[Milton Mauricio Medina-Hernandes](#), A098 993 235 (BIA March 15, 2016) (rescinds in absentia order against respondent who allegedly failed to provide address to which the hearing notice could be sent after being released from custody) (*O'Leary*, Adkins-Blanch, Guendelsberger)

[Elcy Leticia Benitez-Sosa](#), A078 964 763 (BIA March 15, 2016) (remands record because IJ denied motion to rescind in absentia order without addressing request to reopen proceedings sua sponte) (*O'Leary*)

[Miguel Hernandez-Hernandez](#), A202 137 893 (BIA Feb. 22, 2016) (rescinds in absentia order where respondent was not notified of hearing by prior attorney) (*Grant*, Adkins-Blanch, Guendelsberger)

[Jorge Bolivar Maldonado-Lopez](#), A206 881 099 (BIA Feb. 17, 2016) (instructs IJ to reopen proceedings sua sponte due to lack of notice where respondent acted with diligence in seeking reopening despite failing to provide complete address upon release from custody) (*Pauley*, Wendtland, Cole)

[Erika Karem Chumpitaz](#), A096 982 337 (BIA Jan. 28, 2016) (rescinds in absentia order under totality of the circumstances, including respondent's evidence that she did not receive hearing notice and diligence in seeking reopening after learning of removal order) (*O'Leary*, Adkins-Blanch, Guendelsberger)

[Ovidio Perez](#), A094 470 918 (BIA Jan. 15, 2016) (rescinds in absentia order under totality of the circumstances, including diligence in filing motion to reopen) (*Grant*, Guendelsberger, *O'Leary*)

[Mirna Molinas-Pena](#), A097 318 251 (BIA Nov. 10, 2015) (reopens proceedings sua sponte because respondent was 16 and uncle could not secure transportation for her to attend hearing) (*Adkins-Blanch*, Grant, *O'Leary*)

[Cicilia Y. Rivas Mojica](#), A202 175 637 (BIA Nov. 4, 2015) (rescinds in absentia order under totality of the circumstances, including erroneous advice by prior attorney, diligence in seeking reopening, and intent to file asylum application) (*Holiona*, Holmes, Miller)

[Rolando De Jesus Gregorio-Dias](#), A200 000 324 (BIA Oct. 28, 2015) (rescinds in absentia order over DHS opposition under totality of the circumstances, including the lack of DHS opposition when the motion was filed with the IJ) (*Grant*, Adkins-Blanch, *O'Leary*)

[Maricel Tan Reyes](#), A099 862 495 (BIA Oct. 21, 2015) (rescinds in absentia order under totality of the circumstances, including respondent's diligence in seeking reopening and appearance at previous hearings) (*Grant*)

[Maria Nicolasa Ayala-Guevara](#), A077 444 128 (BIA Aug. 27, 2015) (reopens proceedings sua sponte because record did not contain entry of appearance from attorney to whom the hearing notice was

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provided) (*Guendelsberger*, Grant, Holiona)

[Salvador Perez-Sandoval](#), A205 131 868 (BIA Aug. 20, 2015) (reopens proceedings where respondent mistakenly believed hearing was scheduled for October rather than August 2013) (*Holiona*, *Guendelsberger*, Grant)

[Adrian Valverde-Martinez](#), A200 569 794 (BIA Aug. 11, 2015) (rescinds in absentia order where respondent was abusing drugs at the time of hearing, had sought treatment at a drug rehabilitation facility, and appeared at five prior hearings) (*Grant*, *Guendelsberger*, *Holiona*)

[Rene Juarez-Escobar](#), A205 850 513 (BIA Aug. 5, 2015) (rescinds in absentia order where respondent submitted sworn statement that he did not receive NTA, continued to live at the address he provided upon release from custody, and repeatedly reported to ICE before learning he was subject to in absentia order) (*Holiona*, *Guendelsberger*, Grant)

[Daniel Alberto Velasquez-Mejia](#), A078 972 091 (BIA July 15, 2015) (rescinds in absentia order sua sponte even though respondent received notice of hearing and did not file motion to reopen within the prescribed time period to claim exceptional circumstances) (*Grant*, *Guendelsberger*, *Holiona*)—**KEY DECISION**

[Aldo Gustavo Ramirez Pedrosa](#), A205 700 672 (BIA June 26, 2015) (reopens proceedings in light of sworn affidavits that respondent and wife did not receive hearing notice, diligence in seeking reopening, and evidence that respondent is the beneficiary of an approved visa petition) (*Grant*, *Adkins-Blanch*, *Guendelsberger*)

[Pedro Sanchez-Virgil](#), A200 836 945 (BIA June 12, 2015) (remands for further consideration of motion to reopen in absentia order in light of grant of deferred action following approval of U visa) (Grant)

[O-M-L-](#), AXXX XXX 351 (BIA May 26, 2015) (vacates in absentia order in light of respondent's apparent eligibility for asylum, arrival in court on day of hearing, and diligence in filing motion to reopen) (*Guendelsberger*)

[Narindra Lall](#), A046 107 800 (BIA May 15, 2015) (reopens proceedings in light of evidence that respondent lacked sufficient mental competency to understand advisals in NTA regarding duty to inform court of change of address) (*Holmes*, *Greer*, *O'Herron*)

[Claudia Yareni Medina-Martinez](#), A079 038 287 (BIA April 28, 2015) (rescinds in absentia order under totality of the circumstances despite ten year lapse before filing of motion to reopen) (*Holiona*, *Guendelsberger*, Grant)

[Estraya de la Paz Hernandez](#), A205 994 000 (BIA April 22, 2015) (reopens proceedings in light of confusion surrounding whether notice of hearing was sent to respondent or her attorney) (Grant)

[Samuel Antonio Rivera](#), A205 719 877 (BIA Apr. 15, 2015) (vacates in absentia order under totality of circumstances, including the respondent's eligibility for cancellation of removal, lack of motive to avoid hearing at which he arrived late, and diligence in filing motion to reopen) (*Guendelsberger*, *Adkins-Blanch*, Grant)

[Ledvin Isabel Urbina-Padilla](#), A099 481 442 (BIA Oct. 30, 2014) (reverses the denial of motion to reopen in absentia order, reopens proceedings sua sponte, and orders case administratively closed in light of the granting of respondent's DACA application) (*Hoffman*, *Guendelsberger*, *Adkins-Blanch*)

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[Ruven Lopez Olvera](#), A075 244 372 (BIA June 4, 2014) (rescinds in absentia order where immigration court issued three separate hearing notices, the last of which advanced the date of respondent's hearing by nearly a year) (*Guendelsberger*, Hoffman, Manuel)

[Irma Yadira Murillo-Ayala](#), A078 964 772 (BIA June 3, 2014) (rescinds in absentia order against respondent who was 4 years old at time of hearing and is now potentially eligible for relief under DACA program) (*Guendelsberger*, Hoffman, Manuel)

[Glorofer Angelica Nufable Villatuva](#), A089 445 773 (BIA Jan. 23, 2014) (rescinds in absentia order where ineffective assistance of prior counsel contributed to failure to appear) (*Hoffman*, Adkins-Blanch, Manuel)

[Jose Eustate](#), A047 128 564 (BIA Dec. 20, 2013) (remands for further consideration of motion to reopen in absentia order after underlying criminal conviction is vacated) (Grant)

[Maritza Salcido-Rocha](#), A200 832 424 (BIA Sept. 26, 2013) (remands where IJ did not address assertion that respondent appeared in court on same day after receiving in absentia removal order) (Grant)

[Orlando Garcia-Adan](#), A200 151 857 (BIA July 3, 2013) (reopens proceedings where IJ misstated filing date of motion and mistakenly believed respondent was represented by counsel at time of filing) (Hoffman, Adkins-Blanch, Manuel)

[Segundo Balay Navarro, Jr.](#), A087 213 062 (BIA June 6, 2013) (reopens proceedings in light of respondent's eligibility for relief, lack of motive to avoid the hearing at which he was ordered removed, filing of affirmative application with the DHS, attendance at previous hearings, and diligence in filing a motion to reopen) (*Manuel*, Adkins-Blanch, Hoffman)

[Dolores Soliz-Vigil](#), A077 240 379 (BIA May 31, 2013) (reverses denial of joint motion to reopen; finds respondent eligible to apply for adjustment of status under INA 245(i) because more than ten years elapsed since the entry of in absentia removal order) (*Guendelsberger*, Manuel, Hoffman)

[Carlos Antonio Vargas-Pena](#), A040 524 349 (BIA Apr. 29, 2013) (remands record where immigration court twice erroneously instructed the respondent to file an appeal directly with the BIA) (Holmes)

[Abel Ramon Amaya](#), A073 987 815 (BIA Dec. 21, 2012) (reopens proceedings after crediting respondent's contention that he was present in the waiting room while his attorney was in the courtroom) (Grant)

[Bok Kyu Kim](#), A095 750 395 (BIA Nov. 30, 2012) (remands record because cover letter transmitting IJ decision erroneously instructed respondent to file appeal with the BIA) (Manuel)

[Alfonso Zuniga-Aguilar](#), A077 312 584 (BIA Oct. 31, 2012) (certifies record to IJ to direct DHS to set forth procedures for returning respondent to attend future hearing) (Miller)—**KEY DECISION**

[Mohamed Lamine Sanogo](#), A099 163 486 (BIA July 23, 2012) (reopens proceedings in light of totality of circumstances including an affidavit claiming hearing notices were not delivered, marriage to U.S. citizen, and ongoing efforts to adjust status) (*Adkins-Blanch*, Hoffman, Manuel)

[Jose Jesus Estrada-Garcia](#), A087 749 680 (BIA July 20, 2012) (reopens proceedings in light of totality of circumstances including attorney's concession to providing ineffective assistance by failing to appear at hearing) (*Hoffman*, Guendelsberger, Manuel)

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[Pedro Malvais-Hernandez](#), A089 284 493 (BIA July 17, 2012) (IJ improperly issued in absentia removal order after respondent declined to identify country of birth or whether he had a passport) (*Holmes*, Kendall-Clark, Miller)

[Margarita Sanchez-Perez](#), A087 148 850 (BIA May 9, 2012) (reopens proceedings despite respondent's failure to notify court of change of address; hearing had been advanced by more than a month and respondent exercised diligence in filing motion to reopen) (*Guendelsberger*, Mann, Manuel)

[Jose Ismael Aguilar-Rivera](#), A077 701 378 (BIA Apr. 20, 2012) (reopens proceedings under totality of the circumstances where respondent was 11 years old when aunt was served with NTA, aunt never advised him of hearing, and is beneficiary of pending visa petition filed by U.S. citizen spouse) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Erika Ortiz-Garcia](#), A076 708 985 (BIA Apr. 3, 2012) (reopens proceedings under totality of the circumstances, including respondent's regular attendance before deportation officer pursuant to order of supervision) (*Manuel*, Adkins-Blanch, Hoffman)

[Maria Perez-Cabrera](#), A072 365 767 (BIA Mar. 15, 2012) (reopens proceedings "in the interests of justice" because respondent appeared at first two hearings, possessed substantial equities, and claimed not to have received notice of the rescheduled hearing at which she was ordered removed in absentia) (*Cole*, Greer, Wendtland)

[Isabel Balderas-Marquez](#), A095 810 160 (BIA June 30, 2011) (reopens proceedings where respondent was two hours late because of confusion about location of court and need to care for sick child, and IJ was still in the courtroom when the respondent arrived) (*Guendelsberger*, Adkins-Blanch, Holmes)—

### KEY DECISION

[Erika Zulema Ortis-Umanas](#), A078 324 001 (BIA Mar. 23, 2011) (reopens proceedings in light of totality of circumstances, including apparent confusion surrounding the date of hearing attendance at prior hearings, and potential eligibility for relief based on her marriage to U.S. citizen) (*C. King*, Adkins-Blanch, Guendelsberger)

[Elden Misael Pantoja-Cabrera](#), A087 522 960 (BIA Jan. 25, 2011) (reopens proceedings where respondent mistakenly sent change of address form to wrong immigration court and was potentially eligible for voluntary departure) (*Adkins-Blanch*, Guendelsberger, King)

[Tashthed Haider Kabir](#), A096 114 231 (BIA Jan. 21, 2011) (reopens proceedings where prior attorney did not advise respondent of hearing until night before) (Kendall-Clark)

[Claudine Andeena Ramdon](#), A045 878 319 (BIA Jan. 11, 2011) (proceedings terminated where IJ excused respondent from appearing in person and respondent left the country and relinquished LPR status) (*C. King*, Adkins-Blanch, J. King)

### Joint Motions

[Alma Delia Acosta Carmona](#), A086 285 207 (BIA June 1, 2020) (reverses denial of joint motion to reopen where respondent presented evidence indicating that she was admitted with a visa and was thus eligible to adjust status) (*Kelly*, Morris, Couch)

[Thanh Hoang Nguyen](#), A042 647 333 (BIA Aug. 11, 2017) (reverses denial of joint motion to reopen to let respondent apply for waiver under former INA 212(c)) (*Mann*, Kelly, Grant)

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[Felix Garcia-De Luna](#), A205 493 691 (BIA Jan. 6, 2017) (reverses denial of joint motion to reopen denied by IJ due to failure to include application for relief) (*Grant*, Adkins-Blanch, O'Connor)

[Isela Esmeralda Hernandez-Reyes](#), A098 719 936 (BIA Dec. 9, 2016) (reverses denial of joint motion to reopen in absentia order) (*Grant*)

[Julian Sebastian Giraldo Arteaga](#), A088 744 005 (BIA March 14, 2016) (orders further consideration of joint motion to reopen to seek adjustment of status where record did not reflect whether respondent was paroled under INA 236(a) or INA 245(a)) (*Malphrus*, Mann, Geller)

[Dimas Santillan](#), A076 329 2911 (BIA March 9, 2016) (reverses denial of joint motion to reopen and terminate proceedings for respondent to pursue adjustment of status in light of parties' agreement) (*Grant*, Guendelsberger, O'Leary)

[Oscar Diaz-Medina](#), A096 188 908 (BIA Feb. 11, 2016) (reverses denial of joint motion to reopen and terminate to let respondent to pursue adjustment of status before USCIS) (*Wendtland*, Cole, Greer)

[Hernan Antonio Reyes](#), A095 084 205 (BIA Sept. 18, 2015) (reverses denial of joint motion to reopen to consider respondent's NACARA application) (Guendelsberger)

[Bilal Hassan Dyook](#), A076 305 737 (BIA July 22, 2015) (reverses denial of joint motion to reopen and terminate proceedings, noting that respondents need not satisfy standards for rescinding in absentia removal order to pursue a new form of relief and that any issues of timeliness were cured by joint filing) (*Guendelsberger*, Grant, Holiona)—**KEY DECISION**

[Adam Laurence](#), A200 867 388 (BIA Feb. 7, 2014) (respondent's failure to submit application for relief and IJ concern regarding timing of marriage not sufficient to deny joint motion to reopen) (*Guendelsberger*, Manuel, Hoffman)

[Immacula Presmy](#), A095 517 631 (BIA June 13, 2013) (grants joint motion to reopen to allow respondent to apply for a provisional unlawful presence waiver (Form I-601A)) (Kendall-Clark)

[Carmen Anayanci Portillo-Munoz](#), A077 793 500 (BIA May 10, 2013) (reverses denial of joint motion to reopen, states that government's joining a motion to reopen should in most instances be determinative) (*Adkins Blanch*, Guendelsberger, Hoffman)

### Jurisdiction with IJ versus Board

[Luis Aguirre-Polanco](#), A089 817 668 (BIA Feb. 5, 2019) (IJ possessed jurisdiction over motion to reopen because Board had dismissed prior appeal for lack of jurisdiction) (Adkins-Blanch)

### Miscellaneous

[Dilia Chilel-Ramos](#), A215 875 193 (BIA Sept. 17, 2020) (requirement that motion to reopen be accompanied by application for relief does not apply to motions to rescind in absentia orders based on lack of notice where respondent did not yet have chance to plead to NTA) (*Gorman*, Cassidy, Couch)

[Xiu Teng Zheng](#), A073 488 437 (BIA Dec. 27, 2019) (no time or numerical limitations exist on motions to reopen an underlying order of exclusion) (*Grant*, Guendelsberger, Kendall Clark)

[Yaya Hubert Yapo](#), A215 685 128 (BIA Sept. 30, 2019) (reopens proceedings to permit respondent to apply for bond to facilitate restoration of student status) (Guendelsberger)



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[R-A-M-R-](#), XXXX XXX 851 (BIA Dec. 17, 2018) (remands for further consideration of motion to reopen that IJ improperly denied because doctor who examined the respondent did not state that she provided her services free of charge or whether she ever refused to provide a statement in support of another person's claim) (*Greer*, Cole, Donovan)

[S-G-Y-](#), XXXX XXX 192 (BIA Sept. 24, 2018) (upholds denial of DHS motion to reopen because evidence demonstrating that respondent's former counsel was involved in a conspiracy to commit immigration fraud was available at the time of the hearing) (Morris)

[Devon Anthony Allen](#), A037 087 427 (BIA May 7, 2015) (reopens and terminates proceedings at DHS request in light of fingerprint evidence demonstrating another individual had used respondent's name and alien number) (Holmes)

[Andelino Vicente Velasquez Perez](#), A200 936 429 (BIA Mar. 11, 2011) (reopens proceedings where order of removal was mistakenly entered into EOIR's automated system after respondent received a continuance at first and only master calendar hearing) (Grant)

## Post-Departure

[Javier Garcia-Navarro](#), A092 842 802 (BIA March 16, 2020) (reopens proceedings sua sponte in light of vacatur of sole conviction underlying charge of removability and notwithstanding respondent's physical removal from United States in 2014) (*O'Connor*, Greer, Donovan)

[Thomas Rocha Gonzalez](#), A090 912 784 (BIA May 14, 2019) (reopens and terminates proceedings sua sponte notwithstanding respondent's lawful removal to Mexico in the interim) (*Guendelsberger*, Grant, Kendall Clark)

[Javier Valdez Navarro](#), A017 988 072 (BIA May 13, 2019) (reopens and terminates proceedings sua sponte notwithstanding respondent's lawful removal to Mexico in the interim) (*Guendelsberger*, Grant, Kendall Clark)

[S-A-A-F-](#), XXXX XXX 184 (BIA April 16, 2019) (post-departure bar does not apply to motions to reopen to seek asylum or withholding based on changed country conditions) (*Grant*, Guendelsberger, Kendall Clark)

[Kiattisak Kaiwasang](#), A204 426 160 (BIA Dec. 31, 2018) (exercises jurisdiction over appeal of denial of motion to reopen for respondent who was removed from the United States while the appeal was pending) (*Adkins-Blanch*, Geller, Liebowitz)

[Haris Keserovic](#), A075 077 076 (BIA May 24, 2017) (reopens and terminates proceedings sua sponte based on sentence modification that rendered conviction no longer an aggravated felony, declines to apply departure bar because it would have given force to constitutionally invalid conviction) (*O'Connor*, Cole, Pauley (dissenting))

[Carlos Perez-Guerrero](#), A079 746 629 (BIA Nov. 6, 2015) (reopens proceedings sua sponte following vacatur of criminal conviction despite removal of respondent to Mexico following dismissal of appeal in 2003) (Holmes)—**KEY DECISION**

[Sami Dominguez-Vitela](#), A076 703 827 (BIA June 30, 2015) (reopens proceedings sua sponte, stating that removal did not preclude the ability to seek reopening under the law of the Ninth Circuit) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

[Antonio Stephenson](#), A041 457 044 (BIA May 28, 2015) (rejects DHS argument that IJ lacked



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jurisdiction over motion to reopen because respondent had been removed prior to Board decision reopening proceedings, citing *Lin v. U.S. Att’y Gen.*, 681 F.3d 1236 (11th Cir. 2012)) (Holmes)

[Leandro de Souza](#), A098 891 606 (BIA Sept. 2, 2014) (removal does not deprive immigration courts of jurisdiction over motions to reopen in absentia orders that are premised upon lack of notice) (Holmes)

[Paul Muchai Nganga](#), A087 196 423 (BIA Oct. 17, 2013) (remands for further proceedings in light of *Garcia-Carias v. Holder*, 697 F.3d 297 (5th Cir. 2012), which invalidated post-departure bar at 8 CFR 1003.23(b)(1) (Adkins-Blanch)

[Erwin Stuardo Vivar-Flores](#), A029 249 620 (BIA Sept. 10, 2013) (terminates proceedings but declines to address respondent’s request for DHS to facilitate return to United States) (Kendall-Clark)

[Felix Rodriguez-Rojas](#), A200 673 246 (BIA Jul. 12, 2012) (reopens proceedings sua sponte and finds respondent’s removal did not divest IJ of jurisdiction because respondent did not receive actual notice of the hearing, citing *Matter of Bulnes*, 25 I&N Dec. 57 (BIA 2009)) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Terrance Daniel Bailey](#), A089 010 106 (BIA June 13, 2012) (upholds prior decision reopening proceedings where DHS improperly removed respondent while appeal was still pending) (Holmes)

[Wilson Ivan Mendez-Acevedo](#), A073 868 517 (BIA Mar. 11, 2011) (reopens proceedings sua sponte of respondent who was removed while motion was pending in light of *Coyt v. Holder*, 593 F.3d 902 (9th Cir. 2010)) (Holmes)

### Sua Sponte

#### **Diligence in Filing**

[Jose Dennis Alvarado-Canas](#), A046 041 673 (BIA Feb. 14, 2014) (states that diligence in filing motion could be relevant factor in determining whether sua sponte reopening is warranted) (Liebowitz)

#### **Following Acquisition of Lawful Status**

[Lilian Karla Dias-Gomes](#), A098 723 878 (BIA Feb. 12, 2020) (reopens and terminates proceedings sua sponte in light of adjustment from U to LPR status) (*Gorman*, Mann, Grant)

[C-J-](#), AXXX XXX 149 (BIA Jan. 31, 2020) (reopens and terminates proceedings sua sponte over DHS opposition in light of evidence that USCIS granted LPR status shortly before decision denying prior motion to reopen) (Kelly)

[A-N-A-](#), AXXX XXX 918 (BIA Jan. 22, 2020) (reopens and terminates proceedings sua sponte in light of grant of derivate asylee status) (*Greer*, Goodwin, Wilson)

[Wenzhong Lin](#), A079 390 497 (BIA Nov. 22, 2019) (reopens and terminates proceedings in light of evidence that respondent was granted LPR status by USCIS) (Kendall Clark, Guendelsberger, Grant)

[Xiang Fang](#), A075 451 703 (BIA Feb. 13, 2019) (reopens and terminates proceedings sua sponte in light of grant of LPR status by USCIS) (*O’Connor*, Greer, Donovan)

[Pratep Wannasopa](#), A070 087 731 (BIA May 15, 2018) (reopens and terminates proceedings sua

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sponte in light of respondent's adjustment to LPR status more than 25 years after being ordered removed in absentia) (*Pauley*, Adkins-Blanch, Kelly)

[Jin Wei Gao](#), A079 692 001 (BIA Jan. 31, 2017) (reopens and terminates proceedings sua sponte over DHS opposition in light of respondent's acquisition of asylee status) (Guendelsberger)

[Ming Yue Piao](#), A096 187 617 (BIA Dec. 15, 2016) (reopens and terminates proceedings sua sponte in light of approval of Asylee Relative Petition (I-730)) (Guendelsberger)

[Yu Qing Chen](#), A077 977 214 (BIA Oct. 20, 2016) (reopens and terminates proceedings sua sponte in light of evidence that respondent acquired derivate asylee status) (Kendall-Clark)

[Liseth Del Carmen Montano-Montano](#), A200 119 434 (BIA Aug. 30, 2016) (reopens and terminates proceedings sua sponte in light of evidence that respondent acquired derivate asylee status) (*O'Leary*, Adkins-Blanch, Grant)

[Pa Ousman Joof](#), A099 271 700 (BIA Feb. 24, 2016) (reopens and terminates proceedings sua sponte in light of evidence that respondent acquired derivate asylee status) (Holmes)

### **Following Attempt To Remove To Third County**

[F-W-M-](#), AXXX XXX 518 (BIA Nov. 12, 2019) (reopens proceedings sua sponte to permit respondent previously granted deferral of removal from Sudan to seek deferral of removal from South Sudan) (*Liebowitz*, Cassidy, Malphrus)

### **For Post-Conviction Relief**

[Ramon Peguero-Cruz](#), A029 119 039 (BIA July 27, 2020) (reopens and terminates proceedings sua sponte where conviction underlying sole charge of deportability was vacated due to ineffective assistance of counsel under Rhode Island Gen. Laws 10-9.1-1) (Greer, Wilson, Swanwick)

[Houth Chhang Taing](#), A025 109 103 (BIA Feb. 27, 2020) (reopens and terminates proceedings sua sponte following grant of gubernatorial pardon for offenses providing sole basis for charges of removability) (*Greer*, O'Connor, Wendtland)

[Abbas Al-Murshidy](#), A071 673 938 (BIA Feb. 27, 2020) (reopens and terminates proceedings sua sponte following vacatur of conviction that provided sole basis of removability) (Morris)

[Jorge Deltoro-Aguilar](#), A090 925 971 (BIA Feb. 12, 2020) (reopens and terminates proceedings sua sponte in light of vacatur of conviction because respondent had not been advised of the immigration consequences of his guilty plea) (Grant)

[L-M-S-C-](#), AXXX XXX 284 (BIA Jan. 6, 2020) (reopens proceedings sua sponte in light of vacatur of aggravated felony conviction that previously prevented respondent from applying for relief from removal) (Grant)

[Diego Armando Alvarez Mendoza](#), A200 588 416 (BIA Oct. 30, 2019) (reopens proceedings sua sponte for respondent to apply for non-LPR cancellation following nunc pro tunc modification of guilty plea from possession of marijuana to possession of an unspecified controlled substance) (*Grant*, Guendelsberger, Kendall Clark)

[Sok Krouch](#), A027 350 406 (BIA Oct. 22, 2019) (reopens and terminates proceedings sua sponte over DHS opposition in light of receipt of full and unconditional pardon by Governor of Washington for

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conviction underlying sole basis of removability) (Goodwin)

[Herve Guy Ngouyombo](#), A070 460 027 (BIA June 26, 2019) (reopens proceedings sua sponte where respondent's Nevada conviction for receipt of stolen property was no longer an aggravated felony under *Matter of Sierra*, 26 I&N Dec. 288 (BIA 2014)) (Grant)

[Kofi Amouzougan](#), A078 765 761 (BIA Feb. 1, 2019) (reopens proceedings sua sponte following sentence reduction that rendered conviction no longer an aggravated felony) (Donovan)

[Sahr Michael Morsay](#), A060 887 539 (BIA Dec. 3, 2018) (reopens and terminates proceedings sua sponte over DHS opposition in light of modified sentence and conviction allowing respondent to qualify for petty offense exception) (Grant)

[William Paul Okweari](#), A071 666 027 (BIA Oct. 4, 2018) (reopens proceedings sua sponte in light of evidence that conviction underlying order of removal was vacated and respondent's diligence in pursuing his rights following decision of state Supreme Court holding that *Padilla v. Kentucky*, 559 U.S. 356 (2010), applies retroactively) (*Kelly*, Geller, Mann)

[Clinton Daryl Alexander](#), A096 649 248 (BIA Aug. 15, 2018) (reopens proceedings sua sponte over DHS opposition for respondent to apply for adjustment of status following vacatur of convictions under N.Y. Crim. Proc. Law 440.10) (Kendall Clark)

[Isidro Cabrera-Cabrera](#), A092 754 873 (BIA June 27, 2018) (reopens and terminates proceedings sua sponte in light of vacatur of conviction underlying sole charge of removability, notwithstanding that motion was filed many years after order of removal) (*Grant*, Guendelsberger, Kendall Clark)

[Victor Edelberto Espinoza Alvarez](#), A028 688 657 (BIA May 17, 2018) (reopens proceedings sua sponte for respondent to apply for relief under NACARA in light of the vacatur of his conviction for possession of cocaine) (Grant)

[Leon Dave Bennett](#), A037 338 830 (BIA Feb. 1, 2018) (reopens proceedings sua sponte to let respondent to apply for cancellation of removal following vacatur of conviction for aggravated felony) (Grant)

[Randy Ramzi Nissu](#), A079 394 716 (BIA Jan. 31, 2018) (reopens and terminates proceedings sua sponte after vacatur of sole conviction underlying charge of removability due to ineffective assistance of counsel) (Guendelsberger)

[Paul Sylvester Roberts](#), A038 996 686 (BIA Dec. 14, 2017) (reopens and terminats proceedings sua sponte in light of evidence that conviction underlying sole charge of removability was vacated due to defect in underlying proceeding) (Kendall Clark)

[Zhongen Li](#), A059 930 907 (BIA Feb. 15, 2017) (reopens proceedings sua sponte in light of withdrawal of guilty plea apparently as result of a procedural or substantive defect in underlying proceedings) (Guendelsberger)

[Kirk Sean Marlon Young](#), A035 922 976 (BIA Jan. 25, 2017) (reopened and terminated proceedings sua sponte due to vacatur of conviction based on ineffective assistance of counsel) (Kendall-Clark)

[Jesus Ramos](#), A091 679 605 (BIA July 19, 2016) (reopens and terminates proceedings sua sponte over DHS opposition in light of state court order vacating conviction for failure to advise of potential immigration consequences in violation of Cal. Penal Code 1016.5) (Guendelsberger)

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[Christian Trejo-Ortiz](#), A099 647 473 (BIA June 21, 2016) (reopens proceedings sua sponte following withdrawal of guilty plea to possession of marijuana for sale) (Kendall-Clark)

[Samuel Rubio-Covarrubias](#), A045 189 208 (BIA May 24, 2016) (reopens and terminates proceedings sua sponte in light of vacatur of criminal conviction underlying sole charge of deportability on constitutional grounds) (Guendelsberger)

[Carlos Avalos-Mendez](#), A074 332 332 (BIA Jan. 22, 2016) (reopens and terminates proceedings sua sponte in light of vacatur on constitutional grounds of criminal conviction underlying charge of removability) (Miller)

[Wagner Aneudis Martinez](#), A043 447 800 (BIA Jan. 12, 2016) (reopens proceedings sua sponte in light of vacatur of conviction for which respondent was removed in 2003, stating that “enforcement of a removal order that was predicated upon a criminal conviction that was constitutionally defective at the time it was entered, constitutes a gross miscarriage of justice sufficient to warrant reopening the proceedings of a removed alien”) (*Grant*, Guendelsberger, O’Leary)—**KEY DECISION**

[Renato de Bartolo](#), A018 330 617 (BIA Dec. 11, 2015) (reopens and terminates proceedings sua sponte in light of dismissal of indictment underlying criminal conviction forming basis for charges of removability) (Miller)

[Kamil Cwalinski](#), A047 081 455 (BIA March 9, 2015) (reopens proceedings sua sponte in light of evidence that criminal court resentenced respondent to probation for an attempted robbery offense thereby making him eligible to apply for cancellation of removal) (Miller)

[Jacinto Moises Carbonell-Desliz](#), A074 054 226 (BIA Jan. 13, 2014) (reopens proceedings sua sponte in light of vacatur of conviction where respondent was not advised by criminal court of Sixth Amendment right to counsel) (Miller)

[Dave Lall](#), A095 571 038 (BIA Aug. 27, 2013) (reopens proceedings sua sponte over DHS objection and remands to determine basis for vacatur of respondent’s conviction) (Miller)

[Sewdat Rajpaul](#), A058 358 908 (BIA Aug. 15, 2013) (reopens proceedings sua sponte after state court vacates conviction for attempted assault in the second degree in violation of N.Y.P.L. 110-120.05-02 and allows respondent to plead guilty to menacing in the third degree in violation of N.Y.P.L. 120.15) (Holmes)

[Ignacio Javier Perez-Hernandez](#), A092 259 726 (BIA July 18, 2013) (reopens proceedings sua sponte after respondent’s criminal conviction vacated under Cal. Penal Code 1016.5 because he was not advised of potential immigration consequences prior to entering guilty plea) (Miller)—**KEY DECISION**

[Son Hoang Nguyen](#), A097 683 305 (BIA May 16, 2013) (reopens proceedings sua sponte where underlying criminal conviction was vacated on due process grounds) (Manuel)

[Jimmy Ampong Libres](#), A045 232 847 (BIA Sept. 28, 2012) (reopens proceedings sua sponte in light of letter from state prosecutor indicating respondent was convicted of violating Cal. Penal Code 415(a) rather than Cal. Health & Safety Code 11550(a)) (Miller)

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[Salvador Gonzales Diaz](#), A030 105 700 (BIA Mar. 28, 2011) (reopens proceedings sua sponte in light of pardon from New York governor for 1975 conviction for first degree assault) (Holmes)

[Wilson Ivan Mendez-Acevedo](#), A073 868 517 (BIA Mar. 11, 2011) (reopens and terminates proceedings sua sponte where conviction was vacated under *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010)) (Holmes)

[Jose Noel Meza-Perez](#), A029 269 568 (BIA Feb. 28, 2011) (reopens proceedings sua sponte after respondent's criminal conviction vacated under Cal. Penal Code 1016.5 because he was not advised of potential immigration consequences prior to entering guilty plea)

[Susana Lilibeth Ferreira-Neves](#), A036 464 449 (BIA Feb. 25, 2011) (reopens proceedings sua sponte and remands for consideration of cancellation of removal where aggravated felony conviction was vacated due to unspecified constitutional deficiencies) (Kendall-Clark)

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[Dina Issa Muasher](#), A079 000 609 (BIA Aug. 13, 2013) (reopens proceedings sua sponte where Board incorrectly concluded in prior decision that respondent, rather than her mother, made material misrepresentation requiring 212(i) waiver) (Miller)

[Eva Hernandez](#), A093 291 466 (BIA Aug. 30, 2011) (reopens proceedings sua sponte where Board mistakenly concluded respondent needed 212(i) waiver to qualify for adjustment of status) (*Miller*, Holmes, Kendall-Clark)

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[Jorge Roberto Estrada](#), A072 520 654 (BIA Aug. 8, 2020) (decision in *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), constitutes fundamental change in law sufficient to justify reopening sua sponte) (*Kelly*, Pepper, Couch (dissenting))

[Cong Van Nguyen](#), A071 427 810 (BIA July 9, 2020) (reopens and terminates proceedings sua sponte upon finding conviction for selling a precursor substance (pseudoephedrine) under Okla. Stat. 2-328 was not a controlled substance offense under *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (*Wilson*, Goodwin, Monsky)

[Raoul Garrett Willock](#), A040 166 234 (BIA June 23, 2020) (reopens and terminates proceedings sua sponte in light of intervening decision in *Obeya v. Sessions*, 884 F.3d 442 (2d Cir. 2018), holding that *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016), does not apply retroactively) (Riley)



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[Hugo Oswaldo Rivas](#), A071 644 333 (BIA June 16, 2020) (reopens proceedings sua sponte for respondent with TPS to adjust status under *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017)) (O'Connor)

[Viviana Sarayda Larios Andrade](#), A077 810 552 (BIA May 27, 2020) (holds that *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), represents fundamental change of law justifying sua sponte reopening for TPS holder to apply for adjustment of status)) (Kelly)

[Saira Persad](#), A043 832 396 (BIA May 14, 2020) (reopens proceedings sua sponte upon finding theft under Fla. Stat. 812.014 not a CIMT under *Descamps v. United States*, 133 S. Ct. 2276 (2013), and *Matter of Diaz-Lizarraga*, 26 I&N Dec. 847 (BIA 2016)) (Grant)

[Guadalupe De Jesus Castellanos](#), A074 422 175 (BIA April 14, 2020) (reopens proceedings sua sponte for respondent with TPS to adjust status in light of *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017)) (Liebowitz, Creppy, Hunsucker)

[Milagro Del Carmen Acevedo](#), A070 552 239 (BIA March 2, 2020) (decision in *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), holding that TPS holders are deemed inspected and admitted constitutes fundamental change in law sufficient to warrant reopening sua sponte) (Couch)

[Zoila Maribel Moran-Arrue](#), A071 634 100 (BIA Jan. 3, 2020) (reopens proceedings sua sponte for respondent to seek adjustment of status in light of longstanding TPS and decision in *Ramirez v. Brown*, 852 F.3d 954, 964 (9th Cir. 2017)) (Kelly)

[Margarita Reyna Alarcon-Barillas](#), A070 920 890 (BIA Jan. 3, 2020) (reopens proceedings sua sponte for respondent to seek adjustment of status in light of longstanding TPS and decision in *Ramirez v. Brown*, 852 F.3d 954, 964 (9th Cir. 2017)) (Grant)

[Sowath Thong](#), A025 334 591 (BIA Dec. 23, 2019) (reopens and terminates proceedings sua sponte in light of Ninth Circuit decision issued in 2010 holding that crime of conviction was not an aggravated felony) (*Guendelsberger*, Kendall Clark, Grant)

[Chhoy Troy Nuon](#), A025 293 230 (BIA Sept. 30, 2019) (reopens proceedings sua sponte for respondent to apply for waiver under INA 212(h) in light of intervening decision in *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015), holding that statutory bars do not apply to applicants who adjusted to LPR status) (Kendall Clark)

[Letzer Mauricio Salguero Paiz](#), A047 829 855 (BIA Sept. 3, 2019) (reopens and terminates proceedings sua sponte upon finding respondent filed motion within reasonable period of decision in *Lorenzo v. Whitaker*, 752 F. App'x 482 (9th Cir. 2019) (*Cole*, Wendtland, Greer (dissenting)))

[Marcos A. Santos-Banegas](#), A072 523 316 (BIA Aug. 8, 2019) (reopens proceedings sua sponte in light of respondent's maintenance of TPS since 2000 and changes in law allowing him to adjust status) (Kendall Clark)

[Luz Del Carmen Medrano Medrano](#), A074 823 438 (BIA July 29, 2019) (holds that *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017), represents change of law justifying sua sponte reopening for TPS holder to apply for adjustment of status) (Grant)



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[Julia Bustos-Moreno](#), A075 513 721 (BIA July 30, 2019) (reopens proceedings sua sponte for respondent to seek LPR cancellation of removal in light of decision in *Lopez v. Barr*, 925 F.3d 396 (9th Cir. 2019), holding that hearing notice does not trigger stop-time rule) (Donovan); [Bernardo Guzman-Aranda](#), A047 347 949 (BIA July 10, 2019) (same) (Grant); [Rosa Villalpando-Velasquez](#), A077 150 018 (BIA July 2, 2019) (same) (Greer); [Maria De Rodriguez-Echeverria](#), A077 983 920 (BIA June 11, 2019) (same) (Kendall Clark)

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[Thomas Rocha Gonzalez](#), A090 912 784 (BIA May 14, 2019) (reopens and terminates proceedings sua sponte against respondent ordered removed in 2001 in light of intervening case law holding that definition of crime of violence under 18 U.S.C. 16(b) unconstitutionally vague) (*Guendelsberger*, Grant, Kendall Clark)

[Javier Valdez Navarro](#), A017 988 072 (BIA May 13, 2019) (reopens and terminates proceedings sua sponte against respondent ordered removed in 2001 in light of intervening case law holding that definition of crime of violence under 18 U.S.C. 16(b) unconstitutionally vague) (*Guendelsberger*, Grant, Kendall Clark)

[Ricardo Francisco Moya Savinon](#), A034 457 852 (BIA May 3, 2019) (reopens and terminates proceedings sua sponte in light of intervening decision in *Harbin v. Sessions*, 860 F.3d 58 (2d 2017), which held that N.Y. Penal Law 220.31 is categorically overbroad relative to INA 237(a)(2)(B)(i)) (Liebmann)

[Zhong Qin Yang](#), A093 408 583 (BIA April 10, 2019) (reopens proceedings sua sponte in light of intervening decision in *Matter of J-H-J-*, 26 I&N Dec. 563 (BIA 2015), rendering respondent eligible for waiver under INA 212(h) despite aggravated felony conviction) (Grant)

[Pui Sun Ho](#), A044 190 476 (BIA April 9, 2019) (reopens and terminates proceedings sua sponte in light of intervening decision rendering conviction for delivery of cocaine under Ore. Rev. Stat. 475.880 no longer an aggravated felony) (*Guendelsberger*, Adkins-Blanch, Kelly)

[Jorge Ernesto Escajeda-Hernandez](#), A041 939 114 (BIA March 25, 2019) (reopens proceedings sua sponte upon finding first degree burglary under Calif. Penal Code 459 was no longer an aggravated felony under Ninth Circuit and Supreme Court precedent) (*Guendelsberger*, Grant, Kendall Clark)

[Isaac Naewala Toe](#), A079 956 827 (BIA Feb. 13, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of intervening decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018), rendering conviction no longer an aggravated felony crime of violence) (*Grant*, Guendelsberger, Kendall Clark)

[K-K-L-B-](#), AXXX XXX 961 (BIA Nov. 30, 2018) (reopens proceedings sua sponte for respondent to seek adjustment of status in light of intervening decision in *Obergefell v. Hodges*, 135 S. Ct. 2584 (2015) legalizing same-sex marriage) (*Greer*, Wendtland, Cole (dissenting))

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[Anish Dave](#), A038 166 579 (BIA Nov. 29, 2018) (reopens and terminates proceedings sua sponte where respondent's conviction for aggravated criminal sexual abuse under 720 Ill. Comp. Stat. Ann. 5/12-16(d) no longer qualified as sexual abuse of a minor under *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017)) (*Wendtland*, Cole, Greer (dissenting))

[Rebecca Akpevwe Obi](#), A099 002 920 (BIA Sept. 26, 2018) (reopens proceedings sua sponte for respondent to apply for cancellation of removal in light of *Pereira v. Sessions*, 138 S.Ct. 2105 (2018)) (*Kendall Clark*, Grant, Guendelsberger)

[Sergio Arreola-Arreola](#), A011 434 117 (BIA Sept. 14, 2018) (reopens and terminates proceedings sua sponte where respondent was no longer removable in light of intervening decision in *Sessions v. Dimaya*, 138 S. Ct. 1204 (2018)) (*Kendall Clark*, Grant, Guendelsberger)

[Sahra Ahmed Mohamed](#), A075 648 680 (BIA Aug. 24, 2018) (reopens proceedings sua sponte over DHS objection for respondent with TPS who is eligible to adjust status under *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017)) (*Kendall Clark*)

[Abdirazaq Ahmed Ibrahim](#), A079 832 756 (BIA Aug. 7, 2018) (reopens and terminates proceedings sua sponte in light of intervening decision in *United States v. Robinson*, 869 F.3d 933 (9th Cir. 2017), rendering conviction for assault under Wash. Rev. Stat. 9A.36.021 no longer a crime of violence) (*Grant*, Guendelsberger, *Kendall Clark*)

[Conrado Eduardo Bowen-Ellis](#), A031 011 861 (BIA July 25, 2018) (reopens proceedings sua sponte to allow respondent to apply for waiver under former INA 212(c) in light of intervening decision in *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014) (*Grant*))

[Cynthia Ramos de Marquez](#), A076 616 869 (BIA May 24, 2018) (reopens proceedings sua sponte in light of intervening decision in *Saldivar v. Sessions*, 877 F.3d 812 (9th Cir. 2017), which held that a waive-through at the border constitutes an "admission" in any status for purposes of LPR cancellation) (*Grant*)

[Jose Ramon Abreu](#), A090 679 919 (BIA May 21, 2018) (reopens and terminates proceedings sua sponte for respondent convicted under N.Y.P.L. §§ 220.03 and 220.06(5) in light of intervening decision in *Harbin v. Sessions*, 860 F.3d 58 (2nd Cir. 2017)) (*Guendelsberger*)

[Gloria Bertha Perea](#), A078 892 803 (BIA May 14, 2018) (reopens proceedings sua sponte in light of decision in *De Niz Robles v. Lynch*, 803 F.3d 1165 (10th Cir. 2015), which held that *Matter of Briones*, 24 I&N Dec. 355 (BIA 2007), did not retroactively apply to adjustment applicants who relied on prior contrary Tenth Circuit law) (*Grant*, *Kendall Clark*, *Guendelsberger*)

[Corey Quan](#), A071 438 430 (BIA Feb. 27, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status with a waiver under INA 212(h) in light of *Negrete-Ramirez v. Holder*, 741 F.3d 1047 (9th Cir. 2014)) (*Greer*, *Wendtland*, *Cole*)

[Manuel Dejuses Canales Avila](#), A090 104 314 (BIA Jan. 17, 2018) (reopens proceedings sua sponte where burglary under Calif. Penal Code 459 was no longer a CIMT under intervening Supreme Court precedent on divisibility) (*Grant*)

[Michael Ade Ajiboye](#), A023 708 185 (BIA Jan. 8, 2018) (reopens proceedings sua sponte to allow respondent to apply for adjustment of status in light of intervening decisions rendering him eligible to apply for waiver under INA 212(h)) (*Kendall Clark*)

[M-A-H-S-](#), AXXX XXX 759 (BIA Dec. 13, 2017) (reopens proceedings sua sponte upon finding 2010

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elimination of HIV-based ground of inadmissibility for NACARA was fundamental change in law) (Guendelsberger)

[Vivroy Kirlew](#), A058 906 861 (BIA Nov. 30, 2017) (reopens proceedings sua sponte where respondent was no longer inadmissible because of drug paraphernalia convictions under *Mellouli v. Lynch*, 135 S. Ct 1980 (2015)) (Grant)

[Jose Jesus Trujillo](#), A092 937 227 (BIA Nov. 29, 2017) (reopens and terminates proceedings sua sponte in light of intervening law rendering the concealed weapon conviction no longer a firearms offense and notwithstanding that respondent subsequently received expedited removal order for attempting to unlawfully reenter the country) (*O'Connor*, *Wendtland*, *Pauley* (dissenting))

[Ruben Masson-Orta](#), A025 408 267 (BIA Nov. 9, 2017) (reopens proceedings sua sponte in light of the intervening decision in *Lanier v. U.S. Att'y Gen.*, 631 F.3d 1361 (11th Cir. 2011), rendering him eligible to seek waiver under INA 212(h)) (Grant)

[Gennadiy Zheleznyak](#), A071 100 953 (BIA Nov. 1, 2017) (reopens proceedings sua sponte to consider respondent's eligibility for a waiver under INA 212(h) in light of intervening case law holding that the aggravated felony bar does not apply to applicants who adjusted to LPR status after entering the United States) (Kendall Clark)

[Carlos Lopez Mazariegos](#), A044 623 540 (BIA Oct. 26, 2017) (reopens proceedings sua sponte where conviction for unlawful sexual intercourse with a minor under Calif. Penal Code 261.5(c) was no longer an aggravated felony under *Esquivel-Quintana v. Sessions*, 137 S. Ct. 1562 (2017)) (*Wendtland*, *Cole*, *Pauley* (dissenting))

[Ayaz Khan](#), A071 801 450 (BIA Oct 12, 2017) (reopens proceedings sua sponte in light of intervening decisions rendering misdemeanor assault and battery under Va. Code 18.2-57 and misdemeanor assault on a family member under Va. Code 18.2-57.2 not CIMTs) (*O'Connor*, *Wendtland*, *Cole*)

[Eric Omari Thorpe](#), A047 924 686 (BIA Sept. 29, 2017) (reopens and terminates two sets of proceedings sua sponte upon finding original conviction should not have rendered respondent removable in 2004 or served as basis for reinstatement in 2011) (*Kelly*, *Greer*, *Kendall Clark*)—**KEY DECISION**

[Alhaji Shoku Lamin](#), A079 236 239 (BIA July 18, 2017) (reopens proceedings sua sponte in part due to intervening decision in *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), allowing respondent to adjust status) (Kendall Clark)

[Roxine Curlene Mattis](#), A036 810 946 (BIA June 13, 2017) (reopens and terminates proceedings sua sponte in light of intervening case law rendering embezzlement under Va. Code 18.2-111 not an aggravated felony theft or fraud offense) (Guendelsberger)

[Macario Jesus Bonilla](#), A090 170 253 (BIA March 29, 2017) (reopens and terminates proceedings sua sponte in light of intervening decisions holding that carrying concealed firearm in a vehicle under Calif. Penal Code 12025(a)(1) not a firearms offense) (Guendelsberger)

[S-B-D-](#), AXXX XXX 274 (BIA Jan. 11, 2017) (reopens proceedings sua sponte in light of arguments that third degree assault under Colo. Rev. Stat. 18-3-204 is categorically not a CIMT and statute is not divisible) (Kendall-Clark)

[Akim Joseph Trivus Charles](#), A040 166 697 (BIA Jan. 3, 2017) (reopens proceedings sua sponte following vacatur of conviction for third degree criminal sale of a controlled substance under N.Y.P.L.

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220.39(1), and re-plea to fourth degree criminal possession of a controlled substance under N.Y.P.L. 220.09(1)) (Guendelsberger)

[Joel Hernandez](#), A074 043 821 (BIA Dec. 27, 2016) (reopens and terminates proceedings sua sponte because theft under Fla. Stat. 812.014 no longer a CIMT under *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (*Grant*, Adkins-Blanch, O'Connor)

[Oscar Alejandro Estrada-Rodriguez](#), A044 565 408 (BIA Sept. 9, 2016) (reopens proceedings sua sponte in light of *United States v. Flores-Cordero*, 723 F.3d 1085 (9th Cir. 2013) (holding that resisting arrest in violation of Ariz. Rev. Stat. 13- 2508(A)(1) is not divisible) and affirmative non-opposition by DHS) (Kendall-Clark)

[J. Marcos Cisneros-Ramirez](#), A090 442 154 (BIA Aug. 9, 2016) (reopens and terminates proceedings sua sponte against respondent ordered removed in 2000 based on intervening case law rendering driving under the influence no longer an aggravated felony) (*Adkins-Blanch*, Grant, Mann)

[Santos Francisco Maldonado](#), A092 963 279 (BIA July 28, 2016) (reopens proceedings sua sponte against respondent ordered removed in 2000 in light of intervening decisions making driving under the influence with injury under Cal. Veh. Code 23153(A) no longer an aggravated felony) (*O'Leary*, Grant, Mann)

[Claudionizio Alves-Leal](#), A098 892 990 (BIA April 8, 2016) (reopens proceedings sua sponte in light of intervening decisions in *United States v. Windsor*, 133 S. Ct. 2675 (2013), and *Matter of Zeleniak*, 26 I&N Dec. 158 (BIA 2013), which removed Section 3 of the Defense of Marriage Act as an impediment to the recognition of same-sex marriages under the immigration laws) (*Grant*, Guendelsberger, O'Leary)

[Donald Jose Nogura-Luna](#), A027 181 497 (BIA Feb. 19, 2016) (reopens proceedings sua sponte in light of change in law from 2010 no longer rendering HIV-positive individuals inadmissible) (Miller)—**KEY DECISION**

[Tyron Canute Francis](#), A047 224 961 (BIA June 10, 2015) (reopens proceedings sua sponte in light of *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2012), for further consideration of whether theft under Md. Crim. Law, Code Ann. 7-104, is an aggravated felony theft offense) (Mullane)

[Cesar Liriano](#), A076 574 471 (BIA Oct. 14, 2014) (reopens proceedings sua sponte in light of *Vartelas v. Holder*, 132 S. Ct. 1479 (2012), to consider whether respondent's trip to visit father was "innocent, casual, and brief") (Holmes)

[Zulema Espinoza](#), A087 679 061 (BIA Aug. 26, 2014) (reopens proceedings sua sponte in light of intervening decision in *Ibarra v. Holder*, 721 F.3d 1157 (10th Cir. 2013), holding that Colo. Rev. Stat. 18-16-401 is not a categorical crime of child abuse or neglect) (Holmes)

[Manuel Lopez-Rivera](#), A089 235 276 (BIA June 10, 2014) (reopens proceedings sua sponte in light of decisions in *United States v. Windsor*, 133 S. Ct. 2675 (2013), and *Matter of Zeleniak*, 26 I&N Dec. 158 (BIA 2013), which struck down Section 3 of the Defense of Marriage Act and recognized the validity of same-sex marriages under the immigration laws) (Holmes)

[Roger Anthony Simmonds](#), A034 062 738 (BIA Mar. 24, 2014) (reopens proceedings sua sponte in light of decisions making respondent eligible for 212(c) waiver, including *Matter of Abdelghany*, 26 I&N Dec. 254 (BIA 2014)) (Kendall-Clark)

[Jose Dennis Alvarado-Canas](#), A046 041 673 (BIA Feb. 14, 2014) (denies motion to reopen sua sponte

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based on *Carachuri-Rosendo v. Holder*, 560 U.S. 563 (2010), because decision impacted respondent's eligibility for relief rather than underlying removability) (Liebowitz)

[Victor Manuel Parada-Villegas](#), A091 223 049 (BIA Sept. 23, 2013) (reopens and terminates proceedings where intervening Supreme Court and Fifth Circuit case law rendered conviction for driving under the influence no longer a crime of violence) (*Holmes*, Miller, Kendall-Clark). *See also* [Luis Rios-Alatorre](#), A090 791 693 (BIA June 14, 2012).

[Reddy Shireesha](#), A078 722 997 (BIA May 23, 2012) (reopens proceeding sua sponte over DHS opposition in light of intervening decision in *Matter of Arrabally*, 25 I&N Dec. 771 (BIA 2012), holding that temporary travel abroad pursuant to grant of advanced parole does not constitute "departure" under INA 212(a)(9)(B)(i)(II)) (Miller). *See also* [Veronica Delores Ashley](#), A097 996 130 (BIA Apr. 24, 2012) (same).

[Edgar Antonio Castellon-Lemus](#), A091 603 226 (BIA Feb. 17, 2012) (reopens and terminates proceedings sua sponte in light of the decision in *United States v. Chapa-Garza*, 243 F.3d 921 (5th Cir. 2001), holding that driving under the influence under Tex. Penal Code Ann. 49.09 is not an aggravated felony crime of violence) (Holmes)

[Edward Mercado](#), A095 443 759 (BIA Mar. 1, 2011) (reopens proceedings sua sponte upon finding respondent was not convicted for immigration purposes under intervening decision in *Retuta v. Holder*, 591 F.3d 1181 (9th Cir. 2010)) (Kendall-Clark)

### **For Claims of U.S. Citizenship**

[Trokon Douglas Smith](#), A045 161 654 (BIA Oct. 20, 2019) (reopens proceedings sua sponte in light of evidence that respondent may have derived citizenship from his father under former INA 321(a)) (Kendall Clark)

[David Anderson Payne](#), A035 187 615 (BIA Oct. 22, 2018) (reopens and terminates proceedings sua sponte upon finding that the respondent derived citizenship under former INA 321(a) under intervening Second Circuit rulings involving meaning of custody) (*Kendall Clark*, Gundelsberger, Grant)

[Nidal Shawkat Salem](#), A046 010 157 (BIA Oct. 24, 2016) (reopens proceedings sua sponte in light of issuance of U.S. passport by State Department) (Kendall-Clark)

[Hyun Jung Kim](#), A070 972 045 (BIA Apr. 23, 2012) (reopens proceedings sua sponte in light of evidence that respondent is U.S. citizen) (Holmes)

[Heyman Martinez](#), A073 661 308 (BIA July 27, 2012) (reopens proceedings sua sponte to consider respondent's claim that he derived U.S. citizenship from his mother under former section 321(a)(3) of the INA) (Miller) (Note: The Board had previously upheld an order of removal against the respondent in 2004)

### **For Humanitarian Reasons**

[Suri E. Licona Molina](#), A044 006 637 (BIA Oct. 7, 2020) (reopens proceedings sua sponte for DACA recipient who was ordered removed in 2004 to apply for adjustment of status based on marriage to U.S. citizen) (*O'Connor*, Donovan, Monsky)

[J-M-M-](#), AXXX XXX 983 (BIA Sept. 16, 2020) (rescinds in absentia order sua sponte over DHS opposition in light of respondent's long-term residence, her significant family ties, her role as



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primary caregiver to U.S. citizen daughter with serious health issues, and her being the beneficiary of an approved visa petition filed by her U.S. citizen husband) (*Adkins-Blanch*, Couch, Kelly)

[A-M-P-V-](#), 213 303 038 (BIA Sept. 11, 2020) (reopens proceedings sua sponte for respondent who wished to pursue independent asylum claim from her mother after witnessing attempted kidnapping and rape at camp in Mexico and who asserted that she qualified as an unaccompanied child) (*Malphrus*, Liebowitz, Morris)

[R-B-W-](#), AXXX XXX 222 (BIA Aug. 11, 2020) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of her previously receiving protection under the CAT and the lack of DHS opposition) (Mann)

[Dorcas Nduta Muiru](#), A072 414 945 (BIA Aug. 4, 2020) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of her employment as a registered nurse and potential ability to recapture an unused immigrant visa under the Healthcare Workforce Resilience Act) (*Kelly*, Pepper, Adkins-Blanch)

[N-K-C-](#), AXXX XXX 948 (BIA July 8, 2020) (reopens proceedings sua sponte in light of potential hardship to respondent's U.S. citizen spouse, a military veteran who was injured in service with serious medical needs) (Riley)

[Gyu Seon Oh](#), A098 666 025 (BIA June 23, 2020) (reopens proceedings sua sponte to allow respondent to adjust status based on approved visa petition filed by U.S. citizen child who is active member of the military) (Couch)

[Isabel Cristina Julia Garcia Guillot](#), A098 878 799 (BIA June 22, 2020) (reopens proceedings sua sponte for DACA recipient to adjust status in light of residence in United States since age 5 and lack of any criminal record) (Pepper)

[Juan Sanabria Rosales](#), A095 220 903 (BIA June 17, 2020) (reopens proceedings sua sponte for DACA recipient who was married to a U.S. citizen and the beneficiary of an approved visa petition) (Montante)

[Jorge David Castellanos-Castillo](#), A073 213 536 (BIA June 5, 2020) (reopens proceedings sua sponte for DACA recipient who was the beneficiary of an approved visa petition in light of evidence that he may have been admitted on a visa as a child) (Pepper)

[Natalia Cristina Concha Cavieres](#), A095 448 983 (BIA May 28, 2020) (reopens proceedings sua sponte for respondent to apply for adjustment of status given that she was a young child when ordered removed in 2003 and diligently pursued reopening after learning of the removal order in 2019) (Couch)

[J-E-](#), AXXX XXX 542 (BIA May 26, 2020) (reopens proceedings sua sponte over DHS opposition for respondent who has resided in the United States since age 3, is a model student, helps his mother care for his two young U.S. citizen brothers, was abandoned and neglected by his father, and has no caretakers in his country of nationality) (Grant)

[I-G-](#), AXXX XXX 761 (BIA April 23, 2020) (reopens proceedings sua sponte for respondent to apply for adjustment of status based on wife's serious medical conditions) (Grant)

[M-A-A-](#), AXXX XXX 558 (BIA March 27, 2020) (reopens proceedings sua sponte for respondent to adjust status in light of extensive family ties and lengthy presence under a grant of withholding of removal) (Grant)



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[C-H-](#), AXXX XXX 200 (BIA Feb. 3, 2020) (reopens proceedings sua sponte for respondent to seek adjustment of status with INA 212(i) waiver in light of evidence that respondent's husband was diagnosed with major depression stemming in part from her unsettled immigration status) (Grant)

[A-M-C-](#), AXXX XXX 544 (BIA Jan. 10, 2020) (reopens proceedings sua sponte based on birth of child in 2006 with severe medical conditions who relied on respondent for care) (Liebmann)

[M-N-](#), AXXX XXX 701 (BIA Jan. 9, 2020) (reopens proceedings sua sponte over DHS opposition in light of evidence that respondent underwent FGM in her native country, that her children would suffer extreme hardship if she was removed, and that she was the beneficiary of an approved visa petition filed by her U.S. citizen son) (Grant)

[Alexis Exequiel Medina Amaya](#), A097 632 866 (BIA Dec. 30, 2019) (reopens proceeding sua sponte to apply for adjustment of status given that respondent was the beneficiary of an approved visa petition filed by his LPR, had resided in the United States since age 7, and received Deferred Action for Childhood Arrivals) (Mann)

[Ignacia Luis](#), A077 621 748 (BIA Dec. 13, 2019) (reopens proceedings sua sponte to apply for adjustment of status for respondent with an LPR husband, four U.S. citizen children and nine U.S. citizen grandchildren, who made diligent efforts to legalize status and was misadvised over the years by various representatives) (Kendall Clark)

[E-S-H-](#), AXXX XXX 708 (BIA Dec. 13, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to apply for adjustment of status given that she served as a caregiver for her 100-year-old husband who required care 24 hours per day) (Kelly)

[Momodou Jallow](#), A073 166 631 (BIA Nov. 18, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status given that respondent's U.S. citizen wife initially was admitted as a refugee and hardships his family would face if he was removed) (Kendall Clark)

[Hassan Mohamed Ali](#), A075 639 374 (BIA Nov. 18, 2019) (reopens proceedings sua sponte for beneficiary of pending visa petition in light of respondent having TPS, no criminal record, and large family with multiple U.S. citizen children) (Kendall Clark)

[N-A-C-C-](#), AXXX XXX 911 (BIA Aug. 14, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to apply for non-LPR cancellation in light of diagnosis of respondent's U.S. citizen child with cerebral heterotopia, symptomatic generalized epilepsy, and autism disorder) (Grant)

[O-E-Z-R-](#), AXXX XXX 864 (BIA April 1, 2019) (reopens proceedings sua sponte given that respondent was ordered removed as a child, was subsequently granted deferred action, and possessed a fear of returning to his native country because of his sexual orientation) (*Kelly*, Mann, Liebmann)

[B-A-D-N-](#), AXXX XXX 139 (BIA March 8, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of her residence in the United States for more than 30 years, her diminished mental capacity, abuse inflicted by former partners, and U.S. citizen daughter with anxiety disorder) (*Grant*, Guendelsberger, Kendall Clark)

[N-K-](#), AXXX XXX 777 (BIA Feb. 28, 2019) (reopens proceedings sua sponte in light of respondent's age, prior grant of withholding of removal, lengthy residency in United States, and hardship to his U.S. citizen son) (Kendall Clark)

[Abilma Rosaura Gamboa Gomez](#), A070 627 744 (BIA Feb. 25, 2019) (reopens proceedings sua sponte

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for respondent to apply for adjustment of status under INA 245(i) in light of her residence in the United States for more than 25 years, her flight from Guatemala during the civil war, and hardship to her LPR husband and four U.S. citizen children) (Kendall Clark)

[F-D-](#), AXXX XXX 451 (BIA Feb. 22, 2019) (reopens proceedings sua sponte for respondent who was previously found to have adjusted status through a fraudulent marriage in light of evidence that she had undergone female genital mutilation, a statement from her former husband attesting to the bona fides of the marriage, and her potential eligibility for a waiver under INA 237(a)(1)(H) under the intervening decision in *Matter of Agour*, 26 I&N Dec. 566 (BIA 2015)) (Grant)

[Syed Arif Ali Zaidi](#), A073 185 804 (BIA Feb. 13, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of lengthy residency in the United States, hardship to U.S. citizen spouse, and current country conditions in Afghanistan) (Kendall Clark)

[L-A-A-](#), AXXX XXX 603 (BIA Nov. 21, 2018) (reopens proceedings sua sponte for further consideration of non-LPR cancellation where respondent's mother became a permanent resident after the hearing and suffers from AIDS) (Kendall Clark)

[Omar Ali Saeed Khamis](#), A200 576 514 (BIA Nov. 9, 2018) (reopens proceedings sua sponte for respondent who was the beneficiary of an approved visa petition, was granted TPS, and possessed a fear of returning to Yemen) (Kendall Clark)

[L-M-P-](#), AXXX XXX 167 (BIA Oct. 12, 2018) (reopens proceedings sua sponte where respondent was prima facie eligible for non-LPR cancellation based on hardship to son who was diagnosed with pica and exhibited severe delays in speech and fine motor skills) (Kendall Clark)

[Henry Leonel Fontes Martinez](#), A098 736 254 (BIA Oct. 9, 2018) (reopens proceedings sua sponte in light of eligibility for adjustment of status and present country conditions in Venezuela) (*Kendall Clark*, Grant, Guendelsberger)

[Adel Mohamed Ba-Alawi](#), A095 457 820 (BIA Sept. 27, 2018) (reopens proceedings sua sponte in light of respondent's eligibility for adjustment of status and country conditions in Yemen) (Kendall Clark)

[Lobsang Choden](#), A098 975 346 (BIA Sept. 25, 2018) (reopens proceedings sua sponte in light of respondent's eligibility for adjustment of status, past traumatic events, and hardships that would befall his extended family if he was removed) (Grant)

[Kakha Anzorovich Machavariani](#), A095 599 911 (BIA Sept. 18, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of wife's serious health issues and poor quality of medical care in native country of Georgia) (Grant)

[Angelina Zavala-Zuniga](#), A076 228 747 (BIA Sept. 14, 2018) (reopens proceedings sua sponte given that respondent was the beneficiary of an approved visa petition and had resided in the country for approximately 20 years with TPS) (*Kelly*, Snow, Adkins-Blanch)

[Nana Ofosuhene](#), A087 511 111 (BIA Aug. 23, 2018) (reopens proceedings sua sponte for respondent to seek adjustment of status in light of evidence regarding the severity of her son's sickle-cell anemia) (*Kendall Clark*, Guendelsberger, Grant)

[Youssef Diagouraga](#), A072 020 744 (BIA June 20, 2018) (reopens proceedings sua sponte for respondents to pursue adjustment of status in light of their having multiple U.S. citizen children and evidence regarding country conditions in their native Mali) (Kendall Clark)

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[Maria Romero-Vasquez](#), A027 615 963 (BIA May 25, 2018) (reopens proceedings sua sponte over DHS opposition to let 76-year-old respondent apply for NACARA) (Grant)

[Dieydi Ba](#), A096 114 049 (BIA March 29, 2018) (reopens proceeding sua sponte in light of hardship that respondent, his wife, and his three U.S. citizen children would experience if he was removed to Senegal) (*Cole*, Wendtland, Pauley (dissenting))

[Hao Zhang](#), A097 852 229 (BIA Feb. 2, 2018) (reopens proceedings sua sponte to let respondent apply for adjustment of status where she had two U.S. citizen children and provided assistance to spouse who was veteran of U.S. Navy and had serious disability) (Guendelsberger)

[Rolando Protocarrero Tello](#), A097 659 598 (BIA Sept 5, 2017) (reopens proceedings sua sponte in light of respondent's equities, including U.S. citizen spouse, U.S. citizen daughter, and U.S. citizen stepsons serving in the military) (Kendall Clark)

[Alhaji Shoku Lamin](#), A079 236 239 (BIA July 18, 2017) (reopens proceedings sua sponte for respondent with sickle cell disease who was beneficiary of approved visa petition by U.S. citizen spouse with whom he had one U.S. citizen child) (Kendall Clark)

[Cristobal Villatoro](#), A077 751 555 (BIA Jan. 31, 2017) (reopens proceedings sua sponte for beneficiary of approved visa petition who had lived in U.S. for sixteen years and had numerous U.S. citizen children) (*Grant*, Mann, Adkins-Blanch)

[Kanubhai Lalbhai Bhatt](#), A073 183 507 (BIA Oct. 28, 2013) (reopens proceedings sua sponte over DHS opposition in light of serious health issues facing respondent's lawful permanent resident wife) (*Manuel*, Adkins-Blanch, Hoffman)

[Maria Guadalupe Ochoa-Alcantar](#), A076 610 961 (BIA Apr. 30, 2013) (reopens proceedings sua sponte where respondent was ordered removed in absentia due to ineffective assistance of counsel, was married to LPR with serious health issues, and appeared eligible for cancellation) (*Hoffman*, Guendelsberger, Adkins-Blanch)

[Jose Adan Robles](#), A073 567 320 (BIA Aug. 30, 2011) (reopens proceedings sua sponte over DHS opposition to let respondent apply for cancellation of removal in light of medical condition of mother of U.S. citizen children aged 4 and 6) (Holmes)

[Xavier Aristides Mejia-Garcia](#), A098 119 800 (BIA Apr. 15, 2011) (reopens proceedings sua sponte where the respondent was not advised of hearing notice and abandoned by mother prior to hearing) (*Kendall-Clark*, Guendelsberger, Pauley)

[Francisco Ramirez Reyes](#), A072 988 089 (BIA Jan. 19, 2011) (reopens proceedings sua sponte in light of, *inter alia*, respondent's sympathetic family circumstances) (Holmes)

### **For Ineffective Assistance of Counsel**

[D-O-B-O-](#), XXXX XXX 857 (BIA Dec. 17, 2019) (reopens proceedings sua sponte for consideration of asylum application where respondent's prior attorney stipulated to grant of withholding of removal based on erroneous belief that Form I-589 was untimely filed) (Guendelsbeger)

[Magloni Manuel Coyoy-Juarez](#), A089 964 309 (BIA March 27, 2019) (reopens proceedings sua sponte given that respondent was previously represented by attorney who was subsequently disbarred) (Grant)

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[Luis Alberto Sosa-Alvarado](#), A200 718 257 (BIA Jan. 17, 2017) (reopens proceedings sua sponte where respondent's attorney admitted failing to submit cancellation application by required deadline due to mistake of employee in attorney's office) (*Wendtland*, Cole, Pauley)

[F-M-A-](#), AXXX XXX 656 (BIA July 13, 2015) (reopens proceedings sua sponte over DHS opposition in light of allegations of ineffective assistance against multiple prior attorneys who failed to identify potential eligibility for asylum, withholding of removal, protection under the CAT, and relief under section 203 of the NACARA) (Holmes)

[Juan Martinez-Alvarez](#), A200 759 323 (BIA May 29, 2014) (law firm neglected to file motion to substitute counsel after attorney handling the respondent's case left the firm and did not advise the respondent of the court-imposed deadline to submit his adjustment application) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Vaclav Ondrisek](#), A078 965 231 (BIA Mar. 9, 2012) (reopens proceedings sua sponte in light of subsequent approval of visa petition and allegations of ineffective assistance against the respondent's prior attorney) (Kendall-Clark)

[Hemantkumar Patel](#), A047 463 053 (BIA Sep. 27, 2011) (reopens proceedings sua sponte in light of claim of ineffective assistance of counsel and admission of error by former attorney) (Miller)

[Susana Beatriz Vasquez-Ramos](#), A094 922 883 (BIA Feb. 25, 2011) (reopens proceedings sua sponte "in an abundance of caution" because record contained no entry of appearance by attorney who was served with hearing notice) (*Liebowitz*, Malphrus, Miller)

[Tashthed Haider Kabir](#), A096 114 231 (BIA Jan. 21, 2011) (reopens proceedings sua sponte where respondent was removed in absentia because prior attorney did not advise him of hearing until night before and did not confess error in prior motion to reopen) (Kendall-Clark)

### **For Lack of Notice of Hearing**

[Felix Rodriguez-Rojas](#), A200 673 246 (BIA Jul. 12, 2012) (reopens proceedings sua sponte and finds respondent's removal did not divest IJ of jurisdiction because respondent did not receive actual notice of the hearing, citing *Matter of Bulnes*, 25 I&N Dec. 57 (BIA 2009)) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Xavier Aristides Mejia-Garcia](#), A098 119 800 (BIA Apr. 15, 2011) (reopens proceedings sua sponte where respondent was not advised of hearing notice and abandoned by mother prior to hearing) (*Kendall-Clark*, Guendelsberger, Pauley)

[Lilibeth Marquina-Romero](#), A096 018 999 (BIA Mar. 14, 2011) (reopens proceedings sua sponte over DHS opposition in light of totality of the circumstances including evidence that respondent did not receive the NTA) (Miller)

### **Miscellaneous**

[Beatrice Egonmwan](#), A086 992 595 (BIA Aug. 26, 2020) (IJ erred in finding he lacked jurisdiction to consider sua sponte MTR because he previously terminated proceedings) (*Riley*, Mann, Grant)

[Dioulde Bah](#), A087 551 820 (BIA July 17, 2020) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of affirmative non-opposition of DHS) (Wilson)

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[E-B-G-](#), AXXX XXX 700 (BIA Oct. 29, 2019) (IJs have authority to reopen reasonable fear proceedings *sua sponte* under *Bartolome v. Sessions*, 904 F.3d 803 (9th Cir. 2018)) (*Malphrus*, Hunsucker, Liebowitz)

[Judelyne Bataille](#), A096 007 199 (BIA July 11, 2018) (reopens proceedings *sua sponte* in light of lack of DHS opposition and lawful presence throughout adult years due to grant of TPS) (Grant)

[Kashmira Singh Dhillon](#), A093 063 555 (BIA June 11, 2018) (holds IJ erred in stating that Board may not review decisions granting or denying *sua sponte* motions because courts of appeals lack jurisdiction to review such determinations) (*Kendall Clark*, Guendelsberger, Grant)

[Mamadou Yero Bah](#), A095 476 281 (BIA Feb. 9, 2018) (reopens proceedings *sua sponte* under totality of the circumstances where respondent filed motion shortly after expiration of TPS) (Grant)

[Yecsi Folerk Baires-Portillo](#), A201 185 570 (BIA June 17, 2016) (reopens proceedings *sua sponte* in light of absence of portion of transcript in which IJ found respondent conceded charge of removability and designated country of removal) (Guendelsberger)

[Jose Ignacio Ayala-Garcia](#), A202 022 479 (BIA May 19, 2016) (reopens proceedings *sua sponte* where respondent was an 18-year-old high school student at the time he was ordered removed in absentia and would qualify as a derivative on mother's application for U nonimmigrant status) (*O'Herron*, Greer, Kendall-Clark)

[Anna May De Leon Galono](#), A089 528 341 (BIA Sept. 29, 2015) (reopens proceedings *sua sponte* where respondent failed to appear at hearing due to stress arising out of the hospitalization of her mother in the Philippines and pending divorce proceedings) (*Guendelsberger*, Grant, O'Leary)

[Jhonathan Victoria Javier](#), A059 303 967 (BIA Aug. 19, 2015) (reopens proceedings *sua sponte* to consider untimely brief that was significantly delayed in transit to the Board, but upholds original decision after consideration of brief) (Guendelsberger)

[Boris Armando Juarez-Hernandez](#), A200 122 340 (BIA April 22, 2015) (reopens proceedings *sua sponte* in light of prior decision issued in respondent's brother's case remanding for additional fact-finding and development of the record) (Miller)

### **Scope of Authority**

[Francisco Garcia-Hernandez](#), A096 420 438 (BIA Aug. 15, 2014) (provisions for rescinding an *in absentia* order under INA 240(b)(5)(C) do not trump IJs' ability to reopen proceedings *sua sponte*) (Manuel, Guendelsberger, Hoffman)—**KEY DECISION**

### **To Pursue Relief from Removal**

[Wesner Florestal](#), A098 870 782 (BIA June 29, 2020) (reopens proceedings *sua sponte* for respondent to seek adjustment of status in light of grant of TPS, country conditions in Haiti, and family members in the United States) (Montante)

[Achille Pierre](#), A078 616 195 (BIA June 11, 2020) (reopens proceedings *sua sponte* for respondent from Haiti to adjust status through U.S. citizen wife following reentry under grant of advance parole) (Greer)

[Bien Amiee Eric](#), A079 398 511 (BIA April 29, 2020) (reopens proceedings *sua sponte* based on respondent's eligibility to adjust status and holding TPS for many years) (Morris)



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[William Adony Ayala-Ortiz](#), A076 817 508 (BIA April 28, 2020) (reopens proceedings sua sponte for respondent with TPS who left and reentered on grant of advance parole to adjust status) (Kelly)

[Jaime Alberto Umanzor-Navas](#), A028 698 104 (BIA Feb. 6, 2020) (reopens proceedings sua sponte in light of respondent's prima facie eligibility for adjustment of status or suspension of deportation under the NACARA, his long residence in the country, and his ties to a U.S. citizen son) (O'Connor)

[J-J-](#), AXXX XXX 853 (BIA Jan. 15, 2020) (reopens proceedings sua sponte for respondent from Haiti with TPS who was the beneficiary of an approved visa petition filed by his U.S. citizen spouse and had reentered the country pursuant to a grant of advance parole) (Grant)

[Z-Z-](#), AXXX XXX 149 (BIA Jan. 13, 2020) (reopens proceedings sua sponte in light DHS' grant of respondent's VAWA self-petition and lack of serious adverse discretionary considerations) (Greer)

[Jinxiang Zheng](#), A095 573 693 (BIA Aug. 12, 2019) (reopens proceedings sua sponte over DHS opposition for the beneficiary of an approved visa petition filed by U.S. citizen daughter whose spouse was an LPR and child was a U.S. citizen) (Guendelsberger)

[Antonieta Maria Baltodano-Soto](#), A027 197 313 (BIA Aug. 12, 2019) (reopens proceedings sua sponte for 63-year-old respondent from Nicaragua with TPS who was the beneficiary of an approved visa petition) (Kendall Clark)

[Nudeh Hanson Kolubah](#), A078 495 471 (BIA Aug. 7, 2019) (reopens proceedings sua sponte for respondent from Liberia with TPS who was the beneficiary of an approved Form I-130 to apply for adjustment of status) (Grant)

[B-L-](#), AXXX XXX 153 (BIA July 25, 2019) (reopens proceedings sua sponte in light of respondent's affidavit stating that she believed she had to agree to a removal order to be reunited with her daughter and that she now has a fear of returning to the Democratic Republic of Congo) (*Creppy*, Malphrus, Baird (dissenting))

[Louis Samon](#), A077 004 958 (BIA June 18, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of the approval of a visa petition filed by his U.S. citizen wife, his receipt of TPS, and his reentry pursuant to a grant of advance parole) (Guendelsberger)

[Adnel Nozinold](#), A076 988 024 (BIA May 21, 2019) (reopens proceedings sua sponte against respondent with TPS who was the beneficiary of an approved visa petition and had a pending application for adjustment of status) (Grant)

[Yolanda Olivia Monterroso](#), A070 109 803 (BIA May 17, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to pursue NACARA relief under *Chaly-Garcia v. United States*, 508 F.3d 1201 (9th Cir. 2007)) (*Grant*, Guendelsberger, Kendall Clark)

[Alejandro Murillo Mondragon](#), A074 822 379 (BIA April 2, 2019) (reopens proceedings sua sponte over DHS opposition in light of equities acquired since entry in 1986 and ability to adjust status through U.S. citizen spouse) (Grant)

[Marie Nadalette Alcindor](#), A076 916 203 (BIA March 26, 2019) (reopens proceedings sua sponte in light of grant of TPS and entry pursuant to grant of advance parole, giving IJ jurisdiction over adjustment application) (Guendelsberger)

[Sherhline Bolivar](#), A099 635 659 (BIA March 18, 2019) (reopens proceedings sua sponte for



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respondent to apply for adjustment of status in light of her U.S. citizen husband and child, country conditions in Haiti, and grant of TPS) (Guendelsberger)

[Josefa Alfaro-Salvador](#), A072 519 033 (BIA March 15, 2019) (reopens proceedings sua sponte over DHS opposition in light of respondent's advance age, grant of TPS, and entry under grant of advanced parole enabling her to apply for adjustment of status) (Kendall Clark)

[Wigenson Theodore](#), A088 097 264 (BIA March 14, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of his age when he entered the United States, his grant of TPS from Haiti, and his extensive family and community ties) (Kendall Clark)

[Jean Robert Dorilus](#), A076 461 872 (BIA March 14, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status based on an approved visa petition filed by his U.S. citizen wife in light of grant of TPS, entry under grant of advance parole, and country conditions in Haiti) (Guendelsberger)

[Albert Adomako](#), A096 606 818 (BIA March 12, 2019) (reopens proceedings sua sponte in light of evidence demonstrating prima facie eligibility for adjustment of status) (Kendall Clark)

[Mauricio Alberto Figueroa](#), A070 783 348 (BIA Feb. 27, 2019) (reopens proceedings sua sponte over DHS opposition for respondent to apply for adjustment of status in light of grant of TPS and approved visa petition filed by U.S. citizen son) (Grant)

[Widmarck Francois](#), AXXX XXX 880 (BIA Feb. 13, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of grant of TPS and 2013 entry pursuant to grant of advance parole) (Grant)

[Lissondieu Sylvestre](#), A078 602 132 (BIA Dec. 10, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status in light of grant of TPS and recent reentry pursuant to grant of advance parole) (Grant)

[Lucane Senord](#), A076 924 769 (BIA Nov. 29, 2018) (reopens proceedings sua sponte to allow respondent to apply for adjustment of status in light of grant of TPS and recent entry pursuant to grant of advance parole) (Kendall Clark)

[Emila Zefaj](#), A078 279 725 (BIA Nov. 14, 2019) (reopens proceedings sua sponte for respondent to apply for adjustment of status under INA 245(i)) (Grant)

[Marie Rose Vincent](#), A076 506 445 (BIA Aug. 8, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status under INA 245(i)) (Grant)

[D-P.](#), AXXX XXX 527 (BIA July 26, 2018) (reopens proceedings sua sponte to allow respondent to apply for adjustment of status notwithstanding prior submission of asylum application containing same statements that appeared in false applications submitted by prior attorneys) (Grant)

[Armando Alvarado Pacheco](#), A205 865 212 (BIA July 6, 2018) (reopens proceedings sua sponte in light of respondent being the beneficiary of an approved visa petition and hardship that would accrue to family in the United States) (Grant)

[Margaret Vilain](#), A078 575 690 (BIA June 6, 2018) (reopens proceedings sua sponte for respondent to pursue adjustment application following grant of TPS and grant of advance parole) (Grant)

[Margarito Raul Ramirez-Cruz](#), A078 276 475 (BIA May 18, 2018) (reopens proceedings sua sponte for

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respondent who was granted TPS and was the beneficiary of an approved visa petition) (*Mann*, *Adkins-Blanch*, Grant)

[Saul Arnulfo Lopez Romero](#), A073 953 015 (BIA May 15, 2018) (reopens proceedings sua sponte where respondent had resided in the United States since 1995, was granted TPS in 1999, and became the beneficiary of an approved visa petition in 2017) (*Adkins-Blanch*, Kelly, Pauley (dissenting))

[Neita Casseus](#), A075 367 425 (BIA May 14, 2018) (reopens proceedings sua sponte where respondent was stepmother of five children in United States and convictions for fraudulent use of a credit card and grant theft were vacated) (Guendelsberger)

[Manuela Pineda](#), A070 780 102 (BIA Feb. 23, 2018) (reopens proceedings sua sponte for respondent with TPS to pursue adjustment of status under *Ramirez v. Brown*, 852 F.3d 954 (9th Cir. 2017)) (Grant)

[C-N-](#), AXXX XXX 784 (BIA Feb. 9, 2018) (reopens proceedings sua sponte for respondent to apply for adjustment of status, citing lengthy period of TPS and lack of DHS opposition) (Grant)

[Pamela Patricia Gordon](#), A090 594 439 (BIA Jan. 19, 2018) (reopens proceedings sua sponte to let respondent apply for adjustment of status with waiver under INA 212(h)) (Grant)

[Lassama Dembele](#), A075 835 755 (BIA Dec. 22, 2017) (reopens proceedings sua sponte to apply for adjustment of status where respondent had seven U.S. citizen, lived in the United States since 1995 with no criminal record, and was the beneficiary of an approved visa petition with a current priority date) (Guendelsberger)

[Mina Ecem Sarihasan](#), A095 863 704 (BIA Dec. 18, 2017) (reopens proceedings sua sponte to apply for adjustment of status where respondent had lived in United States since childhood, her parents were LPRs, she was married to a U.S. citizen and had a U.S. citizen child, and IJ previously denied cancellation of removal only because of stop-time rule) (Guendelsberger)

[Noel Reyes Mata](#), 200 723 795 (BIA Dec. 14, 2017) (reopens proceedings sua sponte to apply for cancellation of removal in light of intervening decision rendering his conviction no longer a CIMT and evidence that respondent's children were mistreated while in mother's care) (Kendall Clark)

[Miguel Yun Wu](#), A072 443 439 (BIA Dec. 11, 2017) (reopens proceedings sua sponte where respondent was a juvenile when his parents' asylum application was denied, was subsequently granted DACA, and was the beneficiary of an approved visa petition filed by his U.S. citizen spouse) (Guendelsberger)

[Marguy Gourdet](#), A096 269 563 (BIA Oct. 30, 2017) (reopens proceedings sua sponte for respondent who had been granted TPS, was the beneficiary of an approved visa petition, and recently reentered the country pursuant to a grant of advance parole) (Guendelsberger)

[Lulezim Topllari](#), A076 678 765 (BIA Oct. 25, 2017) (reopens proceedings sua sponte and remands to consider whether to terminate proceedings to let respondent adjust status before USCIS where respondent was beneficiary of approved visa petition and USCIS administratively closed application until removal proceedings were terminated) (Guendelsberger)

[Miguel Angel Gamboa Najera](#), A075 253 882 (BIA Oct. 19, 2017) (reopens and terminates proceedings sua sponte to allow the respondents to pursue adjustment before USCIS where DHS failed to submit a response to the motion) (Kendall Clark)

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[Dirav Dolatbhai Patel](#), A201 183 819 (BIA Sept. 15, 2017) (reopens proceedings sua sponte in light of USCIS letter stating that respondent met legal requirements for U-1 nonimmigrant status but visa was not yet available) (Grant)—**KEY DECISION**

[Dieuseul Alcide](#), A073 767 336 (BIA Sept. 6, 2017) (reopens proceedings sua sponte to apply for adjustment of status under the Haitian Refugee Immigrant Fairness Act of 1998 where respondent's stepson was severely disabled) (Molly Kendall Clark)

[Jose Israel Chavarria-Reyes](#), A206 274 376 (BIA April 10, 2017) (reopens proceedings sua sponte where IJ did not notify pro se respondent of potential eligibility for pre- or post-conclusion voluntary departure) (Guendelsberger)

[Francisco Villagrana-Robles](#), A094 984 254 (BIA March 27, 2017) (reopens proceeding sua sponte to pursue adjustment of status where respondent was granted relief under DACA and was beneficiary of approved visa petition filed by U.S. citizen spouse) (Guendelsberger)

[Ketlie Augustin](#), A097 199 166 (BIA March 17, 2017) (reopens and terminates proceedings sua sponte for respondent with TPS who returned under grant of advance parole to adjust status with USCIS based on marriage to U.S. citizen) (Guendelsberger)—**KEY DECISION**

[B-A-M-G.](#), AXXX XXX 558 (BIA Dec. 27, 2016) (reopens proceedings sua sponte because IJ should have granted continuance to pursue SIJ status and motion to reopen containing evidence of pending petition was filed only two days late) (*O'Herron*, Greer, Kendall-Clark)

[S-D-A-A.](#), AXXX XXX 716 (BIA Dec. 27, 2016) (reopens proceedings sua sponte in light of granting of petition for SIJ (status)) (*O'Herron*)

[Sandra Gabriela Martinez-Reyes](#), A206 459 135 (BIA Sept. 28, 2016) (reopens proceedings sua sponte for respondent who was unrepresented before the IJ and was deemed to have abandoned her asylum application by failing to submit it by the court imposed deadline) (*Grant*, Adkins-Blanch, Mann)

[Tunde Olayinka Awaye](#), A076 971 012 (BIA July 1, 2016) (reopens proceedings sua sponte over DHS opposition for beneficiary of recently approved visa petition filed by U.S. citizen spouse) (Guendelsberger)

[Mohamed Bouras](#), A089 601 787 (BIA Nov. 24, 2015) (reopens proceedings sua sponte for additional opportunity to pursue waiver of joint filing requirement under INA 216(c)(4))

[Luis Eduardo Munoz-Castellon](#), A094 230 428 (BIA Sept. 24, 2015) (orders further consideration of motion to reopen sua sponte in light of approval of visa petition and lack of DHS opposition) (Grant)

[Iris Jeanette Benites-Maurisio](#), A099 679 349 (BIA Sept. 3, 2015) (reopens proceedings sua sponte where respondent asserted a fear of returning to El Salvador based on prior abuse by her domestic partner) (*Grant*, Guendelsberger, Holiona)

[Sami Dominguez-Vitela](#), A076 703 827 (BIA June 30, 2015) (reopens proceedings sua sponte in the interests of justice because respondent's prior attorney conceded error in failing to timely file adjustment application) (*Pauley*, Cole, Wendtland)

[Miguel Angel Meraz-Puentes](#), A201 220 260 (BIA June 25, 2015) (reopens proceedings sua sponte for respondent to seek adjustment based on spouse's obtaining of U nonimmigrant status) (Holmes)

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[Domingo Vallecillo-Navarro](#), A200 888 968 (BIA May 15, 2015) (reopens proceedings sua sponte following approval of Form I-130 filed by U.S. citizen son serving in U.S. Marines) (Holmes)

[E-F-](#), AXXX XXX 802 (BIA May 5, 2015) (reopens proceedings sua sponte in light of submission of approved Form I-360 as self-petitioning widow of abusive U.S. citizen and the lack of response from DHS) (Holmes)

[Frank Meyer Flores-Rodriguez](#), A098 941 790 (BIA May 23, 2014) (reopens proceedings sua sponte in light of exceptional circumstances, namely the respondent's 8-year-marriage to a U.S. citizen and pending I-130 visa petition filed on his behalf) (Miller)

[Leymi Sahira Moreno Grullon](#), A099 994 900 (BIA Jan. 30, 2014) (reopens proceedings sua sponte based on approval of visa petition filed by respondent's U.S. citizen spouse) (Hoffman)

[Ali Mahmoud Ibrahim Ibrahim](#), A089 276 533 (BIA Jan. 24, 2014) (reopens proceedings sua sponte over DHS opposition to permit respondent to apply for adjustment of status) (Holmes)

[Omar Malleh Boye](#), A093 429 545 (BIA Jan. 8, 2014) (reopens proceedings sua sponte over DHS opposition to permit respondent to seek adjustment of status based on approved visa petition) (Holmes)

[Manuel Lopez-Rivera](#), A089 235 276 (BIA Jan. 3, 2014) (declines to reopen proceedings against petitioner who recently entered same-sex marriage; states that submission of a marriage certificate and pending Form I-130 not sufficient to demonstrate marriage is bona fide) (Kendall-Clark)

[Rosa Amparo-Salmeron](#), A072 163 739 (BIA Oct. 24, 2013) (reopens proceedings sua sponte to provide respondent further opportunity to pursue request for voluntary departure) (Holmes)

[Oluwole Olufunmi](#), A045 081 162 (BIA Oct. 17, 2013) (reopens proceedings sua sponte to permit respondent to pursue adjustment of status based on approved visa petition by U.S. citizen wife) (Holmes)

[Carlos Andres Palaez](#), A096 985 160 (BIA Sep. 27, 2013) (reopens proceedings sua sponte to allow respondent to apply for voluntary departure) (Miller)

[Santokh Singh Parihar](#), A077 596 351 (BIA Aug. 20, 2013) (reopens proceedings sua sponte following remand from the Ninth Circuit for further consideration of respondent's eligibility for adjustment of status or other forms of relief from removal) (Holmes)

[Jaqueline Zanelatto Martins](#), A089 249 051 (BIA July 31, 2013) (reopens proceedings sua sponte in light of respondent's marriage to a U.S. citizen, approved I-130, lack of DHS opposition) (Miller)

[Tatiana Johns](#), A046 791 561 (BIA June 4, 2013) (reopens proceedings sua sponte over DHS objection to allow respondent to pursue adjustment based on marriage to U.S. citizen) (Kendall-Clark)

[Bernard Akwasi Acheampong](#), A077 551 747 (BIA Oct. 31, 2012) (reopens proceedings sua sponte where respondent's eligibility for adjustment of status was overlooked at previous hearings, and claim of ineffective assistance of counsel submitted in compliance with *Matter of Lozada*, 19 I&N 637 (1988)) (Miller)

[Maria Hernandez-Rodriguez](#), A089 566 220 (BIA Oct. 25, 2012) (reopens proceedings sua sponte

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where respondent claimed ineffective assistance of counsel and complied with the requirements of *Matter of Lozada*, 19 I&N Dec. 637 (1988), was eligible to adjust status, and filed motion to reopen only six days late) (Miller)

[Seung Min Hong](#), A072 971 915 (BIA Apr. 30, 2012) (reopens proceedings sua sponte over DHS opposition to permit respondents to apply for adjustment of status; denies DHS request for remand to lodge new charges of removability) (Holmes)

[Maria Charissa Perez Arriola](#), A088 741 448 (BIA Mar. 25, 2011) (reopens proceedings sua sponte in light of approval of visa petition and despite failure of counsel to submit appropriate application with motion or advise Board that petition was granted) (Holmes)

### **To Re-Examine Removability**

[O-M-K-](#), AXXX XXX 951 (BIA March 8, 2019) (reopens proceedings sua sponte in light of evidence disclosed from a FOIA request undermining CBP claim that respondent had violated terms of B visa) (*O'Connor*, Wendtland, Donovan (dissenting))

[Yunior Hernandez](#), A073 229 686 (BIA June 1, 2018) (reopens proceedings sua sponte because original determination that respondent was convicted of an aggravated felony was based on a clearly erroneous factual finding regarding the length of his sentence; states that “a removal order that is premised on a legally erroneous determination of removability is a truly exceptional situation”) (*Creppy*, Mullane, Hunsucker)

[Lilian D. Miranda](#), A074 667 323 (BIA March 16, 2017) (reopens proceeding sua sponte following submission of documentary evidence supporting claim that respondent was an arriving alien and thus should not have been charged as an alien present who had not been admitted or paroled) (Kendall Clark)

[Felix Ramon Contreras-Largaespada](#), A014 701 083 (BIA Feb. 12, 2016) (reopens proceedings sua sponte in light of questions as to whether respondent was removable as charged based on 1985 criminal conviction and potential eligibility for 212(c) waiver) (Holmes)

[Amabel Amado Alcivar Salavarría](#), A043 910 846 (BIA Jan. 19, 2016) (reopens proceedings sua sponte upon finding attempted battery with substantial bodily harm in violation of Nev. Rev. Stat. 200.481 is not an aggravated felony crime of violence) (Miller)

[Franklin Chukwuma Nwagbo](#), A040 079 914 (BIA Feb. 27, 2015) (reopens proceedings sua sponte in light of assertion that 1997 attempted burglary no longer qualifies as a removable offense under *Descamps*) (Miller)

[Ljuljija Alimi](#), A044 440 041 (BIA Feb. 14, 2013) (reopens proceedings sua sponte over DHS opposition to consider whether respondent is inadmissible for smuggling under INA 212(a)(6)(E)(i)) (Holmes)

[Jose Francisco Mendoza-Carrillo](#), A037 723 177 (BIA Jan. 31, 2013) (reopens proceedings sua sponte where intervening change in law may have affected respondent’s removability and DHS did not respond) (Miller)

[Edgar Castruita-Almaraz](#), A043 779 581 (BIA Jan. 18, 2012) (reopens proceedings sua sponte upon finding conviction for possession of a controlled substance not a drug trafficking aggravated felony under *Lopez v. Gonzales*, 549 U.S. 47 (2006)) (Miller)

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[Vikramjeet Sidhu](#), A044 238 062 (BIA Nov. 30, 2011) (reopens and terminates proceedings sua sponte upon finding conviction for embezzlement under Va. Code 18.2-111 is not an aggravated felony theft offense under INA 101(a)(43)(G)) (*Guendelsberger*, *Adkins-Blanch*, *Hoffman*)—**KEY DECISION**

**To Travel on Advance Parole**

[Yessica Mayeli Colotl-Coyotl](#), A200 599 796 (BIA Oct. 6, 2016) (reopens proceedings sua sponte to allow DACA beneficiary to travel abroad pursuant to grant of advance parole) (*Cole*, *Wendtland*, *Pauley* (dissenting))—**KEY DECISION**

**Unknown Reasons**

[Jurate Virgycio Milutyte](#), A047 841 053 (BIA Apr. 22, 2013) (reopens proceedings sua sponte in light of evidence submitted with respondent's motion) (*Kendall-Clark*)

[Servando Pinon-Ramos](#), A074 787 749 (BIA Feb. 28, 2013) (reopens proceedings sua sponte in light of unidentified circumstances and non-opposition of DHS) (*Holmes*)

**When Barred By Reinstatement of Prior Order**

[R-G-I](#), AXXX XXX 732 (BIA Oct. 28, 2019) (IJ improperly denied motion to reopen based on erroneous belief that DHS had reinstated prior removal order) (*O'Connor*, *Greer*, *Wendtland*)



## V. MOTIONS TO RECONSIDER

### Additional Evidence

[Liman Kuka](#), A089 488 415 (BIA July 10, 2018) (grants motion to reconsider denial of motion to reopen sua sponte in light of respondent's wife's intervening naturalization and filing of visa petition on his behalf) (Grant)

[Lizabeth Adriana Flores-Mares](#), A200 580 864 (BIA Jan. 15, 2015) (grants motion to reconsider denial of motion to reopen in light of additional evidence submitted with motion to reconsider) (Miller)

### Change in Law

[Patrick Cadet](#), A041 584 694 (BIA June 15, 2015) (grants motion to reconsider and remands for further consideration of derivative citizenship claim under *Matter of Cross*, 26 I&N Dec. 485 (BIA 2015) (Adkins-Blanch)

### Erroneous Determinations

[Hiram Abecardo Gonzalez-Sarat](#), A205 164 431 (BIA Nov. 23, 2015) (grants motion to reconsider upon finding respondent's prior attorney provided ineffective assistance of counsel) (Miller)

[S-L-](#), AXXX XXX 361 (BIA Aug. 31, 2015) (grants motion to reconsider where adverse credibility determination was clearly erroneous and IJ unreasonably required submission of corroborating evidence) (Miller)

[Jose Luis Gutierrez-Guzman](#), A205 716 539 (BIA Dec. 31, 2013) (grants motion to reconsider where Board erred in concluding the respondent had not demonstrated prima facie eligibility for U nonimmigrant status) (Kendall-Clark)

[Constantin Florin Salgau](#), A078 734 430 (BIA May 14, 2012) (grants motion to reconsider upon finding IJ failed to sufficiently articulate basis for denying request for continuance) (Miller)

[Jose Manuel Silva](#), A019 321 130 (BIA Nov. 30, 2011) (grants motion to reconsider upon finding attempted arson under Mass. Gen. Law ch. 266 § 5A not crime of violence under 18 USC 16(a) or 18 USC 16(b) because it could include the burning of one's own property) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

### Overlooked Aspect of Case

[Carlos A. Tavaréz](#), A043 908 493 (BIA Oct. 8, 2020) (grants motion to reconsider denial of motion to reopen where Board overlooked evidence demonstrating that sole conviction underlying charge of removability was vacated because respondent was not advised of immigration consequences of his plea) (Kelly)

[Amilcar Amado Arriaza Montiel](#), A071 584 941 (BIA July 8, 2020) (grants motion to reconsider prior decision finding respondent failed to demonstrate that he was an ABC class member where Board overlooked that he submitted asylum application in November 1991) (*Hunsucker*, Gemoets, Creppy)

[A-S-S-](#), AXXX XXX 339 (BIA Dec. 31, 2019) (grants motion to reconsider because both IJ and Board overlooked portion of respondent's asylum claim based upon political opinion) (*Guendelsberger*,

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Grant, Kendall Clark)

[Olatunde Osinubi](#), A207 634 471 (BIA Oct. 9, 2018) (grants motion to reconsider and rescinds in absentia order where Board overlooked fact that NTA was not filed with immigration court until after respondent submitted change of address form) (*Grant*, Guendelsberger, Kendall Clark)

[Mercy Mumbura](#), A096 728 491 (BIA Aug. 17, 2018) (grants motion to reconsider where Board overlooked motion to remand that alleged ineffective assistance of counsel and complied with the requirements in *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988)) (*Kendall Clark*, Grant, Guendelsberger)

[Pablo David Castillo Gomez](#), A030 968 558 (BIA July 12, 2018) (grants motion to reconsider and holds that criminal possession of a controlled substance in the seventh degree under N.Y.P.L. 220.03 is not a controlled substance offense under *Harbin v. Sessions*, 860 F.3d 58 (2d. Cir. 2017)) (*Grant*, Guendelsberger, Kendall Clark)

[Ygnacio De Leon-Mendez](#), A077 048 349 (BIA Jan. 7, 2016) (grants motion to reconsider and remands for fact-finding on whether respondent is inadmissible under INA 212(a)(6)(C)(ii) in light of ongoing collateral consequences of making false claim to citizenship) (Pauley)

[Glenda Herrera-Xivir](#), A079 648 307 (BIA Dec. 16, 2015) (orders further consideration of motion to reconsider because IJ incorrectly stated that respondent failed to challenge correctness of original decision) (O'Leary)

[Augusto Guzman-Chavez](#), A099 226 737 (BIA Feb. 13, 2015) (grants motion to reconsider where prior decision erroneously found respondent did not challenge finding of inadmissibility under INA 212(a)(6)(C)(i) for having allegedly entered a fraudulent marriage and failed to acknowledge affidavits concerning the validity of the marriage submitted with a motion to remand) (*Miller*, Holmes, Guendelsberger)

[Susana Rivero-Godoy](#), A024 718 991 (BIA Nov. 18, 2013) (grants motion to reconsider and remands for further proceedings where both IJ and Board neglected to address argument that Florida convictions for assault and grand theft were not CIMTs) (Holmes)

[Renat Tokbaev](#), A089 274 160 (BIA Aug. 6, 2013) (reconsiders prior decision upholding order of removal issued in absentia where respondent did not receive second hearing notice advancing date of original master calendar hearing by more than one year) (*Kendall-Clark*, Miller, Holmes)

[Ion Alexander Beza](#), A200 630 890 (BIA Oct. 27, 2011) (grants motion to reconsider where IJ failed to consider 8 CFR 214.6(g) in concluding that respondent overstayed period of admission as TN nonimmigrant) (Guendelsberger)

### Post-Departure

[M-C-](#), AXXX XXX 758 (BIA March 21, 2019) (departure bar does not apply to motions to reconsider under reasoning of *Jian Le Lin v. US. Atty. Gen.*, 681 F.3d 1236 (11th Cir. 2012)) (*Kendall Clark*, Adkins-Blanch, Guendelsberger)

[Dickson Kwesi Asamoah](#), A086 973 978 (BIA Sept. 10, 2015) (grants motion to reconsider sua sponte because respondent was no longer removable under *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015), and notwithstanding respondent's prior departure from the country) (Miller)—**KEY DECISION**

### Sua Sponte

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[Dickson Kwesi Asamoah](#), A086 973 978 (BIA Sept. 10, 2015) (grants motion to reconsider sua sponte because respondent was no longer removable under *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (Miller)—**KEY DECISION**

[Enrique Manuel Vasquez-Perez](#), A095 802 066 (BIA Nov. 14, 2013) (reconsiders prior decision sua sponte over DHS opposition, reverses discretionary denial of adjustment application upon finding positive equities not outweighed by single conviction for driving under the influence) (Miller)—**KEY DECISION**

[Kelechi Pauline Mbagwu](#), A078 437 923 (BIA Nov. 4, 2013) (denial of motion to reopen reconsidered sua sponte because Board erroneously believed DHS opposed the motion) (Holmes)

[Omar Antonio Velasquez-Aguirre](#), A099 477 431 (BIA July 22, 2013) (reconsiders sua sponte prior ruling upholding order of removal issued in absentia where both Board and IJ erroneously characterized statements submitted by the respondent and his sister as unsworn) (Miller)

[Roberto Mayorga Ponce](#), A087 326 405 (BIA Mar. 25, 2013) (order of removal reconsidered sua sponte in light of previously overlooked evidence relating to continuous physical presence required for adjustment of status) (Miller)

[Anibal Rolando Arrobo](#), A075 449 130 (BIA July 1, 2011) (deletes paragraph from prior decision sua sponte because statements were dicta and could pose “due process concerns”) (Miller)

[Olumide Goodness Adevinka](#), A099 182 755 (BIA Apr. 15, 2011) (reconsiders sua sponte prior determination that respondent was removable under INA 237(a)(2)(A)(i); states that crimes only punishable by up to 12 months do not trigger removability because a sentence of more than one year may not be imposed) (Miller, Holmes, Kendall-Clark)—**KEY DECISION**

## VI. ADMISSION, ENTRY, AND PAROLE

### Admission

#### General

[E-A-M-Z-](#), AXXX XXX 207 (BIA June 4, 2019) (grant of T nonimmigrant status qualifies as an admission) (Kelly)

[Filemon Valdez Palacio](#), A091 558 068 (BIA March 19, 2019) (respondent established an admission pursuant to *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), in light of corroborating testimony from witness on bus who observed immigration officers check his paperwork) (*Greer*, *Wendtland*, *Donovan*)

[A-M-U-](#), AXXX XXX 567 (BIA Nov. 8, 2018) (grant of V nonimmigrant status from within United States qualifies as “admission” for purposes of LPR cancellation of removal) (*Guendelsberger*, *Kendall Clark*, *Adkins-Blanch*)

[Alejandro Garnica Silva](#), A098 269 615 (BIA June 29, 2017) (grant of U nonimmigrant status from within the United States qualifies as an “admission”) (*Cole*, *Pauley*, *Wendtland*)—**KEY DECISION**

[Dung Huynh](#), A096 055 977 (BIA Oct. 16, 2015) (obtaining nonimmigrant visa by means of fraudulent affidavit of support does not negate “admission” under *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010)) (*Geller*, *Malphrus*, *Guendelsberger*)

[Julio Mujica](#), A090 373 986 (BIA Aug. 28, 2015) (grant of temporary resident status under INA 245A does not qualify as an “admission” for purposes of adjustment of status under INA 245(a)) (*Holmes*, *Miller*, *Holiona*)

[Jean Andre Aine](#), A091 359 621 (BIA May 28, 2015) (granting of temporary residence not an “admission” for purposes of INA 237(a) because respondent never obtained LPR status) (*Pauley*, *Malphrus*, *Wendtland* (dissenting))

[Mario Enrique Ramirez-Lainez](#), A205 236 187 (BIA Aug. 21, 2014) (respondent was “admitted” to United States for purposes of INA 237(a) by receiving U nonimmigrant status) (*Hoffman*, *Adkins-Blanch*, *Guendelsberger*)

[Ricardo Fonseca-Haro](#), A097 369 036 (BIA May 27, 2014) (under *Matter of Quilantan*, 25 I&N Dec. 285 (BIA 2010), respondent’s testimony alone may be sufficient to establish “admission” by being waved through port of entry) (*Wendtland*, *Greer*, *Pauley*)

[Luis Perez](#), A200 687 958 (BIA Oct. 3, 2013) (granting of petition for Special Immigrant Juvenile Status (SIJS) does not constitute “admission”) (*Miller*)

[Altigracia Filpo de Vasquez](#), A300 317 878 (BIA Nov. 15, 2011) (finds respondent was “admitted” based on testimony that she was permitted to enter the United States after presenting travel documents to immigration officer) (*Guendelsberger*)—**KEY DECISION**

#### Adjustment as “Admission”

[M-F-V-](#), AXXX XXX 847 (BIA April 21, 2020) (adjustment from refugee to LPR status under INA 209 does not qualify as an “admission” for purposes of the aggravated felony bar) (*Hunsucker*, *Liebowtiz*, *Malphrus*)

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[A-H-A-](#), AXXX XXX 626 (BIA Aug. 14, 2019) (adjustment from refugee to LPR status under INA 209 does not qualify as an “admission” for purposes of the aggravated felony bar notwithstanding contrary decision in *Spacek v. Holder*, 688 F.3d 536 (8th Cir. 2012)) (Cole)

[Gennadiy Zheleznyak](#), A071 100 953 (BIA Oct. 29, 2018) (aggravated felony bar in INA 212(h) does not apply to applicants who were admitted as refugees before adjusting to LPR status) (*Kendall Clark*, Guendelsberger, Grant)

[B-V-N-](#), AXXX XXX 618 (BIA July 5, 2017) (adjustment from refugee to LPR status under INA 209 does not qualify as an “admission” for purposes of INA 212(h) aggravated felony bar) (*Pauley*, Greer, Wendtland)

[Dorina I. Peduri](#), A071 302 021 (BIA May 19, 2017) (adjustment from refugee to LPR status under INA 209 does not qualify as an “admission” for purposes of the INA 212(h) aggravated felony bar) (*Pauley*, Greer, Wendtland)—**KEY DECISION**

[Rogelio Picazo Romero](#), A074 083 669 (BIA Feb. 18, 2016) (holding of *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), that adjustment of status does not constitute an “admission” is limited to purposes of INA 212(h)) (*Pauley*, Wendtland, Cole)—**KEY DECISION**

[Sunipha Damouni](#), A029 235 328 (BIA Jan. 10, 2013) (waiver under INA 237(a)(1)(H) available for fraud committed in connection with an application for adjustment of status, citing prior decisions holding that an adjustment of status constitutes an “admission”) (*Cole*, Greer, Pauley (dissenting))

[Trinath Chigurupati](#), A095 576 649 (BIA Oct. 26, 2011) (date of adjustment qualifies as date of “admission” under *Matter of Alyazji*, 25 I&N 397 (BIA 2011), because respondent departed and re-entered the country on advance parole while adjustment application was pending) (*Pauley*) (Note: this decision may be impacted by the subsequent decision in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012))

[Ricardo Mata-Rosas](#), A076 404 712 (BIA Apr. 20, 2011) (under *Martinez v. Mukasey*, 519 F.3d 532 (5th Cir. 2008), LPRs admitted on a conditional basis not subject to the aggravated felony bar in INA 212(h)) (Adkins-Blanch)—**KEY DECISION**

### **Fraudulent Documents**

[Enriqueta Popocatl-Jimenez](#), A208 370 486 (BIA April 19, 2018) (fraudulent entry using another person’s documents qualifies as an “admission”) (*Pauley*, Wendtland, Crossett (dissenting))—**KEY DECISION**

[A-T-B-](#), AXXX XXX 667 (BIA Feb. 12, 2018) (adjusting to LPR status through fraud qualifies as “admission” under INA 245(a) because it was procedurally regular in nature) (*Liebowitz*, Geller, Malphrus (dissenting))

[Sokrat Stambolliu](#), A200 548 126 (BIA Nov. 28, 2011) (respondent was “admitted” after being permitted to enter the United States after presenting fraudulent passport) (*Pauley*)

### **Advance Parole**

[Anna Magdalena Bojko](#), A089 059 545 (BIA Sept. 30, 2013) (entry under grant of advance parole following prior period of unauthorized employment does not restart 180-day clock under INA 245(k)) (*Mullane*, Mann, Malphrus)

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[Trinath Chigurupati](#), A095 576 649 (BIA Oct. 26, 2011) (date of adjustment qualifies as date of “admission” under *Matter of Alyazji*, 25 I&N 397 (BIA 2011), because respondent departed and re-entered the country on advance parole while adjustment application was pending) (Pauley) (Note: this decision may be impacted by the subsequent decision in *Matter of Arrabally and Yerrabelly*, 25 I&N Dec. 771 (BIA 2012))

### Entry

[Julian Ulises Espinoza-Ramirez](#), A058 623 622 (BIA March 20, 2018) (term “entry” retains the same meaning as before IIRIRA and thus does not apply to LPRs returning from trips abroad that are innocent, casual, and brief) (*Mullane*, Creppy, Liebowitz)—**KEY DECISION**

[Martha Alicia Perez-Hernandez](#), A092 773 151 (BIA June 15, 2017) (IJ failed to place burden on DHS to demonstrate that returning temporary resident was seeking “entry” when reentering the country in 1992) (*O’Connor*, Cole, Pauley)

[J-J-R-A-](#), AXXX XXX 298 (BIA July 3, 2013) (the term “entry” as used in INA 237(a)(1)(E)(i) is still controlled by *Rosenberg v. Fleuti*, 374 U.S. 449 (1963) and thus does not include returns from trips abroad that were “innocent, casual, and brief”) (*Greer*, Pauley, Cole (concurring))—**KEY DECISION**

### Returning LPRs

[U-F-](#), AXXX XXX 217 (BIA Dec. 30, 2019) (reopens proceedings sua sponte in light of *Vartelas v. Holder*, 566 U.S. 257 (2012), because respondent should not have been regarded as an applicant for admission based on convictions occurring prior to IIRIRA) (*Guendelsberger*, Kendall Clark, Grant)

[Regine Angela Michaud](#), A037 986 431 (BIA Nov. 21, 2019) (denies DHS motion to reconsider decision holding that returning LPR whose conviction had been vacated could not be charged with inadmissibility under INA 212(a)(2)(C) as a suspected drug trafficker) (*Guendelsberger*)

[Alfredo Moya Moncada](#), A097 738 641 (BIA Sept. 10, 2019) (suggests that returning LPRs cannot be regarded as applicants for admission under INA 101(a)(13)(C)(v) unless they have been convicted of or admit to committing an offense that would render them inadmissible) (*Greer*, Noferi, Wendtland)

[M-Y-](#), AXXX XXX 668 (BIA May 9, 2019) (respondent was not “admitted” as LPR by returning from travel abroad after committing a CIMT because DHS did not regard him as an applicant for admission at the time) (*Greer*, O’Connor, Wendtland)

[Joaquin Feliz Suero](#), A044 449 250 (BIA Sept. 19, 2018) (holds that respondent was improperly regarded as applicant for admission based on pre-IIRIRA conviction under *Vartelas v. Holder*, 566 U.S. 257 (2012), and remands for consideration of whether trip abroad was innocent, casual, and brief) (*Kelly*, Snow, Adkins-Blanch)

[I-C-B-](#), AXXX XXX 441 (BIA Jan. 25, 2018) (holds that returning LPR who illegally reentered country should not be regarded as an applicant for admission under 101(a)(13)(C)(vi) because he was fleeing suspected drug traffickers who he feared would kill him) (*Pauley*, Wendtland, Greer)

[Mohammad Jashim Reza](#), A0093 304 084 (BIA July 18, 2016) (reentry following travel abroad does not qualify as “admission” as LPR for purposes of INA 212(h) aggravated felony bar) (*Mullane*, Malphrus, Creppy)

[Esperanza Alcaraz-De Vasquez](#), A076 626 660 (BIA March 16, 2017) (returning LPR could not be



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treated as applicant for admission under *Matter of Pena*, 26 I&N Dec. 613 (BIA 2015), because she did not fall within any exceptions under INA 101(a)(13)(C)) (*Cole*, Liebowitz, Malphrus)

[Ruben Elizondo Gonzalez](#), A034 076 469 (BIA June 27, 2016) (INA 212(a)(2)(B) does not retroactively apply to convictions occurring prior to IIRIRA for returning LPRs under *Vartelas v. Holder*, 132 S. Ct. 1479 (2012)) (*Pauley*, Wendtland, *Cole*)—**KEY DECISION**

[Luis Garibay-Sanchez](#), A037 442 516 (BIA April 12, 2016) (remands record in light of intervening decision in *Matter of Pena*, 26 I&N Dec. 613 (BIA 2015), which held that returning LPRs cannot be regarded as seeking admission unless they fall within an exception listed in INA 101(a)(13)(C), even if they obtained LPR status through fraud) (*Wendtland*, *Cole*, *Pauley*)

[Sung Pan Liu](#), A095 704 688 (BIA Sept. 11, 2015) (returning LPRs cannot be regarded as applicant for admission based solely on allegation that they failed to disclose conviction when applying for LPR status) (*Pauley*)

[Hoang Van Tran](#), A027 309 219 (BIA March 18, 2015) (remands for further consideration of whether respondent should have been regarded applicant for admission based on pre-IIRIRA criminal conviction) (*Grant*)

[Felipe Jimenez](#), A046 294 792 (BIA March 4, 2015) (holds *Doe v. Att’y Gen.*, 659 F.3d 266 (3d Cir. 2011), does not affect holding of *Matter of Rivens*, 25 I&N Dec. 623 (BIA), that DHS must prove by clear and convincing evidence that returning LPR may be regarded as an applicant for admission; fact that respondent pleaded nolo contendere did not mean that he had not “committed” an offense identified in INA 212(a)(2)) (*Pauley*)

[Vladislav Margulis](#), A070 233 197 (BIA Mar. 21, 2014) (on remand from *Margulis v. Holder*, 725 F.3d 785 (7th Cir. 2013), grants DHS motion to remand to charge respondent as returning LPR under INA 212; prior Board decision held respondent was properly charged with deportability under INA 237(a) because he was denied entry by Canadian officials and was thus never lawfully admitted to other country, citing *Matter of T-*, 6 I&N Dec. 638 (BIA 1955)) (*Liebowitz*)

[Esperanza Alcaraz-de Vasquez](#), A076 626 660 (BIA Feb. 18, 2014) (respondent alleged to have fraudulently obtained LPR status properly charged as applicant for admission under INA 212(a) upon returning from travel abroad despite not falling under any exceptions in INA 101(a)(13)(C)) (*Cole*, *Pauley* (concurring), *Donovan* (dissenting))

[Ernesto Villazana-Banuelos](#), A037 837 474 (BIA June 25, 2013) (IJ erroneously placed burden on respondent to show he did not abandon LPR status, mistakenly concluded that respondent’s signing of Form I-407 and admittance with I-551 stamp constituted abandonment of LPR status) (*Donovan*, *Pauley*, *Wendtland*)

[Dung Tuan Pham](#), A027 824 163 (BIA May 30, 2013) (remands in light of *Vartelas v. Holder*, 132 S. Ct. 1479 (2012), which held that INA 101(a)(13)(C)(v) may not be applied retroactively) (*Guendelsberger*)

[Demetrio Enrique Lugo Torres](#), A096 599 329 (BIA Jan. 17, 2013) (remands for consideration of whether returning LPR was properly charged as an arriving alien under intervening decision in *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011)) (*Kendall-Clark*, *Leibowitz*, *Guendelsberger*)

[Mario Nunez Parra](#), A092 283 469 (BIA Nov. 16, 2012) (terminates proceedings after finding DHS failed to meet its burden under *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011), of showing that the respondent was seeking admission; states that inculpatory statements regarding prior marijuana

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use by unrepresented respondent in response to IJ's questions were not sufficient for DHS to carry its burden) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Benno Rivens](#), A026 156 068 (BIA Apr. 13, 2012) (denies DHS motion to reconsider holding in *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011), that government bears burden of proving that returning LPR is subject to provision in INA 101(a)(13)(C) that would allow lodging of charges of inadmissibility) (*Pauley*, Greer, Wendtland)

## VII. EVIDENTIARY ISSUES

### Administrative Notice

[Maritza Salcido-Rocha](#), A200 832 424 (BIA Feb. 4, 2015) (reopens proceedings sua sponte after taking administrative notice that EOIR CASE database revealed that respondent appeared at immigration court window on date of her hearing) (Miller)

[Francisco Fabian-Medrano](#), A205 150 585 (BIA Nov. 24, 2014) (takes administrative notice that one ounce is equivalent to 28.3495 grams) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Juan Ignacio Ruela](#), A077 485 879 (BIA May 5, 2014) (takes administrative notice of order from state trial judge clarifying that entire sentence was to be served on probation) (*Greer*, Guendelsberger, Pauley)

[Pervez Pasha](#), A042 436 375 (BIA Feb. 24, 2011) (takes administrative notice of pardon issued by state of Georgia because record was unequivocal) (Cole)

### Audio/Video Evidence

[Jose Neftan Fuentes](#), A089 955 126 (BIA Oct. 28, 2014) (instructs IJ to consider video evidence submitted on flash drive that may support allegations of pretextual traffic stops in support of motion to suppress) (Adkins-Blanch)

### Authentication/Certification of Records

[Gabrae Orlando Hylton](#), A096 732 564 (BIA Aug. 13, 2020) (IJ failed to consider argument that conviction records submitted by DHS were not properly authenticated) (*Creppy*, Morris, Liebowitz)

[Juan Jose Perez](#), A075 356 235 (BIA Jan. 17, 2020) (remands for further consideration of removability because conviction records submitted by DHS were not originals or certified copies) (O'Connor)

[Miguel Angel Reyes](#), A206 551 626 (BIA Jan. 26, 2018) (vacates finding of removability upon finding DHS trial attorneys not authorized to authenticate Form I-213) (*Wendtland*, O'Connor, Pauley)

[Ruben Aviles-Diaz](#), A097 869 352 (BIA Dec. 5, 2013) (criminal records downloaded from PACER sufficient for authentication purposes; methods of authentication in INA 240(c)(3)(C) and 8 CFR 1003.41 are “safe harbors,” not mandatory and exclusive) (*Guendelsberger*, Miller, Malphrus)

[Jose de Jesus Alvarez Gudino](#), A095 748 846 (BIA June 26, 2013) (IJ failed to address whether FBI rap sheet used to establish respondent’s alienage was properly authenticated) (Creppy)

[Angelito Castillo-Notarte](#), A070 466 715 (BIA May 11, 2012) (remands record where DHS evidence of criminal convictions not properly authenticated under *Matter of Velazquez*, 25 I&N Dec. 680 (BIA 2012)) (Greer)

[Roberto Hernandez-Pacheco](#), A072 317 637 (BIA Apr. 22, 2011) (remands to determine whether individual who certified conviction records was DHS official as required by 8 CFR 1003.41(c)) (*Grant*, Malphrus, Mullane)

[Julio Cesar Rios](#), A090 318 119 (BIA Mar. 31, 2010) (proceedings terminated because DHS did not

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properly certify records under INA 240(c)(3)(B) and 8 CFR 1003.41(b)) (*Cole*, Wendtland, Pauley (dissenting)) (Note: The Board also [denied](#) a DHS motion to reconsider)—**KEY DECISION**

### Burden of Proof

#### To Establish Removability

[Perking Silvestre Hernandez Henriquez](#), A040 073 840 (BIA Oct. 3, 2019) (vacates finding of removability based on criminal conviction because record of conviction was illegible and DHS did not establish that name listed was respondent's alias) (*Cole*, Greer, Wendtland)

[Robert Rudoi](#), A013 998 118 (BIA May 2, 2017) (docket transcript that disclaimed liability for inaccurate data did not establish conviction by clear and convincing) (Pauley)—**KEY DECISION**

[Daniel Suarez-Cortes](#), A093 233 989 (BIA May 20, 2016) (transcript of plea colloquy provided clear and convincing evidence that respondent pleaded guilty to one offense despite reference to separate statute in minute order and abstract of judgment) (*Pauley*, Greer, Mullane)

[Juan Jose Martinez Lopez](#), A046 274 029 (BIA April 29, 2016) (remands record because only evidence submitted in support of the charge of deportability was computer printout with name of offense) (Roger Pauley)—**KEY DECISION**

[Carlos Fleitas Carrazana](#), A076 460 879 (BIA April 22, 2016) (remands record because IJ did not explicitly find that DHS established removability by clear and convincing evidence) (O'Leary)

[Sung Pan Liu](#), A095 704 688 (BIA Sept. 11, 2015) (DHS failed to satisfy burden of proof because evidence in the record suggested that foreign conviction had been revoked) (Pauley)

[Everline Gesare Nyabwari](#), A097 683 208 (BIA Sept. 26, 2013) (checking "citizen or national" box on Form I-9 not sufficient to establish removability under INA 237(a)(3)(D) because respondent did not know meaning of word national, but sufficient to preclude eligibility for adjustment of status under INA 212(a)(C)(6)(ii)) (Miller) (Note: the Board subsequently [denied](#) a motion to reconsider)—**KEY DECISION**

[Juan Carlos Clase](#), A043 986 617 (BIA Oct. 31, 2013) (statement in criminal indictment saying offense occurred "on or about" a particular date not clear and convincing evidence offense actually occurred on that date) (Guendelsberger)—**KEY DECISION**

[Ernesto Villazana-Banuelos](#), A037 837 474 (BIA June 25, 2013) (IJ erroneously placed burden on respondent to show he did not abandon LPR status, mistakenly concluded that respondent's signing of Form I-407 and admittance with I-551 stamp constituted abandonment of LPR status) (*Donovan*, Pauley, Wendtland)—**KEY DECISION**

[Mario Nunez Parra](#), A092 283 469 (BIA Nov. 16, 2012) (inculpatory statements regarding prior marijuana use by unrepresented respondent not sufficient for DHS to carry its burden under *Matter of Rovens*, 25 I&N Dec. 623 (BIA 2011)) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Marcelo Alejandro Cao](#), A089 207 044 (BIA Jan. 31, 2012) (Form I-213 failed to establish respondent's alienage because it was based on information purportedly contained in a Petition for Alien Worker (Form I-140) not in record before the IJ) (*Wendtland*, Cole, Pauley (dissenting))

[Federico Contreras-Torres](#), A036 157 819 (BIA Jan. 20, 2012) (conviction documents not sufficient to establish that respondent was convicted of offense relating to a controlled substance) (Hoffman)

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[Mohammad Hashemian Tabriz](#), A046 960 320 (BIA Mar. 17, 2011) (DHS bears burden of proving respondent abandoned LPR status) (*Grant*, Malphrus, Miller)

### **To Establish Eligibility for Relief**

[A-R-A-](#), AXXX XXX 850 (BIA Aug. 15, 2019) (remands record in light of intervening decision in *Marinelarena v. Barr*, 930 F.3d 1039 (9th Cir. 2019) (en banc), holding that ambiguity in conviction record is sufficient to satisfy relief applicants' burden of proof) (Greer)

[Francisco Alberto Mena](#), A034 019 659 (BIA Feb. 7, 2018) (categorical approach does not prevent LPR alleged to have been convicted of an aggravated felony under INA 101(a)(43)(M)(i) from testifying in regard to subjective beliefs of the monetary loss to the victims of his conviction for credit card fraud) (*Wendtland*, Crossett, Pauley)

[E-H-](#), AXXX XXX 689 (BIA May 20, 2015) (inconclusive record of conviction sufficient for respondent to demonstrate lack of aggravated felony conviction under *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013)) (*Wendtland*, Cole, Paulley (dissenting))—**KEY DECISION**

[Calfus Wentworth Drummond](#), A075 443 280 (BIA Nov. 22, 2013) (respondent eligible to apply for LPR cancellation because possession of marijuana with intent to sell under Fla. Stat. 893.13(1)(a)(2) is not drug trafficking aggravated felony under *Donawa v. U.S. Attorney General*, No. 735 F.3d 1275 (Nov. 7, 2013)) (Guendelsberger)—**KEY DECISION**

[Juan Jose Benitez Recino](#), A201 176 938 (BIA Sept. 10, 2013) (respondent's testimony regarding a methamphetamine conviction sufficient to render him ineligible for cancellation of removal despite lack of documentary proof of the conviction) (Kendall-Clark)

[Hubert Lukasz Gul](#), A055 902 141 (BIA May 29, 2013) (remands for further consideration in light of *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), but states the respondent bears burden of demonstrating absence of aggravated felony conviction to qualify for cancellation of remand, citing *Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009)) (Hoffman)

[Maria Isabel Perez-Castro](#), A095 266 046 (BIA Sept. 5, 2012) (respondent ineligible for non-LPR cancellation because she failed to demonstrate that her conviction for second degree burglary under Colo. Rev. Stat. 18-4-203(1) was not a CIMT) (Pauley)

### **Corroborating Evidence**

[A-G-](#), AXX XXX 070 (BIA Sept. 29, 2020) (IJ should not have given limited weight to medical report where he did not place respondent on notice that contents would be discounted if physician was not available for cross-examination) (*Wilson*, Greer, Baird)

[S-O-](#), AXXX XXX 363 (BIA May 19, 2020) (reverses finding that respondent who submitted statements from sister and former partner corroborating sexual orientation should have also submitted statements from additional witnesses) (*Wilson*, Swanwick, Goodwin (concurring))

[T-O-](#), AXXX XXX 343 (BIA Dec. 30, 2019) (IJ should not have required asylum applicant to submit statement from mother or sexual partners to corroborate his sexual orientation) (*Cassidy*, Cole, Rosen)

[M-V-G-](#), AXXX XXX 375 (BIA Sept. 23, 2019) (IJ erred in declining to consider affidavit solely because it was not signed under penalty of perjury) (*Kendall Clark*, Guendelsberger, Grant)

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[J-C-P-I](#), AXXX XXX 738 (BIA Aug. 9, 2019) (IJ did not give sufficient notice under *Ren v. Holder*, 648 F.3d 1079 (9th Cir. 2011), of need to submit specific corroborating evidence) (*Creppy*, Liebowitz, Noferi)

[S-L](#), AXXX XXX 361 (BIA Aug. 31, 2015) (not reasonable to expect asylum applicant to provide corroborating evidence that former supervisor warned her to leave the country) (Miller)

### Credibility Determinations

[E-C-R-H](#), AXXX XXX 888 (BIA Sept. 30, 2020) (IJ erred in making adverse credibility finding based solely on respondent's purported statement to Border Patrol officer that she came to the United States to work and had no fear of return) (*Wilson*, Donovan, Greer)

[A-G](#), AXX XXX 070 (BIA Sept. 29, 2020) (adverse credibility finding was clearly erroneous where purported omissions related to issues on which respondent was not questioned and other asserted inconsistencies were unrelated to the basis for her asylum application) (*Wilson*, Greer, Baird)

[Z-Y](#), AXXX XXX 710 (BIA Sept. 23, 2020) (adverse credibility determination not supported by specific, cogent reasons where IJ found respondent's testimony evasive and unresponsive without citing examples) (*Kelly*, Cassidy, Couch)

[E-F](#), AXXX XXX 241 (BIA Sept. 8, 2020) (adverse credibility finding was clearly erroneous where IJ engaged in speculation by concluding that manner of escape was implausible, provided no explanation for belief that date on arrest warrant was suspicious, and relied on minor inconsistency) (*Greer*, Donovan, Wilson (dissenting))

[Q-C](#), AXX XXX 001 (BIA Sept. 1, 2020) (reverses adverse credibility determination based on purported lack of doctrinal knowledge of asylum applicant fearing persecution on account of being Catholic) (*Goodwin*, Donovan, Pepper)

[R-K](#), AXXX XXX 855 (BIA Aug. 10, 2020) (remands record because respondent was not provided a complete copy of credible fear interview on which the IJ based adverse credibility finding) (Monsky)

[K-I](#), AXXX XXX 553 (BIA Aug. 5, 2020) (upholds grant of asylum based on well-founded fear of persecution despite adverse credibility finding due to inconsistencies between testimony and credible fear interview relating to past persecution) (Monsky)

[Y-C](#), AXXX XXX 991 (BIA Aug. 3, 2020) (reverses adverse credibility finding where IJ relied on respondent's purported failure to disclose her intent to seek asylum when she applied for a nonimmigrant visa and her failure to list as a residence on her application a shelter where she was temporarily hiding) (*Wilson*, Goodwin, Pepper)

[Muhamad Yusuf Luwaga](#), A097 750 414 (BIA July 31, 2020) (IJ improperly drew *falsus in uno*, *falsus in omnibus* inference where sole false testimony related to whether respondent rather than his prior attorney signed his adjustment application) (*Wilson*, Goodwin, Donovan)

[M-M-A](#), AXXX XXX 675 (BIA June 9, 2020) (purported inconsistencies between testimony and credible fear interview not sufficient to support adverse credibility finding) (*Donovan*, Swanwick, Greer (dissenting))

[S-O](#), AXXX XXX 363 (BIA May 19, 2020) (respondent's failure to specifically describe two of six instances in which he was harmed in his native country during his credible fear interview not



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sufficient basis for adverse credibility determination) (*Wilson*, Swanwick, Goodwin (concurring))

[J-A-E-M-](#), AXXX XXX 747 (BIA May 15, 2020) (finds adverse credibility determination clearly erroneous because IJ did not thoroughly consider respondent's explanations and corroborating evidence) (*Liebowitz*, Malphrus, Gemoets)

[C-M-R-R-](#), AXXX XXX 007 (BIA May 11, 2020) (reverses adverse credibility finding where IJ relied on impermissible speculation, wrongly stated that respondent had to be asked questions repeatedly, and placed undue weight on inconsistencies between her testimony and threshold screening interviews at the border given that she refused to sign the Record of Sworn Statement) (*Greer*, Donovan, Swanwick)

[J-S-S-](#), AXXX XXX 471 (BIA March 30, 2020) (vacates adverse credibility finding where IJ failed to consider cognitive impairment and mental health issues) (*O'Connor*, Greer, Donovan)

[B-S-](#), AXXX XXX 220 (BIA March 10, 2020) (IJ erred in rendering adverse credibility finding based on respondent's explanation for how he obtained evidence rather than evidence itself) (*O'Connor*, Greer, Donovan)

[A-A-A-A-](#), AXXX XXX 562 (BIA Jan. 7, 2020) (remands for further consideration of respondent's credibility because IJ provided no examples in support of finding that his testimony was vague and nonresponsive) (*Mullane*, Noferi, Liebowitz)

[T-O-](#), AXXX XXX 343 (BIA Dec. 30, 2019) (reverses adverse credibility finding where respondent testified to five of six incidents of harm referred to in written statement and omitted some details contained in statement written in 2009) (*Cassidy*, Cole, Rosen)

[E-A-](#), AXXX XXX 838 (BIA Dec. 6, 2019) (vacates denial of asylum based solely on adverse credibility determination where IJ failed to consider objective corroborating evidence, including witness affidavits and reports of country conditions) (*Kendall Clark*, Guendelsberger, Grant)

[R-H-](#), AXXX XXX 179 (BIA Nov. 29, 2019) (reverses adverse credibility finding based on purported similarity to other asylum claims because IJ failed to apply framework from *Matter of R-K-K-*, 26 I&N Dec. 658 (BIA 2015)) (*Greer*, Rosen, Noferi)

[M-U-S-](#), AXXX XXX 833 (BIA Nov. 14, 2019) (vacates adverse credibility finding where IJ found documents appeared to be forged without any forensic testing, relied on potentially outdated Google maps printout of respondent's home, and stated without elaboration that respondent's claim resembled facts in approximately 100 other Bangladeshi asylum claims he had heard) (*O'Connor*, Greer, Wendtland)

[E-Y-A-G-](#), AXXX XXX 756 (BIA Nov. 13, 2019) (remands for reassessment of credibility because respondent was not confronted with and given an opportunity to explain the perceived discrepancies and omissions relied upon by the IJ) (*Greer*, Wendtland, Noferi)

[J-J-](#), AXXX XXX 686 (BIA Oct. 23, 2019) (IJ improperly relied on adverse credibility finding in determining that respondent did not undergo FGM where she submitted independent medical evidence corroborating claim) (*Greer*, Wendtland, Wilson (dissenting))

[S-F-G-G-](#), AXXX XXX 923 (BIA Oct. 20, 2019) (reverses adverse credibility finding as clearly erroneous because it was entirely plausible that respondent would flee the country without telling anyone following a beating tied to his long-time political activism) (*Kendall Clark*, Guendelsberger, Grant (dissenting))

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[M-F-I](#), AXXX XXX 834 (BIA Sept. 13, 2019) (adverse credibility finding was clearly erroneous where IJ's belief that medical prescription in Bangladesh would not have been written in English was pure conjecture) (*Guendelsberger*, Grant, Kendall Clark)

[S-I](#), AXXX XXX 729 (BIA Aug. 29, 2019) (IJ improperly found respondent was not credible for testifying to events not mentioned in his asylum application when he prevented the respondent from amending his application prior to testifying; providing false age when apprehended at border not itself sufficient basis for adverse credibility finding) (*Guendelsberger*, Grant, Kendall Clark)

[L-M-G-S](#), AXXX XXX 751 (BIA Aug. 9, 2019) (reverses finding that respondent failed to establish 10 years continuous physical presence where inconsistencies underlying adverse credibility finding were minor and non-material) (*Wendtland*, Donovan, Cole)

[C-Z](#), AXXX XXX 368 (BIA July 12, 2019) (vacates adverse credibility finding against asylum applicant where IJ relied on deliberate omission of relevant information to consular officials to gain admission and various purported addresses in the United States) (*Guendelsberger*, Grant, Kendall Clark)

[S-M-K](#), AXXX XXX 815 (BIA March 28, 2019) (states that “[a]ny inconsistency may form the basis of an adverse credibility determination, however it does not follow that an adverse credibility finding must result from an inconsistency”) (*Mullane*, Morris, Creppy)

[D-G-A](#), AXXX XXX 307 (BIA Feb. 22, 2019) (reverses adverse credibility determination where IJ misconstrued testimony regarding the year respondent fled her country and respondent explained perceived inconsistency about number of times she called police) (*Guendelsberger*, Grant, Adkins-Blanch)

[E-M-H](#), AXXX XXX 109 (BIA Aug. 30, 2018) (reverses adverse credibility determination where inconsistencies cited by IJ were minor, nonexistent, or likely the result of a spelling error) (*Wendtland*, Greer, Crossett)

[P-A-D](#), AXXX XXX 674 (BIA Aug. 24, 2018) (reverses adverse credibility determination that was improperly speculative and had little or no bearing on the respondent's veracity) (*Grant*, Kendall Clark, *Guendelsberger*)

[Marco Antonio Vasquez-Jacobo](#), A070 719 141 (BIA Aug. 24, 2017) (vacates adverse credibility determination where IJ did not identify any inconsistencies in respondent's testimony and focused exclusively on absence of corroborating evidence without giving respondent notice or opportunity to submit such evidence) (Pauley)—**KEY DECISION**

[A-A-L-M](#), AXXX XXX 585 (BIA Oct. 22, 2015) (reverses adverse credibility finding based on inconsistencies in airport interview in light of potential for intimidation and consistent subsequent testimony) (*Greer*, Miller, O'Herron)

[E-D-R](#), AXXX XXX 907 (BIA June 17, 2016) (reverses adverse credibility determination based on alleged inconsistency with credible fear interview that was conducted telephonically and not transcribed) (*Kendall-Clark*, *Guendelsberger*, Holiona)—**KEY DECISION**

[Zulfiqar Ali Mirza](#), A099 395 768 (BIA Feb. 19, 2016) (reverses adverse credibility determination because IJ failed to provide specific and cogent reasons for disbelieving respondent's testimony) (*Pauley*, Greer, *Wendtland*)—**KEY DECISION**

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[S-L](#), AXXX XXX 361 (BIA Aug. 31, 2015) (testimony about events of which witness has no direct personal knowledge is not sufficient basis for adverse credibility determination) (Miller)

[Norma Angelica Ponce-Arriaga](#), A205 131 985 (BIA May 22, 2015) (finds adverse credibility finding clearly erroneous where alleged inconsistency between two answers was explained by fact that respondent was answering two distinct questions) (*Wendtland*, Greer, Pauley)

[Salome Feehi Lomo-Mensah](#), A096 710 971 (BIA May 1, 2015) (adverse credibility determination does not negate obligation to determine whether corroborating evidence independently satisfies respondent's burden of proof) (*Grant*, Creppy, Mullane)—**KEY DECISION**

### Motions to Suppress

[Erick Cruz-Avendano](#), A208 967 505 (BIA Aug. 3, 2020) (IJ should have adjudicated motion to suppress prior to requiring respondent to enter pleadings rather than deeming motion moot after pleadings were entered) (*Gorman*, Mullane, Grant)

[Jose Alberto Gomez-Rosas](#), A213 090 684 (BIA April 22, 2020) (remands for hearing on motion to suppress for respondent who was in the same vehicle at issue in *Yoe-Us v. Att'y Gen.*, 932 F.3d 98 (3d Cir. 2019)) (*Cassidy*, Hunsucker, Creppy)

[Candelaria Pablo-Nicolas](#), A201 923 839 (BIA Feb. 25, 2020) (upholds decision terminating proceedings due to DHS' violation of 8 C.F.R. 287.3(d)) (Adkins-Blanch)

[Eleodoro Peinado Ixpatac](#), A209 308 396 (BIA Feb. 11, 2020) (remands for further consideration of suppression claim due to lack of specific factual findings regarding alleged widespread Fourth Amendment violations) (*O'Connor*, Wendtland, Noferi)

[Luis Enrique Sanchez](#), A076 359 028 (BIA June 17, 2019) (grants DHS motion to terminate without prejudice on remand from *Sanchez v. Sessions*, 904 F.3d 643 (9th Cir. 2018), which held that the Coast Guard illegally detained the respondent on the basis of race) (Adkins-Blanch)

[Paulino Lazcano Cabrera](#), A097 535 359 (BIA March 15, 2018) (upholds grant of motion to suppress and termination of proceedings where ICE officers entered apartment without warrant or consent) (*Wendtland*)

[Ivan Velazco Castellano](#), A205 056 436 (BIA March 8, 2016) (remands for further consideration of motion to suppress where police officer who initially stopped respondent did not testify and IJ did not address validity of basis to continue holding respondent after initial stop) (*Wendtland*, O'Herron, Pauley (dissenting))—**KEY DECISION**

[Miguel A. Hernandez-Xoqui](#), A205 526 157 (BIA Feb. 26, 2016) (remands for further consideration of motion to suppress because IJ's reasoning was set forth in transcript rather than as separate decision) (*Wendtland*, Pauley, Greer)

[Sohrab Rajebhai Dhuka](#), A205 164 321 (BIA Dec. 23, 2015) (remands record because IJ did not provide opportunity to testify in support of his motion to suppress or adequately explain finding that respondent did not establish prima facie case for exclusion) (Miller)

[Gaspar Raymundo-Velasquez](#), A205-854-679 (BIA Dec. 10, 2015) (orders further consideration of motion to suppress because IJ did not determine whether facts alleged in his affidavit would support exclusion of evidence) (Holmes)—**KEY DECISION**

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[Ramiro Bravo Nolasco](#), A205 854 686 (BIA Sept. 10, 2015) (orders further consideration of motion to suppress because IJ did not determine whether the facts alleged in affidavit if true would support exclusion of Form I-213) (*Holmes*, *Holiona*, *Miller*)—**KEY DECISION**

[Raonel Rodriguez-Avila](#), A206 375 387 (BIA May 15, 2015) (orders further consideration of motion to suppress due to erroneous IJ conclusion that exclusionary rule is never available in removal proceedings) (*Pauley*, *Mullane*, *Geller*)

[Francisco Leiva-Jimenez](#), A094 375 896 (BIA May 14, 2015) (IJ made clearly erroneous factual findings with regard to the respondent's credibility and whether arresting ICE agents possessed a warrant or were given consent to enter home) (*O'Herron*, *Wendtland*, *Pauley* (dissenting))

[Jose Matias Pretzantizin](#), A097 535 298 (BIA March 9, 2015) (terminates proceedings without prejudice in light of egregious violation of Fourth Amendment and precludes DHS from presenting same evidence in any future proceedings) (*Guendelsberger*, *Malphrus*, *Cole* (dissenting))—**KEY DECISION**

[Ezequias Enoc Castro-Tolentino](#), A087 968 919 (BIA Jan. 21, 2015) (remands for further consideration of motion to suppress where IJ failed to explain basis for finding that respondent was free to leave at time of questioning and improperly suggested that officers must engage in physical brutality to commit "egregious" Fourth Amendment violation) (*Pauley*, *Wendtland*, *Cole* (dissenting))—**KEY DECISION**

[Jose Espana](#), A088 745 137 (BIA Nov. 25, 2014) (finds allegations in respondent's affidavit constituted egregious Fourth Amendment violation; ICE agents entered home without a warrant or consent, broke open bedroom door, and used physical force while arresting and questioning respondent) (*Pauley*, *Greer*, *Wendtland*)—**KEY DECISION**

[Jose Neftan Fuentes](#), A089 955 126 (BIA Oct. 28, 2014) (instructs IJ to consider video evidence submitted on flash drive that may support allegations of pretextual traffic stops in support of motion to suppress) (*Adkins-Blanch*)

[Mauro Martinez-Reyes](#), A205 002 826 (BIA Sept. 25, 2014) (remands record because IJ failed to make sufficient factual or credibility determinations for purposes of appellate review, including contention that statements in I-213 were internally inconsistent) (*Wendtland*, *Cole*, *Pauley* (dissenting))

[Jairo Ferino Sanchez](#), A094 216 521 (BIA July 11, 2014) (remands for further consideration of motion to suppress because IJ failed to assess legality of initial traffic stop by Maryland Transportation Authority) (*Pauley*)

[Sandra Jimenez-Cruz](#), A095 748 769 (BIA Apr. 3, 2014) (fingerprint records in US-VISIT obtained after arrest did not constitute independent evidence of alienage but evidence of "identity" not subject to suppression under *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984)) (*Mullane*)

[Rigoberto Antonio Munoz-Barahona](#), A094 301 715 (BIA Mar. 18, 2014) (remands for further consideration of motion to suppress because IJ failed to consider whether initial traffic stop by Border Patrol was motivated by racial profiling) (*Grant*)

[Jose Alfredo Fonseca-Velasquez](#), A200 586 281 (BIA Mar. 10, 2014) (remands for further consideration of motion to suppress because IJ made no factual findings regarding traffic stop by local police or whether respondent was interviewed by federal immigration officer) (*Wendtland*)

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[David Antonio Lara-Torres](#), A094 218 294 (BIA Jan. 28, 2014) (upholds grant of motion to suppress where NSA officers held respondent for approximately four hours after he accidentally drove onto agency property; non-Hispanic drivers who committed same violation were not held or questioned about immigration status; evidence of respondent's alienage obtained from database of Maryland Motor Vehicle Administration not sufficiently attenuated from the unlawful seizure) (*Grant*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Salvador Alejo Reta](#), A060 663 553 (BIA Jan. 15, 2014) (suppression of statements in criminal proceedings does not require suppression in removal proceedings) (Malphrus)

[Esteban Nolasco-Gaspar](#), A201 145 750 (BIA Nov. 29, 2013) (finds ICE officers had basis to question respondent because he was accompanying friend with final removal order at local courthouse) (Mullane)

[Miguel Augusto Ixpec-Chitay](#), A097 535 400 (BIA Sept. 16, 2013) (upholds suppression of evidence obtained during early morning home raid; ICE officers entered home through windows and lacked a warrant or consent; states that respondent's foreign birth certificate neither constituted "independent" evidence of alienage nor was attenuated from the raid) (*Pauley*, Donovan, Wendtland)—**KEY DECISION**

[Christian Rodriguez](#), A088 190 226 (BIA June 18, 2013) (remands record for further determination of whether respondent's name and fingerprints were taken for identification or investigatory purposes, which in turn could affect whether evidence of alienage must be suppressed as "fruit of the poisonous tree") (Pauley)

[Enrique Soto-Garcia](#), A087 534 842 (BIA May 7, 2013) (Border Patrol agents committed egregious Fourth Amendment violation by pulling over car in which the respondent was travelling because they could "smell undocumented aliens"; DHS could not establish respondent's alienage by relying on copies of his children's birth certificates submitted during a bond hearing, records from the Mexican National Population Registry submitted during the suppression hearing, or evidence from the USCIS Central Index System submitted after the suppression hearing) (Pauley)—**KEY DECISION**

[Ferino Sanchez Seltik](#), A094 216 526 (BIA Jan. 14, 2013) (reverses denial of motion to suppress and remands for consideration of whether asserted constitutional violations were sufficiently egregious to warrant suppression under *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984)) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Silvia Cabrera-Carillo](#), A089 168 827 (BIA Apr. 30, 2012) (IJ erred in failing to hold evidentiary hearing on admissibility of Form I-213 and in failing to adequately consider whether respondent's foreign birth certificate was fruit of unlawful search) (*Pauley*, Donovan, Greer)

[Maria de Jesus Ortiz-Mejia](#), A093 138 113 (BIA Mar. 7, 2013) (remands record where IJ improperly shifted burden to respondents after they established prima facie case for suppression, and applied wrong legal standard in evaluating search of respondents' personal property) (*Wendtland*, Donovan, Roger Pauley)

[Angela Marie Murillo-Martinez](#), A089 839 693 (BIA Jan. 11, 2012) (respondent questioned by ICE agents after being summoned to a DMV office; detention lasting more than three hours was "brief" for purposes of 8 C.F.R. 287.8(b)(2)) (Pauley)

[Manuel De Jesus Chavarria-Lopez](#), A089 823 873 (BIA Dec. 15, 2011) (IJ erred in denying motion to suppress without hearing in light of allegations that respondent was questioned by immigration officers after being mistakenly arrested by local police under arrest warrant that pertained to



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another individual) (Greer)

[Edinzon Fernando Yangua-Calva](#), A088 190 231 (BIA Nov. 28, 2011) (upholds prior decision finding IJ committed clear error in making an adverse credibility determination against respondent; remands for further consideration of motion to suppress) (*Pauley*, Greer, Wendtland)

[Juan Carlos Guevara-Mata](#), A097 535 291 (BIA June 14, 2011) (upholds grant of motion to suppress and termination of proceedings where immigration officers broke into respondents' bedroom without warrant or consent; rejects DHS assertion that evidence of prior admission in government database constituted "independent" evidence of alienage) (*Wendtland*, Pauley (dissenting))—**KEY DECISION**

[Jose Zacaria Quinteros](#), A088 239 850 (BIA Mar. 31, 2011) (vacates denial of motion to suppress and remands for further consideration of constitutionality of initial traffic stop by Metro Nashville police officer where respondent submitted evidence disproving asserted basis for the stop) (*Greer*, Wendtland, Pauley (dissenting))—**KEY DECISION**

[Victor Cervantes-Sanchez](#), A097 838 854 (BIA Feb. 16, 2011) (remands for evidentiary hearing under *Matter of Barcenas*, 19 I&N Dec. 609 (BIA 1988)) (*Liebowitz*, Miller, Mullane)

[Luis Narciso Seden-Trujillo](#), A088 190 240 (BIA Sept. 22, 2010) (remands for further consideration where Form I-213s submitted by the DHS contained serious inconsistencies relating to whether agents received consent to enter the home) (*Pauley*, Greer, Wendtland)

[Jose Alberto Armas-Barranzuela](#), A094 812 114 (BIA Feb. 26, 2010) (upholds denial of motion to suppress based on allegations that respondent was improperly held on an ICE detainer after being arrested by local police) (Grant) (Note: this decision was subsequently overturned by [Armas-Barrenzueta v. Holder](#), No. 10-70803 (9th Cir. Jan. 8, 2014).)

## Right to Cross-Examine

[K-D-T-](#), AXXX XXX 140 (BIA May 2, 2019) (vacates order rescinding LPR status because respondent was not given opportunity to cross-examine ex-spouse or USCIS officer who took her statement) (*O'Connor*, Donovan, Rosen)

[Fatimo Eytayo Renke Smith Joda](#), A079 134 441 (BIA June 15, 2016) (IJ erred in relying on unauthenticated notes of immigration offer and ambiguous statement of former spouse who was not subject to cross-examination in concluding prior marriage was not bona fide at inception) (*Pauley*, Cole, Wendtland)—**KEY DECISION**



## VIII. PROCEDURAL ISSUES

### Abeyance

[Yadira Chaparro de Martinez](#), A043 362 190 (BIA Nov. 28, 2014) (denies motion to hold case in abeyance pending Supreme Court's decision in *Mellouli v. Holder*, 134 S. Ct. 2873 (2014), on whether state drug paraphernalia conviction must relate to substance listed in the Controlled Substances Act to trigger removability under INA 237(a)(2)(B)(i)) (Pauley)

### Amending NTA

[Ariel Jonathan Diaz Vargas](#), A044 480 297 (BIA Sept. 29, 2017) (denies DHS request to reopen proceedings to lodge additional charges because it sought to rely on the same conviction records it previously introduced) (Guendelsberger)—**KEY DECISION**

[Esau Lopez-Hernandez](#), A046 620 342 (BIA July 14, 2017) (denies DHS request for remand to relodge charge that it withdrew before IJ) (Cole)

[Nicasio Mendoza-Carrasco](#), A095 725 537 (BIA Sep. 8, 2011) (DHS not entitled to amend charges after respondent overstayed period of admission pursuant to instructions from DHS) (Guendelsberger)—**KEY DECISION**

### Appellate (BIA) Issues

#### Appeal Deadlines

[M-E-R-](#), AXXX XXX 770 (BIA July 15, 2019) (declines to certify untimely appeal where DHS missed deadline due to partial government shutdown lasting from December 22, 2018, through January 27, 2019) (Guendelsberger)

[Amena Begum](#), A077 664 364 (BIA April 9, 2019) (denies DHS motion to certify untimely appeal where courier delivered notice of appeal one day after deadline) (Wendtland)

[S-L-H-O-](#), AXXX XXX 761 (BIA Feb. 12, 2018) (equitably tolls deadline of appeal filed more than two years after deadline where prior attorney provided ineffective assistance by failing to pursue asylum application) (Kendall Clark)

[Glenis Ondina Kirconnell Caballero](#), A206 774 442 (BIA Dec. 18, 2017) (reconsiders prior decision dismissing appeal as untimely following submission of envelope demonstrating that IJ decision was mailed two days after date on which it was issued) (Adkins-Blanch)

[Jorge Luis Gonzalez Hernandez](#), A078 016 721 (BIA June 27, 2016) (vacates prior decision summarily dismissing appeal as untimely where respondent complied with erroneous deadline handwritten on IJ order) (Guendelsberger)—**KEY DECISION**

[Erick Guerrero-Silva](#), A071 914 925 (BIA May 7, 2013) (declines to accept appeal filed one day after December 26, 2012, deadline, where EOIR-26 was sent by guaranteed overnight delivery service on December 24 but was not delivered until December 27 due to intervening Christmas holiday) (Mann)

[Rufino Marquez-Rocha](#), A201 073 660 (BIA Jan. 29, 2013) (reaches merits of appeal that was untimely filed because Board's offices were closed due to Hurricane Sandy) (Holmes)

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[Evgeny Korinzer](#), A020 845 955 (BIA Feb. 28, 2011) (declines to consider untimely DHS appeal on certification because government did not provide original copy of EOIR-26 or affidavit stating it was timely filed) (Kendall-Clark)

### **Briefing Deadlines**

[M-L-D-O-](#), AXXX XXX 678 (BIA July 2, 2019) (denies DHS motion to submit untimely brief three weeks after deadline imposed following remand from circuit court) (*Donovan*, Wendtland, O'Connor)

### **Certification of Appeals**

[R-P-M-M-](#), AXXX XXX 230 (BIA Dec. 10, 2019) (accepts appeal via certification of previously pro se respondent who waived appeal but subsequently retained attorney, submitted completed asylum application, and averred that he could not meaningfully participate in his hearing due to the lack of an interpreter in his native Kechua language) (Guendelsberger)

[I-D-L-](#), AXXX XXX 000 (BIA Oct. 29, 2019) (IJ erred in certifying case back to Board following prior remand solely for completion of background checks) (Kelly)

[Edwin Carrillo Mazariegos](#), A208 023 110 (BIA Aug. 29, 2019) (IJ improperly certified case back to Board based on view that respondent validly waived appeal given that Board found that respondent did not validly waive appeal in its prior decision) (*Hunsucker*, Liebowitz, Malphrus)

[Fernando Altamirano-Rocha](#), A090 450 451 (BIA Nov. 16, 2018) (grants motion to reconsider and accepts untimely appeal by certification where NTA did not contain charge of removability and respondent was removed three days after his hearing) (*Guendelsberger*, Grant, Kendall Clark)

[R-L-R-L-](#), AXXX XXX 540 (BIA Nov. 2, 2018) (certifies appeal to itself where Notice of Appeal was filed one day late due to delay caused by U.S. Postal Service) (Snow)

[Lesly X. Alarcon-Quijada](#), A208 593 158 (BIA Nov. 4, 2016) (certifies appeal to itself where pro se respondent failed to submit timely notice of appeal of final order but had previously filed an interlocutory appeal) (Liebowitz)

[Jose Francisco Lopez-Fiallos](#), A200 216 689 (BIA April 8, 2016) (accepts untimely appeal by certification in light of pro se respondent's numerous unsuccessful attempts to file notice of appeal prior to expiration of the 30-day deadline) (Pauley)

[Jose Alexander Nieto-Montenegro](#), A097 315 872 (BIA March 18, 2016) (declines to accept IJ request for certification based on belief that Board lacked jurisdiction to reopen proceedings in prior decision) (Adkins Blanch)

[Omar Arana-Romero](#), A208 155 509 (BIA Nov. 10, 2015) (accepts appeal by certification despite purported waiver of appeal by respondent; remands for preparation of full decision) (Holmes)

[Alejandro Vega-Morado](#), A205 207 060 (BIA April 23, 2015) (reviews appeal by certification where pro se respondent accepted pre-conclusion voluntary departure but attorney entered appearance on appeal) (Holmes)

[Magdalena Dominga Lopez Lopez](#), A200 811 421 (BIA Feb. 28, 2014) (reviews appeal by certification and remands record for respondent to apply for relief from removal in light of transcript of proceedings and appearance of counsel on appeal) (Holmes)

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[Ngochoa T. Tran](#), A076 751 841 (BIA Feb. 21, 2014) (reviews untimely appeal by certification and remands record for respondent to apply for relief from removal) (Holmes)

[Juan Gabriel Rodriguez](#), A092 389 472 (BIA Jan. 17, 2014) (declines to accept the IJ certification of record upon finding it tantamount to an interlocutory appeal) (*Mullane*, Creppy, Malphrus)

[Domingo Pedro-Salvador](#), A087 008 675 (BIA Sept. 10, 2013) (dismisses appeal certified by IJ where parties only disputed whether proceedings should have been terminated with or without prejudice) (Guendelsberger)

[John Neewaly Tarpeh](#), A078 780 390 (BIA May 21, 2012) (Board certifies untimely appeal to itself where pro se respondent was not properly notified of procedure to contest the IJ decision administratively closing proceedings) (Miller)

[Evgeny Korinzer](#), A020 845 955 (BIA Feb. 28, 2011) (declines to consider untimely DHS appeal on certification because government did not provide original copy of EOIR-26 or affidavit stating it was timely filed) (Kendall-Clark)

### **Cross-Appeals**

[B-J-M-G-](#), AXXX XXX 763 (BIA June 3, 2020) (respondent granted relief from removal must file Form EOIR-26 to appeal underlying finding of removability) (Liebowitz)

[A-U-](#), AXXX XXX 341 (BIA Sept. 20, 2019) (respondent could not challenge denial of asylum application because he failed to file a cross-appeal of DHS' challenge to the IJ's decision granting his CAT claim) (Wendtland)

### **Interlocutory Appeals**

#### **Administrative Closure, Continuances, and Placement on Status Docket**

[Job Meza-Dominguez](#), A200 141 892 (BIA Aug. 5, 2019) (declines to consider interlocutory DHS appeal of decision placing respondent's case on status docket) (Adkins-Blanch)

[Juan Manuel Garcia](#), A203 267 434 (BIA Sept. 20, 2018) (declines to consider interlocutory DHS appeal challenging grant of continuance from July 2018 to January 2019) (Snow)

[Jorge Luis Medina Concha](#), A203 155 500 (BIA February 16, 2018) (declines to consider interlocutory DHS appeal challenging grant of a continuance from Nov. 28, 2017, to Feb. 27, 2018) (Guendelsberger)

[Hayrullah Pazi](#), A208 444 136 (BIA Feb. 9, 2018) (declines to consider interlocutory DHS challenging grant of continuance and resetting case for master calendar hearing) (Grant)

[Ana Mercedes Lemus-Duarte](#), A206 847 825 (BIA Nov. 2, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings pending adjudication of U visa application) (Liebowitz)

[Juan Carlos Rivas-Ayala](#), A208 890 222 (BIA Oct. 11, 2017) (declines to consider interlocutory DHS appeal challenging granting of second continuance to pro se respondent) (Kendall Clark)

[I-A-R-R-](#), AXXX XXX 887 (BIA Sept. 20, 2017) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings based upon approved Form 1-360) (Liebowitz)

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[Jose De Jesus Hernandez-Cid](#), A200 277 242 (BIA Sept. 5, 2017) (dismisses interlocutory DHS appeal of denial of motion to recalendar proceedings previously administratively closed to let respondent pursue provisional unlawful presence waiver (Form I-601A)) (Kendall Clark)

[A-L-M-D-](#), AXXX XXX 671 (BIA Oct. 26, 2016) (dismisses interlocutory DHS appeal challenging the administrative closure of proceedings following grant of visa petition allowing respondent to acquire SIJ status) (Kendall-Clark)

[Michael Pietrantonio](#), A078 590 230 (BIA Oct. 21, 2016) (dismisses interlocutory DHS appeal challenging administrative closure of proceedings pending adjudication of visa petition by USCIS) (Liebowitz)

[S-G-P-G-](#), AXXX XXX 389 (BIA Oct. 20, 2016) (dismisses interlocutory DHS appeal challenging administrative closure of proceedings to let USCIS to adjudicate asylum application) (Greer)—**KEY DECISION**

[Jose Angel Parada Montufar](#), A074 092 123 (BIA July 30, 2015) (grants interlocutory appeal and reverses denial of joint motion to administratively close proceedings) (*Holmes*, Miller, Guendelsberger)

[Taylor Jose Branco-Antonio](#), A075 795 143 (BIA June 10, 2014) (declines to consider interlocutory DHS appeal challenging administrative closure of proceedings to await the adjudication of an I-130 visa petition filed on the respondent's behalf) (Hoffman)

[Ricardo Cisneros](#), A075 789 006 (BIA Aug. 30, 2013) (grants interlocutory DHS appeal challenging administrative closure for detained respondent because IJ failed to discuss factors in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), or whether respondent should be detained while proceedings are closed) (Grant)

[Gilberto Aguilera](#), A093 006 263 (BIA Aug. 14, 2013) (declines to exercise jurisdiction over interlocutory DHS appeal challenging administrative closure of proceedings for detained respondent awaiting adjudication of Form I-130) (Holmes)—**KEY DECISION**

[Safraz Khan](#), A043 452 893 (BIA Aug. 14, 2013) (declines to exercise jurisdiction over interlocutory DHS appeal challenging administrative closure of proceedings against detained respondent to await adjudication of U visa application filed with USCIS) (Holmes)

[Gustavo Alexis Murillo-Borjas](#), A097 744 763 (BIA July 30, 2013) (grants joint interlocutory appeal of denial of joint motion for administrative closure where IJ's order set forth no basis for denial of the motion) (*Holmes*, Miller, Kendall-Clark)

[Myleen Cuyson Pascual](#), A086 963 266 (BIA Apr. 30, 2012) (IJ erred in administratively closing proceedings to await litigation challenging *Matter of Wang*, 25 I&N Dec. 28 (BIA 2009)) (*Malphrus*, Creppy, Grant)

[Roderick Gary Levy](#), A035 954 926 (BIA June 27, 2011) (declines to consider DHS interlocutory appeal challenging grant of continuance to permit respondent to pursue post-conviction relief) (Pauley)—**KEY DECISION**

**Change of Venue**

[Gustavo Casillas-Amezcu](#), A216 554 696 (BIA Aug. 21, 2020) (grants interlocutory appeal

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challenging grant of DHS motion to change venue from Adelanto, California, to Aurora, Colorado, where IJ provided no explanation and did not address respondent's claim that changing venue would interfere with existing attorney-client relationship) (*Pepper*, Malphrus, Adkins-Blanch)

[Iris Ruiz-Ruiz](#), A216 515 454 (BIA Aug. 18, 2020) (grants interlocutory appeal and remands for further consideration of respondents' motion to change venue from Dallas to Boston because IJ did not balance relevant factors) (Adkins-Blanch)

[Oscar Santana Miranda-Rodriguez](#), 212 985 802 (BIA July 28, 2020) (grants interlocutory appeal and remands for further consideration of unopposed motion to change venue from Atlanta to Seattle that IJ had denied because respondent had previously received a change of venue) (*Pepper*, Kelly, Couch (dissenting))

[M-K-P-](#), AXXX XXX 154 (BIA July 24, 2020) (grants interlocutory appeal and changes venue from Boston to New York in light of location of respondent's residence, his filing of an application for relief, and the lack of DHS opposition) (*Adkins-Blanch*, Cassidy, *Pepper*)

[E-A-](#), A215 818 838 (BIA May 20, 2020) (grants interlocutory appeal and changes venue from San Diego to Baltimore in light of the availability of respondent's witnesses and notwithstanding that IJ previously held a merits hearing in the case) (*Adkins-Blanch*, Kelly, Couch)

[Prabhjot Singh](#), A208 185 096 (BIA Sept. 3, 2019) (grants interlocutory appeal and reverses denial of motion to change venue to New York that IJ denied solely because respondent had previously received change of venue to Atlanta) (*Kendall Clark*, Guendelsberger, Grant)

[S-S-](#), AXXX XXX 632 (BIA Aug. 14, 2019) (grants interlocutory appeal and reverses denial of motion to change venue given that respondent pled to the allegations in the NTA, that he indicated that he would apply for asylum, and that DHS filed a non-opposition to the motion) (*Grant*, Guendelsberger, Kendall Clark)

[Wilson Vasquez-Molina](#), A201 705 149 (BIA Aug. 13, 2019) (grants interlocutory appeal and reverses denial of motion to change venue given that respondent's family and pro bono attorney were located in New York and he was not required to demonstrate prima facie eligibility for relief given early stage of proceedings) (*Grant*, Guendelsberger, Kendall Clark)

[Vanessa Johana Cedillo Sierra](#), A215 561 409 (BIA July 25, 2019) (grants interlocutory appeal and reverses IJ's decision to change venue sua sponte to Los Angeles given that respondent's pro bono counsel was located in San Francisco, the parties were prepared to proceed on the merits, and DHS did not allege hardship in going forward in San Francisco) (*Kendall Clark*, Guendelsberger, Grant)

[A-L-R-L-](#), AXXX XXX 211 (BIA July 25, 2019) (grants interlocutory appeal and reverses denial of motion to change venue in light of evidence that lead respondent moved to Virginia following her release from custody, that her attorney in Virginia was providing services pro bono, and that she left Memphis after being the victim of crime) (*Guendelsberger*, Grant, Kendall Clark)

[Megendra Bhakta Shrestha](#), A205 697 971 (BIA July 11, 2019) (grants interlocutory appeal and reverses denial of motion to change venue in light of evidence of respondent's residence, work, bills, interim driver's license, and health insurance, and retaining of counsel in New York) (*Mann*, Morris, Mullane (dissenting))

[Emely Vanessa Mendez Perez](#), A215 931 409 (BIA July 3, 2019) (grants interlocutory appeal of denial of motion to change venue where IJ order only stated that respondent lived closer to Salt Lake City and respondent was willing to travel additional 30 miles to Boise to be represented by her

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existing attorney) (*Kendall Clark*, Guendelsberger, Grant)

[Dimas Ramirez Acosta](#), A034 070 902 (BIA June 21, 2019) (grants interlocutory appeal and reverses grant of DHS motion to change venue to Orlando given respondent's opposition and willingness to travel back to New York so that he can continue to retain his pro bono attorney) (*Kendall Clark*, Guendelsberger, Grant)

[Brisma Lizeth Guevara Carrillo](#), A216 626 978 (BIA May 17, 2019) (grants interlocutory appeal and vacates change of venue requested by DHS because IJ did not acknowledge respondent's opposition or cite any reasons in his decision) (*Grant*, Guendelsberger, Kendall Clark)

[Thelma Carolina Loera Tovar](#), A205 966 595 (BIA April 12, 2019) (grants interlocutory appeal and vacates grant of DHS motion to change venue because respondent's attorney was not served with copy of motion) (*Kelly*, Liebmann, Mann)

[W-G-V-E-](#), AXXX XXX 457 (BIA Feb. 19, 2019) (grants interlocutory appeal and vacates decision to change venue because IJ granted DHS' motion without giving respondent an opportunity to respond) (*Kendall Clark*, Guendelsberger, Grant)

[Juan Eduardo Parra Gallaga](#), A204 334 033 (BIA Dec. 17, 2018) (grants interlocutory appeal of decision granting DHS motion to change venue because DHS motion made reference to and was served on attorney for different respondent) (*Guendelsberger*, Grant, Kendall Clark)

[S-G-P-M-](#), AXXX XXX 999 (BIA Dec. 3, 2018) (grants interlocutory appeal and grants request for change of venue from Atlanta to New York in light of location of respondent's residence, witnesses, and attorney) (*Kendall Clark*, Guendelsberger, Grant)

[G-S-](#), AXXX XXX 521 (BIA Aug. 7, 2018) (grants interlocutory appeal and reverses denial of motion to change venue from Atlanta where respondent had already conceded removability and applied for asylum, and his residence, witnesses, and attorney were located in New York) (*Guendelsberger*, Grant, Kendall-Clark)

[Anthony L. Powell](#), A037 773 826 (BIA Aug. 2, 2018) (grants interlocutory appeal and reverses change of venue over respondent's objection from New York City to Miami) (*Kelly*, Mann, Adkins-Blanch)

[Elphine Kerubo Marube](#), A202 090 039 (BIA Aug. 2, 2018) (grants interlocutory appeal and reverses IJ's change of venue to Florida in light of respondent's longstanding ties to and pro bono counsel in New York City) (*Kelly*)

[Linda Irene](#), A208 704 878 (BIA July 19, 2018) (grants interlocutory appeal and changes venue from Atlanta to Arlington where the respondent was arrested in Virginia and she and her attorney lived in Virginia) (*Grant*, Kendall Clark, Guendelsberger)

[Guohua Huang](#), A213 141 121 (BIA July 17, 2018) (grants interlocutory appeal and orders further consideration of motion to change venue from Atlanta to New York City because IJ failed to consider relevant factors) (*Snow*)

[Mohammed Abdul Zahra Al Khafaji](#), A071 724 265 (BIA July 9, 2018) (grants interlocutory appeal and vacates decision granting DHS motion to change venue from Arlington, Va., to Jena, La., because IJ did not issue decision setting forth why motion was supported by good cause) (*Kendall Clark*, Kelly, Guendelsberger)



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[Juan Jose Linares Flores](#), A206 781 744 (BIA June 15, 2018) (grants interlocutory appeal challenging denial of motion to change venue where respondent conceded removability, submitted application for cancellation of removal, and lived in close proximity to the Orlando immigration attorney) (*Grant*, Kendall Clark, Guendelsberger)

[Jose Bautista Mendoza](#), A216 176 132 (BIA April 27, 2018) (grants interlocutory appeal and reverses denial of motion to change venue) (*Clark*, Guendelsberger, O'Connor)

[M-D-M-D-](#), AXXX XXX 465 (BIA March 1, 2018) (grants interlocutory appeal challenging the denial of request to change venue from Dallas to Boston where respondent had conceded charge and submitted relief application and immigration court in Boston was in proximity to her residence, witnesses, and attorney of record) (*Kendall Clark*, Guendelsberger, Grant)

[C-C-B-](#), AXXX XXX 180 (BIA Nov. 7, 2017) (grants interlocutory appeal challenging change in venue following respondent's release from custody that was not requested by either party) (*Kendall Clark*, Liebowitz, Guendelsberger)

[Jesus Gomez Marin](#), A092 096 240 (BIA May 4, 2017) (grants interlocutory appeal and reverses denial of motion to change venue from Los Angeles to San Francisco) (*Guendelsberger*, Kendall Clark, Liebowitz (dissenting))

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[Giorg Rapava](#), A077 018 104 (BIA Oct. 26, 2016) (grants interlocutory appeal of decision granting DHS motion to change venue from New York to Atlanta where IJ failed to balance relevant factors in making good cause determination) (*Liebowitz*, Guendelsberger, Holiona)

[M-S-L-R-](#), AXXX XXX 188 (BIA July 25, 2016) (grants interlocutory appeal challenging denial of motion to change venue for 6-year-old respondent given proximity to New Orleans immigration court, location of attorney, and pending proceedings against mother and sister) (*Kendall-Clark*, Liebowitz, Guendelsberger)

[Gagik Khalatyan](#), A078 665 900 (BIA June 19, 2015) (grants interlocutory appeal and vacates decision granting DHS motion to change venue)

[Luis Sinchi-Sinchi](#), A206 779 736 (BIA Jan. 16, 2015) (grants interlocutory appeal challenging denial of unopposed motion to change venue from Dallas to New York in light of proximity to respondent's residence and witnesses) (Holmes)

[Nelson Ventura-Ventura](#), A205 700 837 (BIA Oct. 15, 2014) (overturns denial of motion change of venue where San Francisco immigration court was closer to respondent's residence, witnesses, and attorney of record, and DHS did not oppose) (*Miller*, Holmes, Guendelsberger)

[Oscar Antonio Del Cid-Melara](#), A205 875 351 (BIA Aug. 26, 2013) (grants interlocutory appeal of denial of respondent's motion to change venue after DHS filed brief in support of the motion) (*Holmes*, Guendelsberger, Manuel)

[Bernard Paget Hensley James](#), A041 792 398 (BIA Apr. 18, 2013) (grants interlocutory appeal challenging change of venue where IJ's order showed no balancing of factors) (*Cole*, Greer, Pauley)

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[Juan Evan Silva-Raudales](#), A213 441 409 (BIA Aug. 20, 2020) (grants interlocutory appeal and remands for IJ to reconsider motion to appear telephonically where respondents' counsel was based in California and no reasoning was provided for denial of motion) (Adkins-Blanch, Kelly, Mann)

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[Mariano Rafael-Paz](#), A202 070 379 (BIA Jan. 29, 2016) (grants interlocutory appeal and reverses decision denying motion to be represented by students at Cornell Law School) (Adkins-Blanch)

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[Nicole Natalie Wilson](#), A087 397 965 (BIA July 23, 2014) (remands record over DHS opposition in light of submission of evidence on appeal demonstrating bona fides of respondent's marriage to U.S. citizen and indicating that she is the beneficiary of a pending Form I-130) (*Grant*)

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[O-H-D-](#), AXXX XXX 710 (BIA Dec. 13, 2019) (remands record because IJ did not inform respondent of deadline to submit biometrics or the consequences of non-compliance) (*Guendelsberger*, Kendall Clark, Grant)

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[S-S-](#), AXXX XXX 632 (BIA Aug. 14, 2019) (grants interlocutory appeal and reverses denial of motion to change venue given that respondent pled to the allegations in the NTA, that he indicated that he would apply for asylum, and that DHS filed a non-opposition to the motion) (*Grant*, Guendelsberger, Kendall Clark)

[Wilson Vasquez-Molina](#), A201 705 149 (BIA Aug. 13, 2019) (grants interlocutory appeal and reverses denial of motion to change venue given that respondent's family and pro bono attorney were located in New York and he was not required to demonstrate prima facie eligibility for relief given early stage of proceedings) (*Grant*, Guendelsberger, Kendall Clark)

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[Megendra Bhakta Shrestha](#), A205 697 971 (BIA July 11, 2019) (grants interlocutory appeal and reverses denial of motion to change venue in light of evidence of respondent's residence, work, bills, interim driver's license, and health insurance, and retaining of counsel in New York) (*Mann*, Morris, Mullane (dissenting))

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[W-G-V-E-](#), AXXX XXX 457 (BIA Feb. 19, 2019) (grants interlocutory appeal and vacates decision to change venue because IJ granted DHS' motion without giving respondent an opportunity to respond) (*Kendall Clark*, Guendelsberger, Grant)

[S-G-P-M-](#), AXXX XXX 999 (BIA Dec. 3, 2018) (grants interlocutory appeal and grants request for change of venue from Atlanta to New York in light of location of respondent's residence, witnesses, and attorney) (*Kendall Clark*, Guendelsberger, Grant)

[G-S-](#), AXXX XXX 521 (BIA Aug. 7, 2018) (grants interlocutory appeal and reverses denial of motion to change venue from Atlanta where respondent had already conceded removability and applied for asylum, and his residence, witnesses, and attorney were located in New York) (*Guendelsberger*, Grant, Kendall-Clark)

[Anthony L. Powell](#), A037 773 826 (BIA Aug. 2, 2018) (grants interlocutory appeal and reverses change of venue over respondent's objection from New York City to Miami) (*Kelly*, Mann, Adkins-Blanch)

[Elphine Kerubo Marube](#), A202 090 039 (BIA Aug. 2, 2018) (grants interlocutory appeal and reverses IJ's change of venue to Florida in light of respondent's longstanding ties to and pro bono counsel in New York City) (*Kelly*)

[Linda Irene](#), A208 704 878 (BIA July 19, 2018) (grants interlocutory appeal and changes venue from Atlanta to Arlington where the respondent was arrested in Virginia and she and her attorney lived in Virginia) (*Grant*, Kendall Clark, Guendelsberger)

[Guohua Huang](#), A213 141 121 (BIA July 17, 2018) (grants interlocutory appeal and orders further consideration of motion to change venue from Atlanta to New York City because IJ failed to consider relevant factors) (*Snow*)

[Mohammed Abdul Zahra Al Khafaji](#), A071 724 265 (BIA July 9, 2018) (grants interlocutory appeal and vacates decision granting DHS motion to change venue from Arlington, Va., to Jena, La., because IJ did not issue decision setting forth why motion was supported by good cause) (*Kendall Clark*, Kelly, Guendelsberger)

[Juan Jose Linares Flores](#), A206 781 744 (BIA June 15, 2018) (grants interlocutory appeal challenging denial of motion to change venue where respondent conceded removability, submitted application for cancellation of removal, and lived in close proximity to the Orlando immigration attorney) (*Grant*, Kendall Clark, Guendelsberger)

[Jose Bautista Mendoza](#), A216 176 132 (BIA April 27, 2018) (immigration judges may change venue even for detained respondents; changes venue from Imperial to San Francisco to be closer to respondent's relatives, attorney, and witnesses) (*Clark*, Guendelsberger, O'Connor)—**KEY DECISION**

[M-D-M-D-](#), AXXX XXX 465 (BIA March 1, 2018) (grants interlocutory appeal challenging the denial of request to change venue from Dallas to Boston where respondent had conceded charge and submitted relief application and immigration court in Boston was in proximity to her residence, witnesses, and attorney of record) (*Kendall Clark*, Guendelsberger, Grant)

[C-D-L-G-](#), AXXX XXX 158 (BIA July 26, 2017) (IJ should have granted change of venue from Atlanta

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given that respondent, her attorney, and witnesses all resided in Virginia) (*Guendelsberger*, Kendall Clark, Liebowitz)—**KEY DECISION**

[Keila Isabel Reyes-De Romero](#), A206 698 059 (BIA June 8, 2017) (changes venue from Houston to Baltimore after rescinded in absentia order) (*Kelly*, Grant, Mann)

[Jesus Gomez Marin](#), A092 096 240 (BIA May 4, 2017) (reverses denial of motion to change venue from Los Angeles to San Francisco) (*Guendelsberger*, Kendall Clark, Liebowitz (dissenting))

[M-M-J.](#), AXXX XXX 522 (BIA March 15, 2017) (reverses order granting DHS motion to change venue from Los Angeles to Tucson where IJ found location of witnesses able to testify to respondents' manner of entry trumped location of respondents and their attorneys) (*Kendall Clark*, Liebowitz, Guendelsberger)—**KEY DECISION**

[Einstein Ofotsu Djabeng](#), A205 492 530 (BIA Feb. 16, 2017) (finds IJ erred in denying motion to change venue; changes venue from Buffalo to Newark) (*Mann*, Neal, Adkins-Blanch)

[Giorg Rapava](#), A077 018 104 (BIA Oct. 26, 2016) (grants interlocutory appeal of decision granting DHS motion to change venue from New York to Atlanta where IJ failed to balance relevant factors in making good cause determination) (*Liebowitz*, Guendelsberger, Holiona)

[J-A-L.](#), AXXX XXX 205 (BIA Oct. 12, 2016) (reopens proceedings and changes venue from Dallas to New York) (*O'Herron*, Greer, Kendall-Clark)

[Mario Rivera-Flores](#), A094 451 158 (BIA Aug. 8, 2016) (reopens proceedings and grants change of venue from San Diego to Los Angeles immigration court) (Pauley)

[M-S-L-R.](#), AXXX XXX 188 (BIA July 25, 2016) (grants interlocutory appeal challenging denial of motion to change venue for 6-year-old respondent given proximity to New Orleans immigration court, location of attorney, and pending proceedings against mother and sister) (*Kendall-Clark*, Liebowitz, Guendelsberger)

[Mario Echemendia](#), A024 666 407 (BIA June 14, 2016) (changes venue to Miami immigration court in light of lack of DHS opposition) (Guendelsberger)

[Nancy Ocampo-Ulloa](#), A205 227 706 (BIA April 5, 2016) (changes venue to Miami immigration court after rescinding *in absentia* order) (*O'Leary*, Mann, Grant)

[Mohammed Shaiful Islam](#), A202 160 901 (BIA July 20, 2015) (denies interlocutory DHS appeal challenging change of venue from El Paso to New York for detained respondent) (Holmes)—**KEY DECISION**

[Gagik Khalatyan](#), A078 665 900 (BIA June 19, 2015) (vacates decision granting DHS motion to change venue because respondent had already retained local counsel and IJ did not provide reasonable opportunity to respond to motion) (Holmes)—**KEY DECISION**

[Gicely Sarai Fores-Velasquez](#), A205 277 572 (BIA April 24, 2015) (respondents not required to submit completed application for relief with motion to change venue) (*Adkins-Blanch*, Grant, Guendelsberger)—**KEY DECISION**

[Luis Sinchi-Sinchi](#), A206 779 736 (BIA Jan. 16, 2015) (grants interlocutory appeal challenging denial of unopposed motion to change venue from Dallas to New York in light of proximity to respondent's residence and witnesses) (Holmes)



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[Nelson Ventura-Ventura](#), A205 700 837 (BIA Oct. 15, 2014) (overturns denial of motion change of venue where San Francisco immigration court was closer to respondent's residence, witnesses, and attorney of record, and DHS did not oppose) (*Miller*, Holmes, Guendelsberger)

[Edwin Rolando Velazquez-Mejia](#), A201 241 986 (BIA Aug. 29, 2014) (reverses denial of motion to change venue where the respondent and witnesses lived in New York and no government purpose existed for keeping case in New Jersey) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Irma Yadira Murillo-Ayala](#), A078 964 772 (BIA June 3, 2014) (Board changes venue from Harlingen, Texas, to Orlando, Florida, because respondent resides in Tampa and sister's removal proceedings are in Orlando) (*Guendelsberger*, Hoffman, Manuel)

[Douglas Shitote](#), A200 224 343 (BIA March 6, 2014) (upholds denial of motion to change venue but faults IJ for requiring respondent and out-of-state counsel to appear at hearing when charges of removability were not contested and attending hearing posed substantial financial difficulty) (Cole)

[Oscar Antonio Del Cid-Melara](#), A205 875 351 (BIA Aug. 26, 2013) (grants interlocutory appeal of denial of respondent's motion to change venue after DHS filed brief in support of the motion) (*Holmes*, Guendelsberger, Manuel)

[Ambrosio Lorenzo-Aguilar](#), A075 408 836 (BIA July 2, 2013) (venue over motion to reopen lies with immigration court where NTA was originally filed, not court having administrative control over facility where respondent is detained) (Adkins-Blanch)

[Bernard Paget Hensley James](#), A041 792 398 (BIA Apr. 18, 2013) (grants interlocutory appeal challenging change of venue where IJ's order showed no balancing of any applicable factors) (*Cole*, Greer, Pauley)

### Compliance With Practice Manual

[Elias Galvan](#), A092 966 446 (BIA July 6, 2016) (IJ should have permitted testimony of witnesses despite respondent's failure to submit declarations or summaries of witness testimony in compliance with Immigration Court Practice Manual) (*O'Connor*, Adkins-Blanch, Mann)—**KEY DECISION**

[Marvin Raul Morales Mateo](#), A087 681 944 (BIA June 5, 2014) (failure of attorney to comply with Immigration Court Practice Manual regarding procedures for substitution of counsel not valid basis to deny motion to reopen) (*Guendelsberger*, Hoffman, Manuel)

### Continuances

#### For Attorney Preparation

[H-M-](#), AXXX XXX 735 (BIA Oct. 20, 2019) (IJ should have granted continuance where respondent retained new counsel two days prior to individual hearing and prior counsel had submitted scant asylum application that was replete with errors and accompanied by no supporting documentation) (Kendall Clark)

[Fabian Andres Vargas Salgado](#), A206 861 452 (BIA June 13, 2019) (reverses denial of continuance for attorney preparation where counsel was hired less than a month before merits hearing and IJ's assistant did not return messages asking to review record of proceedings) (*Wendtland*, Greer, Donovan)

[Bernartita Moses](#), A206 352 760 (BIA Dec. 9, 2014) (IJ should have granted continuance for attorney



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preparation where client retained at last minute) (Miller)

### **To Obtain Counsel**

[A-K-S-](#), AXXX XXX 454 (BIA May 22, 2020) (remands for new hearing where IJ denied request for continuance by pro se respondent who learned his attorney had withdrawn five days before individual hearing) (*Hunsucker, Liebowitz, Creppy*)

[M-A-R-A-](#), AXXX XXX 703 (BIA Feb. 24, 2020) (IJ erred in denying continuance to obtain counsel based on respondent's failure to make such a request at prior hearing) (*Greer, Swanwick, Gorman* (dissenting))

[J-C-T-](#), AXXX XXX 935 (BIA Dec. 12, 2019) (IJ should have granted continuance at second hearing where respondent stated that he had completed Form I-589 and his family was attempting to secure legal representation) (*Guendelsberger, Kendall Clark, Grant*)

[Abdoulaye Ben Amir Cisse](#), A095 863 284 (BIA Aug. 7, 2019) (IJ erred by denying continuance where respondent was not served with prior attorney's motion to withdraw or decision granting motion to withdraw nine days prior to individual hearing) (*Baird, Wendtland, Greer*)

[Jose Ramon Jiminez](#), A029 534 792 (BIA Oct. 31, 2018) (IJ should have granted additional continuance for respondent to find counsel where he had been given only two weeks since initial hearing that included holiday weekend) (*Greer, Wendtland, Donovan*)

[L-Z-C-](#), AXXX XXX 565 (BIA Oct. 18, 2018) (IJ should have granted continuance to pro se asylum applicant who had been given only one week to complete application and stated that he wished to retain an attorney) (*Adkins-Blanch, Kelly, Geller*)

[Rene Baca-Chavez](#), A200 726 166 (BIA Dec. 16, 2014) (IJ should have granted additional time to secure counsel after original attorney withdrew at second master calendar hearing) (*Hoffman, Guendelsberger, Manuel*)

[Luis Alonso Castillo](#), A094 305 773 (BIA Apr. 9, 2014) (nine-day continuance over holiday period for detained respondent who did not speak English not sufficient time to retain counsel) (*Wendtland, Greer, Pauley*)

### **To Prepare Application for Relief**

[Elias Morales-Ortiz](#), A201 987 822 (BIA Sept. 1, 2020) (reverses denial of continuance to submit application for relief where request was made only 19 days after respondent's initial court appearance and his attorney accepted responsibility for missing the filing deadline) (*Wilson, Donovan, Greer*)

[K-P-N-](#), AXXX XXX 542 (BIA Jan. 17, 2019) (IJ should have granted additional continuance for pro se respondent to complete asylum application because she did not speak English, could not afford to hire a lawyer, and had not received a return call from a legal assistance organization she had contacted) (*Guendelsberger, Kendall Clark, Adkins-Blanch*)

[M-R-E-D-](#), AXXX XXX 856 (BIA Nov. 6, 2018) (IJ should have granted continuance to pro se asylum applicant who did not complete Form I-589 because she did not speak English, three attorneys declined to represent her, and DHS did not oppose continuance)

[Maria Arrieta Cruz](#), A216 171 871 (BIA Nov. 1, 2018) (IJ should have granted continuance to allow

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respondent to file cancellation application because she was not represented at her initial master calendar hearing and her attorney was unaware of the court-imposed deadline to file the application) (Kendall Clark, Guendelsberger, Grant)

[Oswaldo Raul Herrera-Baltazar](#), A200 673 573 (BIA Aug. 30, 2016) (reverses denial of continuance to apply for non-LPR cancellation for respondent who waited to submit application due to belief he would be eligible for adjustment of status based on future marriage to U.S. citizen) (*O'Leary*, Adkins-Blanch, Mann)

[Antonio Palomino-Herrera](#), A205 765 691 (BIA May 24, 2016) (remands record for submission of application for cancellation of removal where IJ denied request for continuance at first master calendar hearing after withdrawal of prior attorney) (Guendelsberger)

[Cesar Miguel Felix-Lugo](#), A201 147 761 (BIA Jan. 29, 2016) (remands for further consideration of request for continuance in light of respondent's potential ability to adjust status) (*O'Leary*)

[Edulio Elizondo Zavaleta](#), A206 222 496 (BIA July 2, 2015) (IJ erroneously denied continuance to apply for U visa where detained respondent was not represented by an attorney and submitted evidence confirming he was the victim of an offense and had assisted in investigation) (*Grant*, Guendelsberger, Holiona)

[Antonio Carralero](#), A088 015 223 (BIA Dec. 23, 2014) (IJ should have provided respondent additional opportunity to file asylum application after attorney withdrew 15 days before the court-imposed deadline) (*Guendelsberger*, Grant, Hoffman)

[Mohammed Kharbach](#), A095 427 618 (BIA Nov. 24, 2014) (vacates denial of motion for continuance where IJ did not analyze merits of the motion, stated that proceedings had been continued "at least 20 times," and voiced concerns with internal case completion goals) (Guendelsberger)

[Leonel Amador Aguilar-Morales](#), A088 091 744 (BIA Dec. 6, 2013) (reverses denial of continuance because IJ presiding over previous hearing did not instruct respondent to bring witnesses to next hearing to testify in support of adjustment application) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Victor Hugo Gomez-Cifuentez](#), A089 284 153 (BIA Nov. 6, 2013) (reverses denial of continuance where attorney requested seven additional days to gather documents to submit with asylum application) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Jose Santos Gomez-Amaya](#), A205 881 617 (BIA Nov. 5, 2013) (reverses denial of continuance where pro se respondent needed more time to submit applications for relief due in part to lack of familiarity with English language) (*Miller*, Holmes, Kendall-Clark)

[Samuel Owusu, Jr.](#), A095 329 362 (BIA Aug. 13, 2013) (remands for further consideration of request for a continuance where Board remanded respondent's case in separate proceedings to submit additional evidence establishing the bona fides of underlying marriage) (Manuel)

[Ohene Bobie Nimako](#), A099 311 604 (BIA July 19, 2013) (remands where IJ did not address argument that USCIS erroneously denied Form I-130 based on a purported lack of request for a bona fide marriage exemption) (Manuel)

[Alisha Rahim Robinson](#), A075 559 747 (BIA June 18, 2013) (remands record because IJ failed to discuss specific facts of case other than respondent's priority date, or whether administrative closure is warranted in light of *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012)) (Hoffman)

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[Diego Alejandro Alonso-Nuno](#), A089 711 493 (BIA June 17, 2013) (upholds denial of request for continuance where no evidence submitted that USCIS approved application for provisional unlawful presence waiver (Form I-601A)) (Grant)

[Fowobi George](#), A071 996 819 (BIA Sept. 14, 2012) (remands for re-evaluation of respondent's request for a continuance to seek U nonimmigrant status in light of intervening decision in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012)) (Greer)

[Anderson Ferreira](#), A099 982 743 (BIA Mar. 18, 2011) (upholds denial of motion for continuance to await availability of immigrant visa based on approved I-140 petition; decision subsequently overturned by *Ferreira v. U.S. Att'y General*, 714 F.3d 1240 (11th Cir. 2013)) (Cole)

[Joy Atila Litaba](#), A200 224 355 (BIA Sept. 11, 2012) (reverses denial of request for continuance and remands to give respondent meaningful opportunity to consult with counsel and seek relief from removal) (Manuel)

### **To Receive FOIA Results**

[Rellio Emmanuel Johnson](#), A096 825 391 (BIA Jan. 22, 2015) (finds IJ should have granted continuance to await results of FOIA request seeking evidence of manner in which respondent entered the country to establish eligibility for adjustment of status) (*Cole*, Pauley, Greer)—**KEY DECISION**

### **To Review A-File**

[Fernando Saenz-Ledesma](#), A024 938 852 (BIA June 13, 2014) (IJ should have continued proceedings to permit respondent to obtain and review a copy of the A-file, the contents of which could have confirmed eligibility to adjust status) (*Mullane*, Malphrus, Liebowitz)—**KEY DECISION**

### **To Seek Post-Conviction Relief**

[Victor Rosel](#), A098 194 325 (BIA Dec. 9, 2013) (no good cause for continuance absent evidence that motion for post-conviction relief “would be adjudicated in the foreseeable future”) (Grant)

[Francisco Flores Alcala](#), A200 762 691 (BIA May 9, 2013) (remands record because respondent's criminal conviction was vacated while appeal was pending, rendering him eligible for adjustment of status) (*Guendelsberger*, Hoffman, Miller)

[Roderick Gary Levy](#), A035 954 926 (BIA June 27, 2011) (declines to consider DHS interlocutory appeal challenging grant of continuance to permit respondent to pursue post-conviction relief) (Pauley)—**KEY DECISION**

[Lindon Ingram](#), A055 557 778 (BIA Jan. 21, 2011) (record remanded for further fact-finding after filing of request for post-conviction relief while appeal to Board was pending) (C. King)—**KEY DECISION**

### **To Seek Special Immigrant Juvenile (SIJ) Status**

[W-E-P-M.](#), AXXX XXX 859 (BIA July 15, 2015) (IJ erroneously denied continuance where respondent filed dependency petition in appropriate state court and a timely hearing was scheduled on the petition) (Holmes)

[A-G-M.](#), AXXX XXX 127 (BIA July 2, 2015) (IJ should have granted short continuance to permit

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filing of dependency petition necessary to seek SIJ status) (*Holmes*, Greer, O'Herron)

[J-S-R-](#), AXXX XXX 304 (BIA June 30, 2015) (respondent demonstrated good cause for continuance by providing evidence of filing of dependency petition in state court required to seek SIJ status) (*Holmes*)

[R-S-P-](#), AXXX XXX 593 (BIA May 11, 2015) (respondent established good cause for continuance by presenting evidence that state juvenile court scheduled hearing that would determine eligibility for SIJ status) (*Holmes*)

### **To Seek U Visa**

[Edgar Marcelo Alvarado-Turcio](#), A201 109 166 (BIA Aug. 17, 2017) (processing delays alone not sufficient basis to deny continuance to await adjudication of U visa application) (*Kelly*, Pauley, Adkins-Blanch)

[Jose Luis Gutierrez-Rodriguez](#), A090 835 106 (BIA Sept. 26, 2016) (remands to consider whether to continue or administratively close proceedings pending adjudication of U visa application notwithstanding separate finding that respondent was inadmissible under INA 212(a)(2)(C) based on potential involvement in trafficking of controlled substances) (Pauley)

[Jose Emilio Alvarado](#), A208 090 238 (BIA June 2, 2016) (remands for further proceedings in light of spouse's filing of Form I-918A on respondent's behalf while appeal was pending; states that respondent's detention was not sufficient basis to decline to continue proceedings) (Grant)—**KEY DECISION**

[Duane Grant](#), A099 743 627 (BIA Sept. 9, 2016) (reverses denial of request for continuance or administrative closure where IJ failed to consider likelihood that U visa would be approved) (Pauley)

[Jose Rogelio Ortiz-Almanza](#), A205 517 790 (BIA Aug. 17, 2016) (IJ committed clear error in finding that respondent failed to submit copy of pending U visa application with request for continuance) (*Pauley*, Cole, Greer)

[Maria Alarcon-Suarez](#), A201 071 840 (BIA Jan. 11, 2016) (remands for further consideration of request for continuance in light of USCIS reversal of prior denial of respondent's daughter's U visa application) (Pauley)

[Elias Aguilar-Jacobo](#), A200 882 885 (BIA Oct. 27, 2015) (IJ erred in denying continuance pending adjudication of U visa application solely because respondent obtained criminal conviction after being placed in proceedings) (Pauley)

[Edulio Elizondo Zavaleta](#), A206 222 496 (BIA July 2, 2015) (IJ erroneously denied continuance to apply for U visa where detained respondent was not represented by an attorney and submitted evidence confirming he was the victim of an offense and had assisted in investigation) (*Grant*, Guendelsberger, Holiona)

### **To Submit Updated Information**

[Shornette Marie Samuels-Foster](#), A087 061 696 (BIA July 30, 2020) (IJ should have continued proceedings for respondent who was otherwise eligible to adjust status where attorney mistakenly submitted medical examination to USCIS rather than immigration court) (*Donovan*, Goodwin, Monsky)

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[Arpad Imre Ivanics](#), A206 527 082 (BIA July 22, 2020) (IJ should have granted motion to continue for respondent to provide updated medical examination where DHS did not oppose request and prior hearing had been continued at DHS' request) (*Mann*, Grant, Mullane)

[Cesar Alcantar](#), A077 520 504 (BIA Dec. 9, 2015) (reverses denial of continuance to submit updated financial and medical documentation where existing evidence only grew stale because IJ continued proceedings for three years on his own motion) (*Wendtland*, Pauley, Cole)

[Andre Luckman Ibrahim](#), A097 680 747 (BIA Jan. 28, 2015) (reverses denial of continuance to submit updated financial and medical documentation where existing evidence only grew stale because IJ continued proceedings for three years on his own motion) (*Pauley*, Wendtland, Cole)

### **Pending Adjudication by USCIS**

[D-J-](#), AXXX XXX 003 (BIA July 15, 2020) (remands record for IJ to consider whether to continue proceedings pending adjudication of visa petition and adjustment application by USCIS) (Pepper)

[A-C-P-](#), AXXX XXX 521 (BIA June 17, 2020) (remands to further consider whether to continue proceedings pending adjudication of petition for U nonimmigrant status under *Caballero-Martinez v. Barr*, 920 F.3d 543 (8th Cir. 2019)) (*Hunsucker*, Creppy, Liebowitz)

[Alfred Kokwaro](#), A087 214 276 (BIA June 12, 2020) (remands for further consideration of request for continuance pending USCIS' adjudication of Form I-751 where IJ did not address *Matter of Stowers*, 22 I&N Dec. 605 (BIA 1999)) (*Donovan*, Kelly, Adkins-Blanch)

[J-A-T-F-](#), AXXX XXX 423 (BIA Nov. 21, 2019) (IJ improperly denied continuance pending USCIS adjudication of I-751 simply because he did not have initial jurisdiction over application and respondent was detained) (*Noferi*, Wendtland, Greer)

[J-F-V-M-](#), AXXX XXX 167 (BIA Nov. 16, 2018) (states that *Matter of L-A-B-R-*, et al., 27 I&N Dec. 405 (A.G. 2018) "does not alter the fundamental considerations outlined in *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009)" on whether to continue proceedings pending approval of I-130) (Wendtland)

[Luasa Tshimanga](#), A209 012 271 (BIA Sept. 25, 2017) (remands for further consideration of request for continuance because IJ failed to apply the standards in *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009)) (Grant)

[Mariana Gonzalez-Hernandez](#), A205 324 473 (BIA July 14, 2015) (orders further consideration of request for continuance in light of the evidence submitted on appeal that respondent submitted U visa application) (Grant)

[Benigno Uribe-Ramirez](#), A205 163 479 (BIA June 8, 2015) (orders further consideration of request for continuance pending adjudication of U visa application where respondent had previously failed to submit application after being granted continuance to do so) (Holmes)

[Wilson Humberto Ismatul Cordova](#), A206 563 666 (BIA March 10, 2015) (remands for further consideration of request for continuance pending adjudication of U visa application where DHS did not oppose continuance and potential availability of consular processing not valid basis to deny continuance) (*Pauley*, Wendtland, Cole)—**KEY DECISION**

[Rodrigo Chavez-Tellez](#), A200 777 839 (BIA March 9, 2015) (remands for consideration of request for continuance based on submission of evidence on appeal that respondent filed U visa application

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accompanied by required law enforcement certification) (Mann)

[Pekepeka Laiseni](#), A205 272 741 (BIA Feb. 27, 2015) (remands for further consideration of request for a continuance in light of evidence submitted on appeal that respondent's wife filed U visa application of which respondent was derivative beneficiary) (Cole)

[Juan Carlos Torres-de Santiago](#), A089 474 810 (BIA Feb. 27, 2015) (remands for further consideration of request for continuance pending adjudication of U visa application because IJ did not discuss the basis for DHS opposition or the possibility that any grounds of inadmissibility would be waived) (*Greer*, Cole, Pauley (dissenting))

[Edmundo Dimas-Lopez](#), A076 799 635 (BIA Feb. 10, 2015) (remands for further consideration of request for continuance in light of submission of signed law enforcement certification, Form I-918 Supplement B, indicating potential prima facie eligibility for U nonimmigrant visa) (Grant)

[G-M-H-](#), AXXX XXX 060 (BIA May 29, 2014) (IJ erred in denying request for a continuance based on denial of Form I-130 where respondent submitted proof that an appeal of the denial was filed with the Board) (Adkins-Blanch)

[Pilar Obsequio David](#), A089 556 687 (BIA Mar. 20, 2014) (grants motion to remand in light of evidence that adult daughter may have naturalized and filed visa petition on respondent's behalf; says proceedings should be continued pending adjudication of visa petition because respondent would likely demonstrate prima facie eligibility for adjustment of status on remand) (Manuel)

[Brandon Fuentes-Vasquez](#), A205 857 112 (BIA Mar. 13, 2014) (remands for further consideration of continuance pending adjudication of petition for U status where IJ denied request without meaningfully considering DHS response or whether petition was prima facie approvable) (Hoffman)

[Nonhlanhla Guguletha Ngema](#), A087 948 239 (BIA Feb. 5, 2014) (delay by USCIS in forwarding appeal of Form I-130 to Board is factor to be considered in favor of respondent seeking continuance) (Wendtland)—**KEY DECISION**

[Omar Daniel Ruiz](#), A095 640 803 (BIA Jan. 23, 2014) (reverses denial of continuance where respondent recently filed a Petition to Remove the Conditions of Residence (Form I-751) with USCIS) (Adkins-Blanch)

[Merton David Lopez](#), A091 085 417 (BIA Dec. 13, 2013) (IJ observation that 212(h) waivers not typically granted for persons convicted of robbery and that respondent may not merit favorable exercise of discretion not valid basis to deny continuance pending adjudication of Form I-130) (Pauley)

[Erick Cruz Bermejo](#), A205 497 572 (BIA Dec. 12, 2013) (remands for further consideration of request for continuance pending adjudication of petition for U nonimmigrant status where law enforcement agency executed the required certification while the appeal was pending) (Adkins-Blanch)

[To Nga Thi Dinh](#), A089 854 183 (BIA Oct. 25, 2013) (remands for further consideration of request for continuance in light of evidence that respondent appealed USCIS denial of visa petition and gave birth to child of U.S. citizen husband) (Manuel)

[Anderson Ferreira](#), A099 982 743 (BIA Oct. 23, 2013) (remands for further consideration adjustment application after respondent's priority date becomes current) (Miller) (Note: in *Ferreira v. U.S. Att'y Gen.*, 714 F.3d 1240 (11th Cir. 2013), the Eleventh Circuit found the Board abused its discretion in upholding the denial of respondent's request for a continuance)



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[Roberto Ceja-Ruiz](#), A200 558 702 (BIA Sept. 26, 2013) (remands for further consideration of request for continuance pending USCIS determination of petition for U nonimmigrant status in light of evidence indicating respondent's sister received certification law enforcement agency and mother may claim his as derivative) (Grant)

[Domingo Pacheco Garcia](#), A205 062 933 (BIA Aug. 29, 2013) (grants continuance pending pursuit of application for U nonimmigrant status, construes DHS non-opposition as motion to administratively close proceedings) (Holmes)

[Celeste Ramirez-Perez](#), A205 672 704 (BIA June 4, 2013) (pending DACA application not good cause for a continuance) (Miller)

[Sheila Sofia Diaz-Aulis](#), A205 131 206 (BIA May 16, 2013) (upholds order of removal against respondent with pending DACA application; states that proceedings need not have been continued while application was pending) (Guendelsberger)

[Alcides Marte-Blanco](#), A077 888 145 (BIA Feb. 24, 2012) (remands for further consideration of motion for continuance in light of separate decision remanding denial of visa petition filed by respondent's spouse) (Adkins-Blanch)

[Waldemar Stanislaw Mroczkowski](#), A099 657 732 (BIA Jan. 30, 2012) (reverses denial of continuance in light of evidence submitted on appeal showing respondent divorced prior wife and U.S. citizen spouse filed visa petition on his behalf) (Pauley)

[Michael Eshun](#), A089 439 806 (BIA Mar. 11, 2011) (respondents need not demonstrate bona fides of marriage under *Matter of Velarde*, 23 I&N Dec. 253 (BIA 2002), to obtain continuance pending adjudication of Form I-130) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

[Cesar Brenner Varillas Calderon](#), A076 520 895 (BIA Jan. 28, 2011) (remands for further consideration of request for continuance in light of Board decision in separate proceedings requiring USCIS to reconsider denial of visa petition) (Grant)

[Sadrudin Ali Bhai Rajani](#), A074 088 126 (BIA Jan. 12, 2011) (IJ failed to consider all factors under *Matter of Hashmi*, 24 I&N Dec. 785 (BIA 2009), and improperly calculated time by which priority date would become current) (*Pauley*, Filppu, Cole)

[Rui Li](#), A095 529 382 (BIA Jan. 3, 2011) (reverses denial of continuance where IJ erroneously calculated time by which priority date would become current) (*Greer*, Pauley, Wendtland)

### **Pending Appeal of Denial By USCIS**

[M-A-M-G-](#), AXXX XXX 693 (BIA Sept. 27, 2019) (IJ should have granted continuance to await appeal of denied Form I-130 in light of evidence indicating respondent was likely to succeed on appeal) (*Grant*, Guendelsberger, Kendall Clark)

### **Pending State or Federal Court Proceedings**

[Alejandro Perez-Serrano](#), A205 394 591 (BIA Sept. 17, 2014) (IJ erred in denying continuance for respondent to appear in federal court for sentencing) (*Wendtland*, Greer, Pauley)

### **Pending Promulgation of Regulations**

[Enereo Mederos-Sanchez](#), A205 132 022 (BIA Feb. 3, 2014) (IJ erred in denying continuance to await promulgation of regulations allowing noncitizens to apply for unlawful presence waivers on a provisional basis (Form I-601A)) (Grant)—**KEY DECISION**

### **Pending Completion of Related Removal Proceeding**

[Brenda Vargas Romero](#), A206 532 274 (BIA Oct. 15, 2019) (IJ should have granted continuance to minor respondent pending adjudication of her parents' applications for non-LPR cancellation of removal) (*Kelly*, Goodwin, Mann)

### **Miscellaneous**

[C-M-R-C](#), AXXX XXX 130 (BIA Aug. 6, 2020) (IJ should have granted continuance to allow respondent to retrieve additional copy of Form I-589 from his cell) (*Pepper*, Adkins-Blanch, Kelly)

### **Equitable Tolling**

[Juan Carlos Sanmartin Prado](#), A046 534 674 (BIA Feb. 27, 2019) (equitably tolls deadline and reopens proceedings because prior attorney provided ineffective assistance by failing to apply for LPR cancellation of removal) (Grant)

[Seidi Elda Sandoval-Landero](#), A088 056 174 (BIA Nov. 20, 2015) (equitably tolls deadline for filing motion to reopen in absentia order based on exceptional circumstances) (*Grant*, Guendelsberger, O'Leary)—**KEY DECISION**

[Luis Alfredo Castro](#), A200 226 899 (BIA Oct. 29, 2015) (180-day deadline to reopen in absentia order based upon exceptional circumstances is subject to equitable tolling) (*Grant*, Adkins-Blanch, O'Leary)—**KEY DECISION**

[Carlos Alberto Zambrano](#), A088 741 973 (BIA Sept. 5, 2014) (respondent exercised sufficient diligence to warrant equitable tolling of the time and numerical limitations on motions to reopen) (Holmes)

[Kamleshwar Prasad](#), A099 681 885 (BIA Dec. 13, 2013) (April 30, 2001, deadline to establish eligibility under INA 245(i) not subject to equitable tolling due to ineffective assistance of counsel) (Greer)

[Gladys Margarita Hernandez](#), A095 080 333 (BIA Aug. 23, 2013) (remands to consider argument that respondent is entitled to equitable tolling of TPS registration deadline on account of mental incompetence and physical illness) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Kim Stevens](#), A035 172 124 (BIA Oct. 12, 2011) (deadline for motion to reopen to seek 212(c) waiver equitably tolled in light of respondent's mental incompetency) (Greer)—**KEY DECISION**

### **Expert Witnesses**

[M-B](#), AXXX XXX 729 (BIA March 23, 2020) (remands record because IJ failed to rule on request to designate witness as an expert or consider contents of his affidavit) (*Liebowitz*, Hunsucker, Cassidy)

## Filing Deadlines

[R-K-K-P-](#), AXXX XXX 070 (BIA April 17, 2020) (detained respondent established good cause to extend deadline to file asylum application where he diligently retained counsel prior to deadline who promptly filed motion to extend based on logistical challenges preparing application) (*Mann, Couch, Kelly*)

[M-M-S-](#), AXXX XXX 983 (BIA Nov. 25, 2019) (IJ improperly excluded documentary submission as untimely because he only set deadline for filing of Form I-589 itself) (*Wendtland, Greer, Rosen*)

[E-A-Y-](#), AXXX XXX 858 (BIA May 25, 2017) (IJ should have considered evidence submitted only one day after court-imposed deadline where DHS was served on day of deadline) (*Adkins-Blanch, Cole, Grant*)

[Leymi Sahira Moreno Grullon](#), A099 994 900 (BIA Jan. 30, 2014) (declines to consider untimely DHS brief providing no reason for delayed response) (*Hoffman*)

[Frederick Monyoncho Kerina](#), A093 442 983 (BIA Apr. 24, 2012) (8 CFR 1003.31(c) does not prevent IJs from extending deadlines to submit relief applications) (*Manuel, Kendall-Clark, Miller*)

## Filing Fees

[G-M-V-M-](#), AXXX XXX 957 (BIA Sept. 28, 2017) (reverses denial of motion to reopen for failure to pay \$110 filing fee because motion was related to asylum application) (*Liebowitz, Mullane, Creppy*)

## Filing Requirements

[Nicholas Jermaine Gumbs](#), A040 159 442 (BIA Jan. 13, 2015) (respondent abandoned request for INA 211(b) waiver because attorney filed the Form I-193 by fax with the immigration court) (*Grant*)

## Jurisdiction

[Feni Awuor Ataro](#), A089 669 376 (BIA April 30, 2012) (returns record to IJ because motion to reopen was filed with immigration court one day prior to filing of EOIR-26 with Board; says motion should be adjudicated and IJ may return record to Board on certification) (*Cole*)—**KEY DECISION**

## Late-Filed Evidence

[J-J-B-M-](#), AXXX XXX 282 (BIA March 9, 2017) (remands for further consideration of cancellation application where IJ declined to consider late-filed evidence despite its submission 34 days prior to hearing and lack of objection from DHS) (*Cole, Adkins-Blanch, Greer*)—**KEY DECISION**

[Hector Diaz-Mendoza](#), A044 371 296 (BIA May 23, 2011) (remands where IJ did not consider motion for leave to file evidence after the filing deadline) (*Pauley, Cole, Wendtland*)

## “Law of the Case” Doctrine

[Juan Pablo Zea-Flores](#), A041 737 150 (BIA Apr. 6, 2011) (law of the case doctrine does not prevent reconsideration of whether offense is CIMT) (*Cole*)—**KEY DECISION**

## Migrant Protection Protocols (MPP)

[S-E-J-V.](#), AXXX XXX 239 (BIA July 17, 2020) (recognizes existence of temporal or geographic limits on respondents who can properly be placed in the Migrant Protection Protocols and remands for additional factfinding on location of respondents' apprehension) (Cassidy)

[S-M-B-V.](#), AXXX XXX 486 (BIA July 7, 2020) (rejects DHS argument that respondent subject to Migrant Protection Protocols (MPP) should have been ordered removed in absentia where record contained no copy of instructions for how he could be transported from Mexico to the San Diego immigration court) (*Kelly*, Adkins-Blanch, Kelly)

## Motions to Withdraw as Counsel

[F-D-H.](#), AXXX XXX 690 (BIA Aug. 30, 2019) (grants interlocutory appeal and reverses denial of motion to withdraw as counsel where client's native language prevented attorney from providing effective representation and complying with ethical obligations) (*Guendelsberger*, Grant, Kendall Clark)

## Miscellaneous

[Oracio Lopez Velasquez.](#) A209 881 127 (BIA Dec. 23, 2019) (DHS attorneys may not leave prior to issuance of oral decision unless they are excused by the IJ for good cause) (*Malphrus*, Mullane, Kelly)

[Kyung Lee.](#) A071 523 654 (BIA Dec. 7, 2017) (grants motion to sua sponte reopen and terminate proceedings nunc pro tunc as of January 27, 2003) (*Mann*, Kelly, Grant)

[Odalis Vanessa Garay-Murillo.](#) A206 763 642 (BIA Nov. 30, 2017) (denies DHS motion to reconsider where DHS filed opposition with immigration court rather than the Board) (Grant)

[Ramon Jasso Arangure.](#) A056 333 337 (BIA April 7, 2017) (remands for further proceedings because record did not include copy of NTA from previously terminated proceedings; orders IJ to provide parties with copy of unpublished Board decision on which he relied) (Pauley)

[Flor De Maria Gonzalez-Lopez.](#) A024 732 563 (BIA Sept. 21, 2016) (remands to update evidentiary record where respondent was ordered removed in 1987 but appeal was only recently received) (Liebowitz)

[Noel Chege Micho.](#) A079 302 034 (BIA Sept. 28, 2015) (unable to review denial of withholding application because proceedings were terminated after a prior remand) (Holmes)

[Jermaine Horatio Dussard.](#) A037 332 033 (BIA July 16, 2015) (vacates prior decision denying motion to reopen because respondent placed supplemental filing into detention center's mailing system before the Board issued the decision) (Miller)

[Washington Vicente Pena-Flores.](#) A091 546 852 (BIA Mar. 19, 2012) (denies DHS motion to reopen proceedings terminated by the Board because respondent was subject of second set of removal proceedings that had been administratively closed) (Miller)

## Notices to Appear

[Marin Amezcuita-Flores.](#) A075 823 277 (BIA July 21, 2020) (respondent raised timely objection to noncompliant NTA under *Ortiz-Santiago v. Barr*, 924 F.3d 956 (7th Cir. 2019), by challenging

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defects before pleadings were taken or removability was established) (*Greer*, Wilson, Donovan)

[Rodolfo Jones Mendoza](#), A205 147 042 (BIA June 29, 2020) (remands for further consideration of removability where respondent was charged under INA 212(a)(7)(A)(i) but IJ found him removable under INA 212(a)(6)) (*Liebowitz*, Creppy, Gemoets)

[Maria Lilian Lopez-Ferrera](#), A206 005 069 (BIA Sept. 27, 2013) (illegible signature on NTA not grounds for termination of proceedings) (Grant)

### Opportunity to Respond

[Ana Paula Mendes](#), A096 415 542 (BIA Oct. 2, 2017) (vacates decision granting DHS motion to reconsider because IJ issued order on same day motion was filed without giving respondent opportunity to respond) (Kendall Clark)—**KEY DECISION**

### Pleading

[L-E-L-C-](#), AXXX XXX 244 (BIA July 24, 2020) (remands record because IJ did not take pleadings, explain allegations in the NTA in non-technical terms, or place respondent under oath) (Kelly)

[A-M-M-](#), AXXX XXX 247 (BIA June 4, 2020) (remands record because IJ never required respondent to plead to NTA) (Montante)

[Elsaid Elsayed Elkenawi](#), A088 426 340 (BIA Mar. 26, 2012) (remands record because IJ never took pleadings on allegations in the NTA or found respondent removable on the record) (Adkins-Blanch)

[Jesus Manuel Corral-Chavira](#), A092 800 902 (BIA Feb. 1, 2011) (pro se respondent could not have knowingly conceded to having been convicted of aggravated felony burglary offense) (Pauley)

### Reissuance of Decisions

[K-A-](#), AXXX XXX 403 (BIA March 13, 2020) (reverses denial of motion to reissue where respondent's attorney did not receive decision because he failed to update address after moving offices) (*Goodwin*, Donovan, Swanwick)

[E-G-C-](#), AXXX XXX 583 (BIA Feb. 28, 2020) (reverses denial of motion to reissue decision in light of absence of evidence in record that decision was mailed to prior attorney and affidavit from prior attorney that he never received the decision) (Morris)

[Alejandro Sanchez-Garcia](#), A206 550 176 (BIA Nov. 29, 2019) (motions to reissue are distinct from and do not count against the number limit for motions to reopen) (*Guendelsberger*, Grant, Kendall Clark)

[Adnan Perez-Zazueta](#), A200 569 599 (BIA April 23, 2019) (reissues decision issued in 2015 because prior attorney failed to file timely petition for review and current attorney diligently sought reissuance after prior petition for review was dismissed as untimely) (Guendelsberger)

[Victor Manuel Lucero](#), A074 912 171 (BIA May 20, 2016) (reissues decision issued in 2006 because it was not sent to respondent's correct address) (Kendall-Clark)

[Koyode Akinniye](#), A093 014 174 (BIA March 12, 2015) (grants DHS motion to reissue prior decision denying motion to reopen where petitioner mistakenly filed petition for review in wrong circuit and Office of Immigration Litigation asked DHS to file motion to reissue) (Holmes)

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[Jose Alberto Arias Benitez](#), A041 267 639 (BIA Dec. 23, 2014) (reissues prior decision in light of submission of sworn statements from respondent and attorney of record saying they never received copy of the decision) (Holmes)

[Dilipkumar Dashrathbhai Patel](#), A200 939 111 (BIA June 6, 2014) (reissues decision because weather prompted closure of respondent's attorney's offices for two weeks and resulted in eventual delivery of badly damaged mail) (Holmes)

[Iris Jeanette Benites-Maurisio](#), A099 679 349 (Apr. 11, 2014) (instructs IJ to reissue decision denying motion to reopen where respondent and attorney claimed not to have received a copy of the decision) (*Hoffman*, Guendelsberger, Adkins-Blanch)

[Francisco Navarro-Acosta](#), A077 173 541 (BIA Nov. 13, 2013) (grants motion to reissue decision because respondent did not receive copy) (Kendall-Clark)

[Lenin Patino](#), A089 013 179 (BIA Jan. 20, 2012) (reissues decision issued more than three years prior to provide opportunity to file petition for review) (Holmes)

## Replacement of Immigration Judge

[J-A-G-](#), AXXX XXX 969 (BIA Aug. 1, 2019) (replacement IJ improperly found respondent's asylum application was untimely based on mistaken belief that original IJ found she did not qualify for any exception to the one-year filing deadline) (Wendtland)

[V-C-A-](#), AXXX XXX 336 (BIA Nov. 1, 2018) (remands record because IJ who signed decision failed to state that he had familiarized himself with the record as required under 8 C.F.R. 1240.1(b)) (Snow)

[J-L-H-](#), AXXX XXX 772 (BIA June 29, 2017) (IJ who signed decision denying cancellation application failed to state that he familiarized himself with record as required under 8 CFR 1240.1(b)) (*Adkins-Blanch*, Kendall Clark, Cole)

[I-J-A-](#), AXXX XXX 630 (BIA June 20, 2017) (IJ who signed decision denying cancellation application failed to state that he familiarized himself with record as required under 8 CFR 1240.1(b)) (*Adkins-Blanch*, Grant, Kendall Clark)

[G-F-L-](#), AXXX XXX 133 (BIA May 17, 2017) (IJ who signed decision denying cancellation application failed to state that he familiarized himself with record as required under 8 CFR 1240.1(b)) (*Adkins-Blanch*, Grant, Kendall-Clark)

[V-R-](#), AXXX XXX 467 (BIA Dec. 13, 2016) (replacement IJ violated 8 C.F.R. 1240.1(b) by failing to state for the record that he familiarized himself with the record in the case) (*Adkins-Blanch*, Guendelsber, Grant)

## Res Judicata

[M-F-H-](#), AXXX XXX 149 (BIA Feb. 13, 2019) (IJ improperly found res judicata precluded further consideration of whether respondent was convicted of particularly serious crime because intervening decision in *Gomez-Sanchez v. Sessions*, 892 F.3d 985 (9th Cir. 2018), held that mental health is a relevant factor in considering whether a crime was particularly serious) (*Malphrus*, O'Connor, Donovan)

[Armando Jose Muller-Martinez](#), A028 669 657 (BIA Oct. 15, 2018) (decision finding Fla. Stat.



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784.048 was crime of stalking barred by *res judicata* because same charge was dismissed in prior proceeding) (*Crossett*, Greer, Wendtland)

[Sai Sandeep Kurremula](#), A208 554 742 (BIA Aug. 10, 2017) (terminates proceedings where second NTA lodged same charge contained in first NTA) (*Cole*, Wendtland, Greer)

[Tyrone O. Shane Hill](#), A035 596 053 (BIA May 14, 2012) (upholds termination of proceedings where NTA was identical to charging document filed in case terminated by different IJ; stated that DHS was required to file motion to reopen if it believed proceedings were terminated erroneously) (Greer)—**KEY DECISION**

[Jesus Gaytan-Castro](#), A078 047 050 (BIA Dec. 29, 2011) (upholds termination of proceedings based on *res judicata* where respondent's eligibility for adjustment of status remained central underlying issue, even though DHS lodged different charge of removability) (Grant)—**KEY DECISION**

[Eloy Sanchez-Rubio](#), A077 405 856 (BIA June 20, 2011) (*res judicata* does not require termination of proceedings against respondent charged with deportability under INA 237(a) based on termination of prior proceedings involving charges of inadmissibility under INA 212(a)) (*Grant*, Malphrus, Mullane)

### Scope of Remand

[J-D-V-G-](#), AXXX XXX 895 (BIA March 11, 2020) (IJ mistakenly believed he could not consider new evidence on remand because Board's order was not qualified or limited) (*O'Connor*, Donovan, Noferi)

[A-Y-A-](#), AXXX XXX 252 (BIA Oct. 18, 2019) (holds that IJ erred in declining to consider issues other than CAT claim because prior Board decision did not contain language explicitly limiting scope of the remand) (*Kendall Clark*, Guendelsberger, Grant)

[Yan Zhen Hu](#), A042 729 871 (BIA Apr. 7, 2011) (remands for consideration of eligibility for 212(c) waiver despite prior abandonment of application where DHS did not object to prior remand order to consider such relief) (*Malphrus*, Creppy, Liebowitz)

[Epifanio Martinez Juarez](#), A095 194 852 (BIA Mar. 21, 2011) (IJ should have considered new evidence of hardship after Board reversed initial grant of cancellation because it did not retain jurisdiction or explicitly limit scope of remand) (*C. King*, Adkins-Blanch, Guendelsberger)

[E-M-E-](#), AXXX XXX 420 (BIA Jan. 31, 2012) (remands effective for all matters unless limited to specific purpose) (Liebowitz)

### Service

[Kiomasa Saimon](#), A205 286 425 (BIA Nov. 1, 2018) (remands for further consideration of respondent's removability because key document submitted by DHS was not accompanied by certificate of service as required under 8 C.F.R. 1003.32(a)) (*Mann*, Kelly, Geller)

[G-A-M-A-](#), AXXX XXX 034 (BIA March 9, 2017) (rescinds in absentia order because the NTA was served only on respondent who was under 14 years of age at time of service) (*Adkins-Blanch*, Kendall Clark, Greer)

[L-D-M-G-](#), A206 764 834 (BIA Aug. 31, 2016) (DHS did not properly serve NTA on mother with whom minor respondent was no longer living; remands to give DHS opportunity to perfect service) (*Greer*, Kendall-Clark, O'Herron)

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[B-N-G-M-](#), AXXX XXX 323 (BIA Dec. 9, 2015) (service of NTA on respondent's grandfather was not proper because respondent was under 14 years of age and did not reside with grandfather at the time of service) (*O'Herron*, Greer, Neal)

### Subpoenas

[Mohammad M. Qatanani](#), A076 133 969 (BIA May 13, 2014) (remands record where IJ did not sufficiently explain why the documents sought in subpoena were "essential" under 8 C.F.R. 1003.35(b)) (*Creppy*, Malphrus, Mullane)

### Stays of Removal

[P-A-S-S-](#), AXXX XXX 982 (BIA June 13, 2016) (remands record for further consideration of motion to reopen and orders previously issued stay of removal to remain in effect during pendency of proceedings before the IJ) (*Kendall-Clark*, Holiona, Guendelsberger)

[Maria Theresa Ganzon Domicillo](#), A029 688 986 (BIA July 18, 2011) (grants stay of removal where IJ did not meaningfully explain basis for denying the motion to reopen) (Guendelsberger)—**KEY DECISION**

### Termination of Proceedings

[Kao Nai Saechao](#), A071 439 989 (BIA July 8, 2019) (terminates proceedings as moot after respondent became U.S. citizen) (Guendelsberger)

[Gloria Reyes Martinez](#), A208 132 079 (BIA Dec. 17, 2018) (terminates proceedings in light of the death of the respondent) (Neal)

[Claudia L. Perdomo Cortez](#), A073 712 738 (BIA Aug. 16, 2018) (reopens and terminates proceedings sua sponte where respondent was granted LPR status under a different A-number and an NTA served on respondent under that A-number was never filed with the immigration court) (*Grant*, Kendall Clark, Guendelsberger)

[Anahit Melkonyan](#), A075 741 482 (BIA June 21, 2017) (reverses decision terminating proceedings against respondent subject to prior removal order because DHS may elect to initiate new round of proceedings as exercise of prosecutorial discretion) (*Mullane*, Creppy, Liebowitz)

[Douglas Crucey](#), A043 446 797 (BIA June 12, 2017) (terminates proceedings following death of respondent) (*Kendall Clark*, Greer, Kelly)

[Md All Rabby Toukir](#), A058 546 274 (BIA April 4, 2017) (upholds grant of DHS motion to dismiss NTA over respondent's objection in light of intervening change in law rendering continuation of proceedings no longer in government interest) (Cole)

[Leonardo Estabillo Guerro](#), A091 849 187 (BIA April 20, 2016) (terminates proceedings in light of death of respondent) (Kendall-Clark)

[Roberto Estrada-Pacheco](#), A071 608 938 (BIA Feb. 3, 2016) (grants DHS appeal and reverses decision terminating proceedings against respondent subject to prior removal order; states that DHS has unreviewable prosecutorial discretion to place respondent in removal proceedings who would otherwise be subject to reinstatement) (*Grant*, Guendelsberger, O'Leary)—**KEY DECISION**

[Lorenzo Sanchez Nino](#), A090 090 672 (BIA Dec. 18, 2015) (holds termination of proceedings required

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under Ninth Circuit decision finding DHS did not satisfy burden of proof) (Guendelsberger)

[Mauricio Jose Gomez-Argueta](#), A091 261 217 (BIA Aug. 18, 2015) (denies DHS request to terminate without prejudice in light of concession that respondent was not subject to the charge of deportability) (O'Herron)

[Joan Mwaniki](#), A200 224 423 (BIA May 29, 2014) (grants joint appeal of IJ decision to terminate proceedings without prejudice rather than grant joint request for administrative closure) (*Holmes*, Miller, Kendall-Clark)

[Ahmed Nadeem Malik](#), A092 006 532 (BIA Dec. 17, 2013) (vacates order terminating proceedings where respondent wished to challenge rescission of LPR status) (*Creppy*, Liebowitz, Mullane)

[Juan Espinoza-Torres](#), A200 978 484 (BIA Dec. 16, 2013) (grants DHS motion to reopen and terminate proceedings pursuant to 8 CFR 239.2(c) as exercise of prosecutorial discretion) (Kendall-Clark)

[Braulio Aladino Sinche-Vera](#), A097 957 323 (BIA Mar. 20, 2012) (upholds termination of proceedings because respondent did not receive actual or constructive notice of hearing; court could not have accepted any change of address form because NTA was not filed for fourteen months after it was served on respondent) (*Adkins-Blanch*, Guendelsberger, Manuel)

[Jose Luis Tapia-Fierro](#), A091 456 635 (BIA Mar. 19, 2012) (remands record for DHS to lodge charges of deportability after dismissal of charges of inadmissibility; states the DHS was not required to comply with requirements for motion to reopen because it requested remand on appeal if charges were dismissed) (Pauley)

[Ponniah Ramanan](#), A087 629 177 (BIA Feb. 9, 2012) (termination improper where respondent's departure from country did not divest court of jurisdiction over removal proceedings) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Estefania Torres-Bracamontes](#), A098 523 028 (BIA July 7, 2011) (proceedings terminated where respondent submitted certificate of citizenship that had not been revoked by the government) (*Grant*, Creppy, Liebowitz)

[Cirilo Aaron Covarrubias-Teposte](#), A078 469 158 (BIA May 13, 2011) (proceedings terminated upon finding decision in *Covarrubias Teposte v. Holder*, 632 F.3d 1049 (9th Cir. 2011), did not intend to remand case for consideration of whether conviction was aggravated felony under modified categorical approach) (Holmes)

[Sreedhar Rao Padma Sri](#), A099 046 696 (BIA Apr. 25, 2011) (proceedings terminated where respondent did not receive notice of hearing at which he was removed in absentia, lawful status had expired, and had already been removed from the country) (Holmes)

[Ismail Ibrahim Abdelfattah Mohammad Khalil](#), A097 659 194 (BIA Mar. 16, 2011) (proceedings terminated due to failure of USCIS to adjudicate visa petition filed by respondent's U.S. citizen spouse in 2003 despite issuance of writ of mandamus by U.S. District Court in 2007) (*Grant*, Malphrus, Miller)—**KEY DECISION**

[Juan Pablo Villafana-Ramos](#), A070 734 138 (BIA Mar. 15, 2011) (remands record to "allow the government an opportunity to review new evidence relating to the respondent's death and to determine whether proceedings should be terminated") (Grant)

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[Estelito Jr. Carpio Adiova](#), A047 899 129 (BIA Feb. 24, 2011) (Ninth Circuit terminated proceedings pursuant to decision in *Castillo-Cruz*, 581 F.3d 1154 (9th Cir. 2009), and explicitly declined to remand case to Board) (Holmes)

[Abril Carrera-Luciano](#), A088 749 575 (BIA Jan. 20, 2011) (proceedings terminated where respondent charged with being present without admission or parole voluntarily left country during course of proceedings and no evidence was presented demonstrating an intent to circumvent the process) (C. King) (Note: This decision may no longer be valid under *Matter of Sanchez-Herbert*, 26 I&N Dec. 43 (BIA 2012))

[Claudine Andeena Ramdon](#), A045 878 319 (BIA Jan. 11, 2011) (proceedings terminated where IJ excused respondent from appearing in person and respondent left the country and relinquished LPR status) (*C. King*, Adkins-Blanch, J. King)

### Visa Waiver Program (VWP)

[Luca Utzeri](#), A087 211 857 (BIA July 16, 2014) (DHS did not satisfy burden of showing respondent was admitted under Visa Waiver Program where respondent did not concede admission under the VWP and DHS did not submit direct evidence of such) (*Greer*, Pauley, Cole (dissenting))—**KEY DECISION**

### Withdrawal of Attorney Concession

[G-C-R-](#), AXXX XXX 305 (BIA July 23, 2020) (relieves respondent of prior attorney's concession that he was convicted of a particularly serious crime based on three DUI convictions) (*Cassidy*, Kelly, Pepper)

[N-T-L-](#), AXXX XXX 425 (BIA June 30, 2020) (permits respondent to withdraw concession of removability for aggravated felony theft offense where record did not contain evidence that sentence exceeded one year) (*Wilson*, Goodwin, Swanwick)

[G-V-G-M-](#), AXXX XXX 366 (BIA July 10, 2019) (reverses finding that respondent withdrew asylum application with prejudice where attorney said he misspoke only six minutes after agreeing to withdrawal) (*Morris*, Liebmann, Mullane)

[Leonel Valdez Garcia](#), A208 932 090 (BIA Feb. 15, 2017) (respondent not bound by his prior attorney's concession of charge of removability in light of evidence submitted on appeal demonstrating that conviction related to respondent's brother) (*Mann*, Grant, Adkins-Blanch)

[Fernando Cardeas Cazares](#), A014 273 381 (BIA Jan. 27, 2017) (respondent not bound by attorney's concession of removability where statute was no longer divisible under intervening case law) (*Guendelsberger*, Cole, Liebowitz)—**KEY DECISION**

[Jorge Israel Herrera Lopez](#), A091 389 123 (BIA Apr. 15, 2015) (permits withdrawal of concession that respondent was present without having been admitted or paroled because concession was factually erroneous and not made for tactical benefit) (*Pauley*, Cole, Greer)—**KEY DECISION**

## IX. BOND

### Arriving Aliens

[A-R-S-](#), AXXX XXX 161 (BIA June 25, 2020) (remands for further consideration of whether respondent was correctly classified as an “arriving alien”) (*Malphrus*, Creppy, Hunsucker)

[L-E-V-H-](#), AXXX XXX 504 (BIA Dec. 21, 2018) (vacates finding that respondent was an arriving alien where NTA alleged that he entered at unknown location and charged that he was present without being admitted or paroled) (*Geller*, Kelly, Snow)

[A-M-Y-](#), AXXX XXX 169 (BIA Feb. 2, 2018) (reverses determination that IJ lacked jurisdiction based on designation as arriving alien by DHS where respondent had in fact been apprehended after attempting to enter the country illegally) (*Adkins-Blanch*, Grant, Malphrus)

### Bond Proceedings Distinct From Removal Proceedings

[H-M-](#), AXXX XXX 816 (BIA Feb. 24, 2020) (remands for further proceedings because bond memorandum was based on consideration of events that transpired in removal proceedings following the bond hearing) (*Liebowitz*, Creppy, Hunsucker)

[E-A-A-M-](#), AXXX XXX 461 (BIA May 10, 2018) (IJs not prohibited from copying evidence from record in bond proceedings and placing it in record in removal proceedings) (*Pauley*, Adkins-Blanch, Snow)

[Cevada Azizyan](#), A044 428 950 (BIA May 13, 2016) (remands for further consideration of whether respondent was present pursuant to prior admission in light of discrepancy in respondent’s testimony between bond and removal proceedings regarding manner of entry) (*Geller*)

[Alberto Deleon-Suhul](#), A206 133 325 (BIA Sept. 23, 2014) (remands record because IJ provided numerous required advisals during bond proceedings rather than removal proceedings) (*Cole*)

### Burden of Proof

[M-T-G-](#), AXXX XXX 648 (BIA July 31, 2017) (IJ erred under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015), by placing burden of proof on respondent rather than DHS) (*Grant*)

### Conditions of Release

[H-S-](#), AXXX XXX 365 (BIA Dec. 20, 2018) (removes requirement that respondent present passport as a condition of release given testimony that he gave his passport to smugglers and submission of alternative identity documents) (*Snow*, Geller, Kelly)

[G-S-](#), AXXX XXX 503 (BIA Dec. 12, 2018) (removes requirement that respondent present his passport as a condition of release given testimony that his passport was stolen and he could not obtain a new one while in detention) (*Snow*, Geller, Mann)

[S-S-](#), AXXX XXX 779 (BIA Oct. 18, 2018) (vacates condition that respondent present original passport to DHS prior to being released from custody) (*Snow*, Kelly, Geller)

[S-S-](#), AXXX XXX 871 (BIA July 31, 2018) (vacates requirement that respondent present his original passport in order to be released on bond) (*Snow*, Kelly, Adkins-Blanch)

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[G-S-](#), AXXX XXX 202 (BIA July 27, 2018) (vacates requirement that respondent present his original passport in order to be released on bond) (*Kelly, Snow, Adkins-Blanch*)

[M-S-](#), AXXX XXX 440 (BIA June 20, 2018) (IJ erred in requiring respondent to present original copy of passport as condition of release) (*Kelly, Pauley, Snow*)

[S-S-](#), AXXX XXX 612 (BIA Feb. 26, 2018) (reverses decision denying request to reinstate bond where worksheet accompanying original bond motion stated that respondent would move to California if release from custody) (*Pauley, Snow, Adkins-Blanch*)

[S-S-](#), AXXX XXX 008 (BIA Sept. 15, 2017) (respondent did not breach bond conditions by moving out of state where IJ decision did not say that respondent had to reside indefinitely at existing address) (*Greer, Kelly, Mullane* (dissenting))

### **Jurisdiction**

[Armando Cerda Reyes](#), A029 923 675 (BIA Oct. 7, 2014) (transfer of respondent did not divest IJ of jurisdiction to consider pending bond motion) (*Adkins-Blanch, Guendelsberger, Hoffman*)—**KEY DECISION** (Note: the Board subsequently published this decision in *Matter of Cerda Reyes*, 26 I&N Dec. 528 (BIA 2015))

### **Discretionary Detention—INA 236(a)**

#### **Alternatives to Detention**

[M-S-D-](#), AXXX XXX 451 (BIA Jan. 28, 2020) (upholds finding that respondent was a flight risk but remands for further consideration of practicability of alternatives to detention) (Goodwin)

[M-A-H-](#), AXXX XXX 083 (BIA Sept. 19, 2019) (remands for further consideration of bond request because IJ failed to consider alternatives to detention) (Rosen)

#### **Amount of Bond/Ability to Pay**

[M-H-L-](#), AXXX XXX 145 (BIA March 19, 2019) (remands for further consideration of bond request because IJ failed to consider respondent's financial circumstances before imposing \$80,000 bond) (*Adkins-Blanch*)

[C-R-C-](#), AXXX XXX 675 (BIA March 20, 2018) (reduces bond from \$30,000 to \$10,000 where respondent had no criminal history or negative immigration history other than initial illegal entry) (*Kelly, Pauley, Snow* (dissenting))

[R-R-V-](#), AXXX XXX 708 (BIA Jan. 12, 2018) (lowers bond from \$25,000 to \$10,000 where respondent lived in the United States for more than 14 years and was potentially eligible for non-LPR cancellation of removal) (*Adkins-Blanch, Grant, Malphrus* (dissenting))

[M-D-I-B-](#), AXXX XXX 847 (BIA Dec. 29, 2017) (remands for further consideration of \$15,000 bond because IJ did not considering respondent's ability to pay) (Greer)

[J-D-C-](#), AXXX XXX 963 (BIA Nov. 13, 2017) (remands for further consideration of whether \$15,000 bond was required to ensure respondent's future appearance because IJ did not expressly consider the respondent's financial ability to pay the bond) (Malphrus)

[M-R-R-A-](#), AXXX XXX 050 (BIA Oct. 11, 2017) (reduces amount of bond from \$50,000 to \$25,000)



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(*Adkins-Blanch*, Greer, Grant)

[M-R-G-C-](#), AXXX XXX 102 (BIA Aug. 31, 2017) (reduces bond from \$8,500 to \$3,000 for respondent granted hearing under *Franco-Gonzalez v. Holder*) (*Greer*, Kelly, Neal)

[Marcelino Simbron-Sanchez](#), A201 029 423 (BIA Apr. 21, 2011) (reduces bond from \$20,000 to \$5,000 where respondent resided in the United States for 18 years, had two U.S. citizen children, and was eligible to apply for voluntary departure and non-LPR cancellation of removal) (*Guendelsberger*, Adkins-Blanch, C. King)

[Carlos Antonio Taracena-Herrera](#), A092 446 911 (BIA Feb. 28, 2011) (upholds grant of \$4,000 bond to respondent who did not pose threat to national security, danger to the community, or a flight risk) (Filppu)

[Miguel Barron-Villeda](#), A093 342 975 (BIA Feb. 18, 2011) (remands for reconsideration of motion to lower \$7,500 bond where IJ erroneously concluded that respondent with pending U visa application was eligible for no forms of relief and did not consider letters of support from family members living lawfully in the country) (*Pauley*, Cole, Greer)

[Eddy Bismark Nunez-Garrido](#), A099 115 048 (BIA Feb. 3, 2011) (upholds grant of \$50,000 bond in light of significant passage of time since respondent's foreign murder conviction, evidence suggesting the shooting was accidental, and respondent's extensive family ties and eligibility for relief from removal) (*Guendelsberger*)

### **Danger to the Community**

[M-D-M-](#), AXXX XXX 797 (BIA Aug. 24, 2020) (dismisses DHS appeal alleging that respondent was a danger to the community based on arrest prior to initial of removal proceedings in light of nearly 20-year residence in the United States and evidence of rehabilitation) (Riley)

[F-J-G-V-](#), AXXX XXX 679 (BIA Aug. 6, 2020) (dismisses DHS appeal asserting that respondent was danger to the community based on single DUI arrest) (Gorman)

[M-E-G-](#), AXXX XXX 869 (BIA May 27, 2020) (remands for IJ to reconsider whether DHS established that respondent was a danger to the community in light of class membership in *Brito v. Barr*, 415 F. Supp. 3d 258 (D. Mass. 2019)) (*Morris*, Creppy, Liebowitz)

[M-R-](#), AXXX XXX 598 (BIA April 28, 2020) (vacates finding that respondent was a danger to the community where IJ only cited statements of DHS counsel to support apparent link with terrorist organization) (*Mann*, Mullane Grant)

[F-P-E-G-](#), AXXX XXX 448 (BIA Feb. 24, 2020) (reverses finding that respondent was a danger to the community where IJ relied on police report uncorroborated by other evidence and disregarded supplemental case report stating that another individual had been arrested for the offense) (*Greer*, Wendtland, Donovan)

[C-A-B-](#), AXXX XXX 164 (BIA Feb. 5, 2020) (dismisses DHS appeal contending that alleged drug trafficker was a danger to the community where federal government dismissed criminal charges four days after his arrest and allegations in Form 1-213 were conclusory and unsupported by other evidence in the record) (Goodwin)

[O-B-M-](#), AXXX XXX 277 (BIA Jan. 21, 2020) (reverses finding that respondent was a danger to the community based on single arrest for DUI, speeding, and driving without a valid driver's license)

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(*Kelly*, *Liebmann*, *Rosen*)

[J-B-P-](#), AXXX XXX 884 (BIA Jan. 21, 2020) (dismisses DHS appeal asserting that respondent was a danger to the community based on single arrest for operating a vehicle under the influence of alcohol or drugs) (*Mullane*)

[L-Y-V-A-](#), AXXX XXX 531 (BIA Jan. 2, 2020) (reverses finding that respondent was a danger to the community based on his arrest for child endangerment and neglect where the charges were subsequently dismissed and DHS itself initially agreed to release respondent upon the posting of a \$13,000 bond) (*Mann*, *Kelly*, *Mullane* (dissenting))

[L-D-P-B-](#), AXXX XXX 089 (BIA Nov. 27, 2019) (reverses finding that respondent was a danger to the community based on arrest for sexual misconduct for which he was released without charge and which was based on allegations made ten years before he was taken into immigration custody) (*Cole*, *Wilson*, *Greer*)

[M-M-L-](#), AXXX XXX 084 (BIA Nov. 21, 2019) (dismisses DHS appeal asserting that respondent was danger to the community based on single arrest for DUI) (*Kelly*)

[A-E-A-](#), AXXX XXX 093 (BIA Nov. 21, 2019) (reverses finding that respondent was danger to the community based on arrest for DUI given lack of other criminal record and fact that incident did not result in damage to persons or property) (*Liebmann*)

[J-B-A-T-](#), AXXX XXX 828 (BIA Nov. 18, 2019) (remands record because IJ did not meaningfully explain why driving with a suspended license made the respondent a danger to the community) (*Kendall Clark*)

[L-D-M-L-](#), AXXX XXX 093 (BIA Nov. 12, 2019) (reverses finding that respondent was danger to the community based on single DUI in which his blood alcohol content was only .09) (*Kelly*, *Liebmann*, *Couch*)

[E-G-M-](#), AXXX XXX 287 (BIA Oct. 29, 2019) (dismisses DHS appeal asserting that respondent was danger the community in light of letters from local prosecutor and homicide detective stating that respondent would not endanger anyone and his release from custody would help convict suspect changed in brother's homicide) (*Wilson*, *Wendtland*, *Cassidy*)

[J-L-C-G-](#), AXXX XXX 031 (BIA Oct. 25, 2019) (reverses finding that respondent was a danger to the community based on single pending DUI charge) (*Mann*, *Kelly*, *Mullane* (dissenting))

[M-D-B-](#), AXXX XXX 796 (BIA Sept. 19, 2019) (denies DHS appeal asserting that respondent was danger to the community based on 2008 conviction for DUI, four subsequent convictions for driving without a license, and 2018 arrest for DUI resulting in an accident) (*Mullane*, *Kelly*, *Liebmann*)

[T-A-G-](#), AXXX XXX 364 (BIA July 24, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community where IJ relied on victim's testimony that respondent was arrested based on lies she told to police) (*Grant*)

[J-C-A-C-](#), AXXX XXX 660 (BIA July 2, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community based on DUI conviction in which his blood alcohol level was .178) (*Liebmann*)

[H-A-V-H-](#), AXXX XXX 930 (BIA June 25, 2019) (dismisses DHS appeal asserting that respondent was danger to the community based on DUI conviction where he was only sentenced to probation

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and has no other criminal record) (*Kelly*, Liebmann, Morris)

[J-M-G-A-](#), AXXX XXX 305 (BIA June 21, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community based on arrest for DUI and tattoos potentially evidencing gang membership) (*Mann*, Morris, Mullane)

[M-A-R-M-](#), AXXX XXX 364 (BIA May 30, 2019) (reverses finding that respondent was a danger to the community based on single DUI conviction that did not result in injury or property damage) (*Mann*, Kelly, Morris)

[R-T-M-](#), AXXX XXX 273 (BIA May 17, 2019) (reverses finding that respondent was a danger to the community based on four convictions for driving without a license between 2014 and 2018) (*Mann*, Liebman, Morris)

[P-N-M-L-](#), AXXX XXX 785 (BIA May 6, 2019) (upholds finding that respondent was not a danger to the community where the Form I-213 claiming that respondent was involved in alien smuggling contained information contradicting the account of his accuser and no criminal charges were ever filed) (*Mann*)

[G-C-S-](#), AXXX XXX 032 (BIA April 30, 2019) (reverses finding that respondent was a danger to the community based on single arrest for DUI that did not result in injury to person or damage to property) (*Wendtland*, Cole, Greer)

[R-A-A-C-](#), AXXX XXX 006 (BIA April 24, 2019) (reverses finding that respondent was danger to the community based on single traffic incident involving unlicensed vehicle operation, a speeding ticket, and simple possession of marijuana) (*Kelly*, Adkins-Blanch, Mann)

[E-D-D-](#), AXXX XXX 979 (BIA April 12, 2019) (reverses finding that respondent was danger to the community based on apparent use of gang signs in photograph where record contained no evidence that group was associated with violence or criminal behavior) (*Greer*, Cole, Donovan)

[B-C-](#), AXXX XXX 002 (BIA April 12, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community where none of his arrests resulted in convictions) (*Kelly*)

[L-C-R-](#), AXXX XXX 742 (BIA April 9, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community based on single arrest for driving more than twenty miles per hour over the speed limit while under the influence) (*Kelly*)

[J-Z-D-](#), AXXX XXX 562 (BIA April 9, 2019) (reverses finding that respondent was danger to the community based on two convictions and one charge for driving without a license) (*Kelly*, Adkins-Blanch, Liebmann)

[G-R-G-](#), AXXX XXX 889 (BIA March 28, 2019) (reverses finding that respondent was a danger to the community where his only serious conviction was for making an alcoholic beverage available to a person under the legal age) (*Mann*, Adkins-Blanch, Kelly)

[A-A-D-Z-](#), AXXX XXX 819 (BIA March 19, 2019) (reverses decision finding respondent a danger to the community given that DUI conviction was only criminal history in United States and did not result in injury or property damage) (*Mann*, Kelly, Adkins-Blanch)

[L-R-S-](#), AXXX XXX 190 (BIA March 18, 2019) (dismisses DHS appeal asserting that respondent was a danger to the community where DUI conviction did not result in injury or property damage and was sole offense in prior 20 years) (*Mann*)

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[E-S-L-F-](#), AXXX XXX 493 (BIA March 14, 2019) (dismisses DHS appeal asserting that respondent was danger to the community where criminal offenses from 2002 were prosecuted as youthful offenses and more recent charges were dismissed and likely the result of false accusations) (Cole)

[F-P-E-G-](#), AXXX XXX 448 (BIA March 7, 2019) (reverses finding that respondent was a danger to the community where criminal record included arrests for disorderly conduct in 2009 and a conviction for theft by shoplifting in 2016) (*Kelly*, Adkins-Blanch, Mann)

[C-C-C-](#), AXXX XXX 219 (BIA March 1, 2019) (dismisses DHS appeal and finds respondent not a danger to the community where DUI arrest did not result in accident and strangulation charge was downgraded to simple assault) (Cole)

[E-I-O-H-](#), AXXX XXX 527 (BIA Feb. 28, 2019) (reverses finding that respondent was a danger to the community based on arrest for financial crime in Azerbaijan given that he was in poor health and asylum application was based on claim that prosecution was politically motivated) (*Mann*, Kelly, Adkins-Blanch)

[P-C-A-](#), AXXX XXX 143 (BIA Feb. 5, 2019) (respondent not a danger to the community based on DUI conviction in June 2018 given lack of aggravating factors or other criminal history) (*Kelly*, Adkins-Blanch, Mann)

[K-D-D-E-](#), AXXX XXX 534 (BIA Jan. 17, 2019) (whether a respondent is a danger to the community is a legal determination subject to de novo review) (*Greer*, Wendtland, Kendall Clark)

[K-D-D-E-](#), AXXX XXX 534 (BIA Jan. 17, 2019) (whether a respondent is a danger to the community is a legal determination subject to de novo review) (*Greer*, Wendtland, Kendall Clark)

[V-C-V-](#), AXXX XXX 783 (BIA Jan. 15, 2019) (respondent not a danger to the community based on single DUI conviction for which he was sentenced to probation and that did not result in injury or property damage) (*Geller*, Kelly, Mann)

[H-H-R-](#), AXXX XXX 822 (BIA Jan. 15, 2019) (respondent not a danger to the community based on single conviction for DUI and four convictions for driving without a license) (*Geller*, Mann, Neal (dissenting))

[J-O-T-D-](#), AXXX XXX 333 (BIA Jan. 9, 2019) (reverses finding that respondent would be a danger to the community in light of his attending a substance abuse program prior to being placed in detention and the willingness of his employer to drive respondent to and from work) (*Adkins-Blanch*, Geller, Mann (dissenting))

[M-B-M-](#), AXXX XXX 687 (BIA Jan. 4, 2019) (dismisses DHS appeal asserting that respondent would be a danger to the community where DUI offense was sole criminal conviction in the United States and he was potentially eligible for relief from removal) (Snow)

[N-A-G-H-](#), AXXX XXX 960 (BIA Jan. 4, 2019) (reverses finding that respondent would be a danger to the community based on conviction for misprision of a felony where the underlying offense related to drug-trafficking) (*Kelly*, Adkins-Blanch, Snow (dissenting))

[V-H-A-R-](#), AXXX XXX 637 (BIA Dec. 28, 2018) (vacates finding that respondent would be a danger to the community based on prior convictions and pending criminal charges of which no evidence appeared in the record) (*Greer*, Adkins-Blanch, Morris)

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[H-R-E-](#), AXXX XXX 938 (BIA Dec. 21, 2018) (dismisses DHS appeal asserting respondent would be danger to the community where the Form I-213 contained indicia of unreliability and evidence alleging respondent was a gang member was untimely submitted and untranslated) (Wendtland)

[J-A-G-](#), AXXX XXX 146 (BIA Dec. 17, 2018) (reverses finding that respondent would be a danger to the community where IJ relied on Facebook photographs of respondent wearing clothing allegedly worn by gang members and an untested cooperating source) (*Geller*, Snow, Adkins-Blanch)

[J-R-H-R-](#), AXXX XXX 324 (BIA Dec. 10, 2018) (reverses finding that respondent would be a danger to the community based on arrest for DUI where the respondent denied guilt and there was no evidence the incident involved injury to a person or damage to property) (*Snow*, Kelly, Geller (dissenting))

[K-V-T-M-](#), AXXX XXX 104 (BIA Dec. 7, 2018) (dismisses DHS appeal asserting that respondent would be a danger to the community upon finding the IJ did not clearly err in finding him to be a member of the class covered by *Saravia v. Sessions*, 280 F. Supp. 3d 1168 (N.D. Cal. 2017), which requires DHS to demonstrate probable cause before rearresting an unaccompanied minor based on an alleged gang affiliation) (O'Connor)

[I-Y-](#), AXXX XXX 129 (BIA Nov. 29, 2018) (denies DHS appeal asserting that respondent was a danger to the community based on two dismissed domestic assault charges and omissions relating to his military experience in his visa application) (Cole)

[O-B-N-](#), AXXX XXX 401 (BIA Nov. 26, 2018) (denies DHS appeal asserting respondent was a danger to the community based on conviction for DUI with child passenger in light of testimony that incident occurred after he attended a family reunion with his family, had no prior criminal record, was pulled over for a non-functioning license plate light, and had a blood alcohol concentration of .089) (Snow)

[J-M-G-F-](#), AXX XXX 696 (BIA Nov. 23, 2018) (reverses finding that respondent was a danger to the community based on single arrest for DUI) (*Kelly*, Geller, Adkins-Blanch)

[E-E-R-M-](#), AXXX XXX 560 (BIA Nov. 13, 2018) (reverses finding that respondent was a danger to the community based on arrest for possession/use of cocaine in light of plan to stay away from friends who were a bad influence on him and complete high school at a different school) (*Geller*, Adkins-Blanch, Snow)

[E-P-F-](#), AXXX XXX 961 (BIA Oct. 31, 2018) (dismisses DHS appeal asserting that respondent was a danger to the community based on conviction for sexual abuse of a minor where he was unaware of the victim's age until he overheard patrol officers say she was 16 years old) (*Kelly*, Snow, Adkins-Blanch)

[N-P-N-](#), AXXX XXX 692 (BIA Oct. 29, 2018) (dismisses DHS appeal asserting that respondent was a danger to the community where DUI offense was respondent's only such conviction in nine years and incident did not result in injury or property damage) (Mann)

[I-R-A-](#), AXXX XXX 111 (BIA Oct. 19, 2018) (denies DHS appeal asserting that respondent was danger to the community where DUI conviction was respondent's sole offense since he arrived in 2001 and the incident did not result in injury or property damage) (Snow)

[S-S-S-S-](#), AXXX XXX 831 (BIA Oct. 11, 2018) (DHS failed to establish that respondent was a danger to the community based on his knowingly presenting a cancelled visa at the border and where record did not support DHS' assertions that respondent was not forthright about encounters with U.S. troops in Iraq) (*Adkins-Blanch*, Malphrus, Mullane)



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[A-D-J-](#), AXXX XXX 192 (BIA Oct. 9, 2018) (denies DHS appeal asserting that respondent was danger to the community where domestic assault charge was dismissed) (*Mann*, Adkins-Blanch, Snow)

[M-R-V-](#), AXXX XXX 398 (BIA Oct. 1, 2018) (reverses finding that respondent was a danger to the community where the state dismissed charges following his first arrest for DUI, it was unclear whether charges were filed following his more recent arrest, and neither instance resulted in injury or property damage) (*Adkins-Blanch*, Snow, Mann)

[J-A-H-R-](#), AXXX XXX 293 (BIA Sept. 26, 2018) (denies DHS appeal asserting that respondent was danger to the community based on DUI conviction where it was his only such offense and it did not result in injury or property damage) (Snow)

[J-Z-R-](#), AXXX XXX 406 (BIA Sept. 14, 2018) (reverses finding that respondent was a danger to the community given that no charges were filed following arrests for possession and discharge of a firearm and that he had no other arrests) (*Adkins-Blanch*, Kelly, Snow)

[A-B-S-](#), AXXX XXX 896 (BIA Sept. 4, 2018) (denies DHS appeal asserting that respondent was danger to the community based on DUI conviction where it was his first offense, it did not result in an accident, and he understood the gravity of the offense) (Mann)

[J-P-C-](#), AXXX XXX 749 (BIA Aug. 30, 2018) (denies DHS appeal asserting that respondent was danger to the community based on pending DUI charge where respondent had resided in U.S. for 17 years and never previously been arrested for DUI) (Snow)

[O-M-G-](#), AXXX XXX 755 (BIA Aug. 29, 2019) (denies DHS appeal asserting that respondent was danger to the community based on DUI conviction where it was his only criminal conviction in the United States and the incident did not involve injury to person or property) (Snow)

[A-S-R-](#), AXXX XXX 001 (BIA Aug. 22, 2018) (respondent not danger to the community based on DUI where it was his first offense, he was not involved in an accident, and he acknowledged the seriousness of the offense) (Kelly)

[E-A-G-R-](#), AXXX XXX 809 (BIA Aug. 16, 2018) (denies DHS appeal asserting that respondent was danger to the community based on arrest for DUI where he had no other criminal history and pleaded guilty to public intoxication and reckless driving) (Snow)

[C-E-M-N-](#), AXXX XXX 716 (BIA Aug. 14, 2018) (finds respondent not a danger to the community based solely on arrest for driving 97 miles per hour where speed limit was 70 miles per hour) (*Mann*, Snow, Adkins-Blanch)

[J-M-C-D-](#), AXXX XXX 374 (BIA Aug. 1, 2018) (reverses finding that respondent was a danger to the community where his DUI conviction was his only offense in the United States, he complied with the terms of probation, three years passed since the offense, and it did not result in injury or property damage) (*Mann*, Adkins-Blanch, Kelly)

[A-T-E-](#), AXXX XXX 315 (BIA July 27, 2018) (reverses IJ determination that respondent would be danger to the community where respondent's DUI conviction was his only conviction in the United States, it did not involve injury or damage to property, and he was sentenced only to probation) (*Adkins-Blanch*, Kelly, Mann)

[G-D-](#), AXXX XXX 055 (BIA July 24, 2018) (denies DHS appeal asserting that respondent was danger to the community where he had lived in the United States since 2006 and sole criminal charges filed



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against him were dismissed) (Grant)

[H-H](#), AXXX XXX 416 (BIA June 28, 2018) (denies DHS appeal arguing that respondent is danger to the community based on DUI conviction in 2016 where he was only sentenced to probation, no longer drinks, and travels only by taxi) (Pauley)

[L-E-S-G](#), AXXX XXX 551 (BIA June 28, 2018) (denies DHS appeal arguing that respondent is danger to the community based on single DUI conviction in ten years in the United States) (Kelly)

[E-M-C](#), AXXX XXX 892 (BIA June 22, 2018) (denies DHS appeal arguing that respondent is danger to the community where he was not convicted of driving under the influence, was not involved in behavior that involved injury to a person or damage to property, and committed to a specific treatment program) (Kelly)

[R-S-C](#), AXXX XXX 650 (BIA June 13, 2018) (denies DHS appeal asserting that respondent was danger to the community based on single arrest for DUI in 12 years in United States) (Snow)

[J-L-F](#), AXXX XXX 364 (BIA June 7, 2018) (denies DHS appeal asserting that respondent was danger to the community based on single DUI charge for which he had not been convicted) (Cole)

[J-J-G-P](#), AXXX XXX 823 (BIA June 6, 2018) (denies DHS appeal asserting that respondent was danger to the community based on 2005 conviction for contributing to the delinquency of a minor and 2018 arrest for aiding and abetting driving under the influence) (*Snow*, Adkins-Blanch, Pauley (dissenting))

[L-D-S](#), AXXX XXX 104 (BIA June 6, 2018) (denies DHS appeal asserting that respondent was danger to the community based on single conviction for reckless driving) (Kelly)

[J-S-R](#), AXXX XXX 568 (BIA May 25, 2018) (denies DHS appeal asserting that respondent was danger to the community where she successfully passed 28 drug and alcohol tests over two-year period and completed nearly 100 hours of therapy sessions after second DUI conviction) (Cole)

[P-B-R](#), AXXX XXX 303 (BIA May 16, 2018) (denies DHS appeal asserting that respondent was danger to the community based on DUI conviction where it was his only conviction in 32 years in the United States and did not involve injury to persons or damage to property) (Snow)

[M-O-A-M](#), AXXX XXX 469 (BIA May 9, 2018) (upholds grant of bond to respondent who was convicted of DUI in 2015 and 2017 where second offense occurred shortly after respondent's home was destroyed in a fire and he had not consumed alcohol since) (*Kelly*, Adkins-Blanch, Snow)

[S-H-H](#), AXXX XXX 293 (BIA April 27, 2018) (respondent not a danger to the community where DUI conviction was only offense in fifteen years, he was not sentenced to any period of incarceration, and incident did not cause injury or property damage) (*Adkins-Blanch*, Kelly, Snow)

[H-M-H](#), AXXX XXX 406 (BIA April 10, 2018) (orders further consideration of dangerousness where pending DWI charge pending at time of IJ decision was later dismissed) (Snow)

[M-H](#), AXXX XXX 564 (BIA March 16, 2018) (upholds finding that respondent is not a danger to the community where he was accepted into pre-trial diversion program and mother of minor victim submitted letter supporting request for bond) (*Mann*, Adkins-Blanch, Kelly)

[C-A-L-V](#), AXXX XXX 848 (BIA Feb. 15, 2018) (reverses determination that respondent was a danger to the community where he had not subsequently been arrested or charged with any offense following

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2002 convictions for harassing and making terroristic threats against ex-wife) (*Snow*, Kelly, Adkins-Blanch)

[M-D-](#), AXXX XXX 982 (BIA Feb. 8, 2018) (reverses determination that respondent was a danger to the community where sole convictions all stemmed from single incident occurring more than 11 years prior) (*Grant*, Adkins-Blanch, Malphrus (dissenting))

[O-A-O-G-](#), AXXX XXX 382 (BIA Feb. 2, 2018) (upholds determination that respondent was not a danger to the community where his arrest for driving under the influence did not result in conviction and there was no indication that El Salvador had made any attempt to extradite him for outstanding warrant) (Pauley)

[A-B-L-](#), AXXX XXX 554 (BIA Jan. 23, 2018) (reverses determination that respondent would pose danger to property based on fact that large quantity of stolen retail merchandise was seized by police at respondent's home; notes that respondent was not charged with any crime and says little weight should be accorded to conduct described in police documents that is neither prosecuted criminally nor independently corroborated) (*Pauley*, Cole, Greer)

[B-M-Z-](#), AXXX XXX 168 (BIA Jan. 18, 2018) (reverses determination that respondent was danger to the community where respondent's arrest for driving under the influence took place in 2015, he was driving alone and did not cause an accident, and he had no alcohol-related problems) (*Grant*, Adkins-Blanch, Malphrus (dissenting))

[F-F-D-A-](#), AXXX XXX 959 (BIA Jan. 10, 2018) (upholds determination that respondent was not a danger to the community where respondent was never incarcerated as a result of arrest and conviction for engaging in sexual acts with 14 year old) (Liebowitz)

[A-O-S-](#), AXXX XXX 332 (BIA Jan. 10, 2018) (vacates prior decision finding respondent danger to the community in light of submission of presentence report with motion to reopen) (Malphrus)

[J-L-C-H-](#), AXXX XXX 540 (BIA Jan. 5, 2018) (reverses determination that respondent was danger to the community based solely on recent DUI conviction that was sole encounter with law enforcement in 27 years in United States) (*Adkins-Blanch*, Greer, Mullane (dissenting))

[J-O-N-G-](#), AXXX XXX 305 (BIA Dec. 26, 2017) (reverses determination that respondent was a danger to the community based on arrest for reckless driving for which authorities declined to pursue charges) (*Greer*, Kendall Clark, Neal)

[J-G-H-S-](#), AXXX XXX 834 (BIA Dec. 20, 2017) (denies DHS appeal challenging grant of bond to respondent convicted of driving under the influence in 2016) (*Adkins-Blanch*, Mullane, Malphrus)

[C-G-C-](#), AXXX XXX 735 (BIA Dec. 8, 2017) (reverses determination that respondent was danger to the community where last criminal conviction occurred in 1991) (*Malphrus*, Mullane, Adkins-Blanch)

[K-N-A-Z-](#), AXXX XXX 412 (BIA Nov. 22, 2017) (reverses determination that respondent was danger to the community based upon single conviction for food stamp fraud) (*Greer*, Malphrus, Mullane)

[N-Y-T-H-](#), AXXX XXX 854 (BIA Oct. 19, 2017) (reverses finding that respondent was danger to the community based on multiple citations for driving without a license) (*Mullane*, Adkins-Blanch, Grant)

[J-W-](#), AXXX XXX 281 (BIA Oct. 13, 2017) (reverses finding that respondent was danger to the community based on single disorderly conduct conviction resulting from prostitution charge) (*Grant*,

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Adkins-Blanch, Malphrus (dissenting))

[F-N-A-Z-](#), AXXX XXX 416 (BIA Oct. 6, 2017) (reverses finding that respondent with single conviction for food stamp fraud was a danger to the community) (*Grant*, Greer, Adkins-Blanch)

[J-D-L-L-J-](#), AXXX XXX 318 (BIA Sept. 28, 2017) (reverses determination that respondent was danger to the community for having numerous convictions for driving without a license where none of the incidents involved any aggravating circumstances) (*Grant*, Greer, Adkins-Blanch)—**KEY DECISION**

[G-P-](#), AXXX XXX 001 (BIA Sept. 25, 2017) (DHS failed to establish respondent was danger to the community where he had not been arrested since 2010, none of crimes from previous decade were violent, and he had health problems limiting his mobility) (*Adkins-Blanch*, Greer, Mullane)

[E-S-](#), AXXX XXX 170 (BIA Aug. 17, 2017) (three arrests for driving without a license did not make respondent a danger to the community) (*Greer*, Neal, Adkins-Blanch)—**KEY DECISION**

[E-C-](#), AXXX XXX 516 (BIA April 20, 2017) (upholds IJ determination that respondent with two recent DUI convictions was not danger to the community in light of participation in alcohol rehabilitation program in detention and enrollment in residential treatment program upon release) (Greer)

### **Flight Risk**

[F-V-B-](#), AXXX XXX 296 (BIA June 19, 2020) (IJ improperly focused on likelihood that respondent would appear for removal if ordered removed rather than likelihood that he would appear for removal proceedings) (*Kelly*, Adkins-Blanch, Pepper)

[A-A-F-](#), AXXX XXX 282 (BIA June 16, 2020) (orders release from custody upon posting of \$3,500 bond for respondent who passed a credible fear interview and had a U.S. citizen relative willing to serve as a sponsor) (*Donovan*, Kelly, Pepper)

[M-V-U-Y-](#), AXXX XXX 725 (BIA June 5, 2020) (orders release from custody upon posting of \$7,500 bond for respondent whom the IJ deemed a flight risk because she did not arrive at port of entry and because her sponsors lacked lawful immigration status) (*Swanwick*, Donovan, Greer)

[Y-B-N-](#), AXXX XXX 674 (BIA June 3, 2020) (vacates flight risk finding and remands for imposition of bond given evidence of sponsor's financial means that IJ failed to consider and intervening submission of Form I-589) (*Kelly*, Adkins-Blanch, Couch (dissenting))

[A-G-T-](#), AXXX XXX 483 (BIA May 19, 2020) (remands for further consideration of flight risk where respondent had relatives with lawful status in United States and submitted asylum application while appeal was pending) (*Greer*, Swanwick, Wilson (dissenting))

[T-D-N-](#), AXXX XXX 374 (BIA March 2, 2020) (remands for further consideration of whether respondent poses a flight risk in light of IJ's intervening grant of asylum) (*Grant*, Mann, Mullane (dissenting))

[J-F-P-S-](#), AXXX XXX 101 (BIA Feb. 25, 2020) (orders further consideration of whether respondent posed a flight risk because IJ overlooked that he was married to a U.S. citizen with whom he had a child and was prima facie eligible for adjustment of status) (*Mann*, Grant, Mullane (dissenting))

[R-A-A-C-](#), AXXX XXX 006 (BIA Feb. 20, 2020) (finds respondent not a flight risk based on testimony

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regarding sole traffic infraction and his having lived in the United States since age 8 and his having a pending application for SIJ status) (*Greer, Wendtland, Donovan*)

[X-Z-](#), AXXX XXX 926 (BIA Feb. 19, 2020) (fact that respondent overstayed his visa without more does not support IJ's finding that respondent was a flight risk) (*Greer, Wilson, Donovan*)

[N-S-](#), AXXX XXX 375 (BIA Feb. 5, 2020) (reverses finding that respondent was a flight risk in light of positive credible fear finding and that respondent's parents were LPRs and his sister was a U.S. citizen) (*Goodwin, Greer, Donovan*)

[H-G-W-](#), AXXX XXX 614 (BIA Dec. 19, 2019) (reverses finding that respondent was a flight risk given that he had a fixed address, was employed, possessed property and community ties, turned himself into immigration authorities, intended to apply for asylum, and that his similarly situated wife received a bond of \$10,000) (*Couch, Mann, Kelly*)

[M-B-H-](#), AXXX XXX 149 (BIA Sept. 9, 2019) (remands for further consideration of flight risk where DHS did not oppose bond and IJ did not acknowledge evidence showing that his sponsor, a U.S. citizen sister, had more than \$175,000 in savings) (*Greer, Cole, Noferi*)

[D-M-W-](#), AXXX XXX 837 (BIA Aug. 20, 2019) (DHS did not demonstrate that respondent was flight risk by clear and convincing evidence in light of circuit court granting his petition for review, his lengthy period of residence, and wife and child with lawful status) (*Donovan, Noferi, Wendtland*)

[A-A-O-](#), AXXX XXX 985 (BIA Aug. 2, 2019) (orders further consideration of risk of flight in light of intervening grant of asylum) (*Greer*)

[A-R-A-](#), AXXX XXX 777 (BIA July 3, 2019) (upholds finding that respondent was not flight risk in light of his entry as an LPR as a child, extensive family and community ties, and grant of cancellation of removal) (*Mann*)

[R-T-M-](#), AXXX XXX 273 (BIA May 17, 2019) (reverses finding that respondent was a flight risk based solely on prospect of receiving relief from removal) (*Mann, Liebman, Morris*)

[G-C-S-](#), AXXX XXX 032 (BIA April 30, 2019) (reverses finding that respondent was a flight risk where IJ found that respondent did not establish prima facie eligibility for any form of relief but administrative records showed that he had a pending application for cancellation of removal) (*Wendtland, Cole, Greer*)

[A-A-D-Z-](#), AXXX XXX 819 (BIA March 19, 2019) (reverses decision finding respondent a flight risk in light of his residence in the United States since 2003 and that he would reside with his wife and eight U.S. citizen children) (*Mann, Kelly, Adkins-Blanch*)

[R-C-K-C-](#), AXXX XXX 113 (BIA March 11, 2019) (reverses finding that respondent would be a flight risk in light of affidavit from cousin stating that he would provide housing and ensure respondent appeared in court) (*Greer, Donovan, Cole (dissenting)*)

[M-R-](#), AXXX XXX 518 (BIA March 11, 2019) (dismisses DHS appeal asserting that respondent was a flight risk based on outstanding Interpol warrant in light of his potential eligibility for asylum) (*Cole*)

[I-M-](#), AXXX XXX 714 (BIA March 11, 2019) (reverses finding that respondent was a flight risk in light of residence in United States since 2002, lengthy employment history, four U.S. citizen children, letters of support, and eligibility for adjustment of status) (*Kelly, Adkins-Blanch, Mann*)

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[Z-C-](#), AXXX XXX 305 (BIA March 1, 2019) (vacates decision finding respondent was flight risk given that he was the beneficiary of an approved visa petition filed by his U.S. citizen wife, that he and his wife co-own a business and reside at a fixed address, and that he has two U.S. citizen children, one of whom has been diagnosed with autism) (*Mann, Kelly, Adkins-Blanch*)

[J-R-P-](#), AXXX XXX 882 (BIA Feb. 14, 2019) (vacates finding that respondent would be risk of flight based on arrest for computer fraud given that he was married and had two U.S. citizen children, was the beneficiary of an approved employment-based visa petition, and submitted proof of employment and numerous letters of support) (*Kendall Clark, Kelly, Adkins-Blanch*)

[J-A-](#), AXXX XXX 070 (BIA Feb. 13, 2019) (remands for new bond hearing because IJ did not consider respondent's family ties and prevented his U.S. citizen partner from testifying in support of his request) (*O'Connor, Wendtland, Greer*)

[O-E-M-](#), AXXX XXX 467 (BIA Jan. 30, 2019) (denies DHS appeal of finding that respondent was not a flight risk given that he had resided in the U.S. since the age of three months, was a high school student living with his mother, and had a U.S. citizen girlfriend) (*Malphrus, Liebowitz, Mullane*)

[H-H-R-](#), AXXX XXX 822 (BIA Jan. 15, 2019) (respondent not a flight risk given more than 20 years of residence in United States, fixed address, three U.S. citizen children, and lengthy work history) (*Geller, Mann, Neal* (dissenting))

[N-F-O-](#), AXXX XXX 604 (BIA Dec. 26, 2018) (reverses finding that respondent would be a flight risk based on her arrival through the use of a smuggler given that she would be living at a fixed address with her common law husband and three children) (*Geller, Adkins-Blanch, Kelly*)

[L-V-D-](#), AXXX XXX 283 (BIA Nov. 2, 2018) (reverses finding that respondent was a flight risk given that he claimed to have resided in the country since 1994, had a pending application for cancellation of removal, and submitted letters of support noting his community ties and regular church attendance) (*Snow, Kelly, Geller*)

[F-V-A-](#), AXXX XXX 523 (BIA Oct. 12, 2018) (reverses finding that respondent was a flight risk and sets \$10,000 bond given that he has fixed address, has resided in U.S. for more than twenty years, and has strong family and community ties) (*Snow, Mann, Adkins-Blanch*)

[J-M-N-C-](#), AXXX XXX 736 (BIA Oct. 9, 2018) (reverses finding that respondent was a flight risk given that he lawfully entered on a B visa in 2003, had a steady employment history, and was pursuing adjustment of status based on his marriage to a U.S. citizen with whom he had been in a relationship for over five years) (*Geller, Snow, Kelly*)

[Y-G-](#), AXXX XXX 227 (BIA Sept. 24, 2018) (vacates finding that respondent was a flight risk given that she resided at a fixed address with her husband who was granted asylum and filed a Form I-730 on her behalf) (*Kelly, Adkins-Blanch, Snow*)

[L-C-T-](#), AXXX XXX 524 (BIA Aug. 10, 2018) (reverses finding that respondent is a flight risk where he was prima facie eligible for non-LPR cancellation of removal and one of his U.S. citizen children may suffer from autism) (*Mann, Kelly, Snow*)

[J-M-C-D-](#), AXXX XXX 374 (BIA Aug. 1, 2018) (reverses finding that respondent was a flight risk where lived in the United States for 18 years, had a steady work history, resided with U.S. citizen wife and children, was applying for cancellation of removal, and consistently appeared in court before proceedings were administratively closed) (*Mann, Adkins-Blanch, Kelly*)



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[S-C-O-](#), AXXX XXX 980 (BIA June 26, 2018) (reverses determination that respondent was a flight risk given that she had lived in the United States for 20 years, was married with three U.S. citizen children, and was a stay-at-home housewife) (Snow)

[J-A-A-A-](#), AXXX XXX 899 (BIA May 25, 2018) (remands for further consideration of bond request in light of declarations submitted on appeal from friends and family) (Adkins-Blanch)

[D-S-J-](#), AXXX XXX 873 (BIA May 15, 2018) (reverses IJ's determination that respondent was a flight risk where he had two U.S. citizen children, had resided in the United States for more than 10 years, had no criminal record, and had applied for cancellation of removal) (*Pauley*, Snow, Kelly)

[G-R-A-C-](#), AXXX XXX 208 (BIA May 9, 2018) (upholds release on \$5,000 bond where respondent had pending withholding application, brought himself to the government's attention by seeking to reopen proceedings, and was only a minor when he received a grant of voluntary departure with which he did not comply) (*Kelly*, Pauley, Snow)

[J-D-G-L-](#), AXXX XXX 708 (BIA May 2, 2018) (upholds release on \$6,000 bond upon finding lack of relief did not outweigh respondent's other equities, including being married with three U.S. citizen children, having a fixed address, and previously attending hearings) (Mann)

[I-F-T-](#), AXXX XXX 884 (BIA Jan. 5, 2018) (reverses determination that respondent was flight risk where she was prima facie eligible for non-LPR cancellation and IJ clearly erred in finding she did not submit application) (*Adkins-Blanch*, Greer, Mullane (dissenting))

[C-G-C-](#), AXXX XXX 735 (BIA Dec. 8, 2017) (reverses determination that respondent was a flight risk where he was eligible for a waiver under INA 212(c) and owned multiple real estate properties) (*Malphrus*, Mullane, Adkins-Blanch)

[J-S-A-](#), AXXX XXX 618 (BIA Nov. 21, 2017) (reverses flight risk determination against respondent who had resided in United States for approximately 20 years, had fixed address and significant family ties, and had pending DACA renewal application) (*Greer*, Malphrus, Mullane)

[K-S-](#), AXXX XXX 141 (BIA Aug. 17, 2017) (lack of passport not sufficient to deem respondent a flight risk) (*Greer*, Adkins-Blanch, Malphrus)—**KEY DECISION**

[A-M-I-U-](#), AXXX XXX 212 (BIA May 26, 2017) (orders further consideration of bond motion because IJ failed to consider length of time respondent had been detained and whether conditions short of detention, such as electronic monitoring, would be sufficient to ensure presence at future hearings) (Greer)—**KEY DECISION**

[E-D-J-F-T-](#), AXXX XXX 302 (BIA May 19, 2017) (dismisses DHS appeal of \$10,000 bond to respondent with recent DUI conviction in light of newborn U.S. citizen child, his wife seeking asylum, and strong family ties in United States) (Mullane)

[E-J-E-B-](#), AXXX XXX 122 (BIA Nov. 13, 2015) (sets \$10,000 bond and holds IJ erred in finding respondent posed a risk of flight given ability to live with family members and positive credible fear determination) (*Guendelsberger*, Adkins-Blanch, Holiona)—**KEY DECISION**

[M-Y-R-H-](#), AXXX XXX 316 (BIA Aug. 7, 2014) (grants \$5,000 bond despite deeming respondent a flight risk in light of residence at a fixed address, existence of family ties, and pending claim to asylum) (*Grant*, Hoffman, Manuel)—**KEY DECISION**



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[Salvador Jr. Villareal](#), A092 722 540 (BIA Mar. 17, 2011) (reverses denial of bond to U.S. resident of more than 30 years with U.S. citizen spouse and two U.S. citizen children) (*C. King*, Adkins-Blanch, Guendelsberger).

[Jose Miguel Argueta Sandoval](#), A046 177 199 (BIA Jan. 18, 2011) (denial of bond vacated where criminal record outweighed by lengthy residence, family ties, and employment history, and where the respondent was granted relief from removal while his bond appeal was pending) (*Cole*, Greer, Pauley (dissenting))

### **Material Change in Circumstances**

[B-G-L-](#), AXXX XXX 714 (BIA Nov. 8, 2019) (dismissal of two pending criminal charges and efforts at rehabilitation constitutes material change in circumstances) (Liebmann)

[O-E-M-](#), AXXX XXX 467 (BIA Jan. 30, 2019) (IJ improperly required respondent to establish changed circumstances where motion to reconsider decision denying bond was based on error of law) (*Malphrus*, Liebowitz, Mullane)

[E-D-L-T-](#), AXXX XXX 573 (BIA Nov. 28, 2018) (DHS not authorized to seek redetermination of custody conditions under 8 CFR 1003.19(e) based on material change in circumstances) (*Morris*, Mullane, Creppy)

[I-R-](#), AXXX XXX 145 (BIA Nov. 5, 2018) (grant of non-LPR cancellation of removal qualifies as material change in circumstances for respondent previously denied bond as a danger to the community) (Snow)

[O-D-](#), AXXX XXX 373 (BIA Oct. 22, 2018) (filing of visa petition by U.S. citizen spouse qualifies as material change in circumstances) (*Kelly*, Adkins-Blanch, Geller)

[V-B-C-](#), AXXX XXX 289 (BIA Sept. 10, 2018) (dismissal of pending criminal charge and reinstatement of DACA qualifies as material change in circumstances) (*Snow*, Geller, Kelly)

[H-A-A-](#), AXXX XXX 215 (BIA Aug. 8, 2018) (holds that respondent was eligible for a second bond hearing under *Hamama v. Adducci*, 285 F. Supp. 3d 997 (E.D. Mich. 2018) because the intervening grant of his motion to reopen constituted a material change in circumstances) (*Mann*, Snow, Geller)

[G-D-](#), AXXX XXX 055 (BIA July 24, 2018) (dismissal of criminal charges resulting in Adjournment in Contemplation of Dismissal qualified as a material change in circumstances justifying new bond hearing) (Grant)

[L-G-O-C-](#), AXXX XXX 435 (BIA July 19, 2018) (remands record upon finding marriage to U.S. citizen and filing of visa petition qualifies as material change in circumstances) (Snow)

[E-T-](#), AXXX XXX 683 (BIA March 14, 2018) (intervening marriage to U.S. citizen constitutes material change in circumstances with respect to whether respondent is a risk of flight) (Pauley)

[A-M-O-](#), AXXX XXX 479 (BIA Feb. 23, 2018) (respondent not required to demonstrate material change in circumstances where initial request for custody determination was withdrawn before being decided by IJ) (*Wendtland*, Cole, Crossett)

[M-F-G-L-](#), AXXX XXX 837 (BIA Jan. 16, 2018) (orders new bond hearing where IJ did not regard acquiring counsel as material change in circumstances) (*Malphrus*, Greer, Mullane)

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[W-S-](#), AXXX XXX 991 (BIA Sept. 28, 2017) (grant of application for relief from removal is a material change in circumstances warranting reconsideration of bond motion) (Grant)—**KEY DECISION**

[M-R-R-A-](#), AXXX XXX 496 (BIA April 25, 2017) (respondent convicted of DUI established material change in circumstances based on attendance at meetings designed to assist him with rehabilitation, willingness to abstain from such behavior in the future, and wife's assurances that she would drive him if necessary) (Mullane)—**KEY DECISION**

[Jose Juan Rodriguez Garcia](#), A044 581 069 (BIA May 6, 2015) (government's unopposed motion to remand proceedings from the Ninth Circuit constituted a material change in circumstances) (Grant)

[Wajid Ali Siddiqi](#), A095 473 104 (BIA Apr. 26, 2011) (failure of DHS to appeal release of alien in virtually identical position constitutes material change in circumstances justifying subsequent request for bond redetermination under 8 CFR 1003.19(e)) (Pauley)—**KEY DECISION**

### **Purpose of Detention**

[A-M-D-](#), AXXX XXX 416 (BIA Jan. 30, 2015) (rejects DHS argument that no bond should be given to respondent and her children under *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003), saying that "the extraordinary remedy of continued detention of the respondents without bond in order to deter future waves of mass migration is not warranted") (Guendelsberger)—**KEY DECISION**

### **Rodriguez v. Robbins (Rodriguez III), 804 F.3d 1060 (9th Cir. 2015)**

[A-S-C-H-](#), AXXX XXX 196 (BIA July 5, 2017) (respondent in withholding-only proceedings and previously found removable under INA 237(a)(4)(D) eligible for bond hearing under *Rodriguez v. Robbins*, 804 F.3d 1060 (9th Cir. 2015) (Rodriguez III)) (*Greer*, Malphrus, Adkins-Blanch)

[R-R-M-](#), AXXX XXX 256 (BIA May 24, 2017) (IJ improperly denied bond under "law of the case" doctrine because *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015), requires de novo hearing every six months and length of detention is itself a factor to consider) (*Grant*, Adkins-Blanch, Malphrus)

[J-C-G-](#), AXXX XXX 683 (BIA May 19, 2017) (respondent in withholding-only proceedings subject to detention under INA 236(a) and thus eligible for custody redetermination under *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015)) (*Grant*, Adkins-Blanch, Malphrus (dissenting))

[R-S-A-](#), AXXX XXX 926 (BIA April 7, 2017) (respondent in withholding-only proceedings subject to detention under INA 236(a) and thus eligible for custody redetermination under *Rodriguez v. Robbins (Rodriguez III)*, 804 F.3d 1060 (9th Cir. 2015)) (*Greer*)—**KEY DECISION**

### **Mandatory Detention—INA 236(c)**

#### **"Custody" Requirement**

[K-S-D-](#), AXXX XXX 521 (BIA Feb. 8, 2018) (reverses finding that respondent was subject to mandatory detention because he was never placed in "custody" for state conviction) (Pauley)

[Rafael Diaz Maldonado](#), A092 831 293 (BIA Jan. 25, 2011) (mandatory detention does not apply to respondents released prior to October 9, 1998, expiration of Transition Period Custody Rules) (Guendelsberger)

### Whether DHS Is Likely To Prevail on Charge

[P-C-C-](#), AXXX XXX 731 (BIA Nov. 27, 2019) (respondent not subject to mandatory detention where conviction was set aside because respondent was not properly advised of the immigration consequences of his guilty plea) (Wilson)

[O-D-K-](#), AXXX XXX 074 (BIA March 6, 2019) (reverses finding that respondent was subject to mandatory detention because DHS was substantially unlikely to establish that either third degree trademark counterfeiting under N.Y.P.L. 165.71 or criminal possession of a forged instrument under N.Y.P.L. 170.20 was a CIMT) (*Kelly*, Adkins-Blanch, Mann)

[Jonathan Nustes Parra](#), A207 612 117 (BIA Sept. 26, 2018) (admitted alien not subject to mandatory detention based on marijuana conviction that would qualify for personal use exception) (*Hunsucker*, Creppy, Liebowitz)

[A-C-D-](#), AXXX XXX 646 (BIA Dec. 11, 2015) (respondent not subject to mandatory detention because operating a motor vehicle during a period of license suspension under N.J. Stat. 2C:40-26(a) is not a CIMT) (*Guendelsberger*, Malphrus, Geller)

[Marco Antonio Rivera Carrillo](#), A200 607 697 (BIA Apr. 22, 2011) (respondent subject to mandatory detention because Ariz. Rev. Stat. 13-2006 is divisible and record of conviction did not establish the provision under which he was convicted; “intent to induce” in Ariz. Rev. Stat. 13-2006(A)(3) does not establish requisite scienter to make offense a CIMT) (Adkins-Blanch)

[Willian Josue Rosales-Lazo](#), A095 021 153 (BIA Apr. 21, 2011) (remands for IJ to provide greater reasoning for conclusion that respondent was subject to mandatory detention due to his conviction for battery of a peace officer under Cal. Penal Code 243(b)) (*Malphrus*, Adkins-Blanch, Guendelsberger)

[Francisco Onate-Vazquez](#), A079 362 130 (BIA Apr. 14, 2011) (respondent not subject to mandatory detention because battery of a spouse under Cal. Penal Code 243(e)(1) and false imprisonment under Cal. Penal Code 236 not CIMT) (*Greer*, Cole, Pauley)

[Uriel Rangel](#), A200 607 623 (BIA Mar. 25, 2011) (IJ erred in relying on *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000), to find that providing false identity to a peace officer under Ariz. Rev. Stat. 13-2008 is not CIMT) (*Pauley*, Cole, Filppu (dissenting))

[Gilberto Dominguez-Gutierrez](#), A201 021 861 (BIA Mar. 21, 2011) (respondent not subject to mandatory detention because conviction for Taking the Identity of Another under Ariz. Rev. Stat. 13-2008 not a CIMT under *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000); breadth of statute creates “realistic possibility” that individual might be prosecuted for non-turpitudinous conduct) (*J. King*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Antonio Salazar Montiel](#), A091 611 884 (BIA Mar. 10, 2011) (record remanded where bond memorandum did not specify date of conviction, length of sentence, or date of release) (*Guendelsberger*, Adkins-Blanch, J. King)

[Edgar Armando Valenzuela-Garcia](#), A079 651 539 (BIA Mar. 10, 2011) (respondent not subject to mandatory detention where conviction for false reporting to law enforcement agency under Ariz. Rev. Stat. 13-2907.1 is not categorical CIMT and conviction documents did not establish an intent to defraud) (*Pauley*, Cole, Fillpu)

[Juan Pablo Garcia Garcia](#), A087 940 270 (BIA Mar. 4, 2011) (remands for further consideration of

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whether respondent is subject to mandatory detention where IJ did not address contention that conviction was for simple assault or apply steps of *Matter of Silva-Trevino*) (Pauley)

[Claudia Lorena Santos Baca](#), A077 387 355 (BIA Feb. 23, 2011) (respondent's statements regarding criminal history not sufficient to establish convictions for multiple CIMTs because admissions were lacking in detail and information in bond worksheet did not provide dates for three of four convictions) (*C. King*, Guendelsberger, J. King)

[Anthony Ariel German](#), A099 232 178 (BIA Feb. 11, 2011) (respondent not subject to mandatory detention because theft convictions were vacated and he was re-sentenced to period of imprisonment of less than one year) (Guendelsberger)

[Gerardo Candelario-Torres](#), A087 968 160 (BIA Jan. 14, 2011) (respondent not subject to mandatory detention because assault conviction under Cal. Penal Code 240 fell under petty offense exception in INA 212(a)(2)(A)(ii)) (Pauley)

[Alejandro Olvera-Ramirez](#), A099 489 080 (BIA Jan. 5, 2011) (respondent subject to mandatory detention for conviction for solicitation to take the identity of another in violation of Ariz. Rev. Stat. 13-2008, despite raising "serious questions" whether offense qualifies as a CIMT) (Adkins-Blanch)

[Sandra Flores-Nieto](#), A087 755 789 (BIA Jan. 3, 2011) (respondent not subject to mandatory detention because DHS did not demonstrate under which subsection of a divisible statute, Ariz. Rev. Stat. 13-2006, the respondent was convicted) (*Grant*, Malphrus, Mullane (dissenting))

## Mootness

[M-V-R-](#), AXXX XXX 080 (BIA Sept. 30, 2019) (dismisses DHS bond appeal as moot because respondent was granted pre-conclusion voluntary departure while appeal was pending) (Mullane)

## Miscellaneous

[A-H-](#), AXXX XXX 481 (BIA Oct. 10, 2019) (denies DHS appeal claiming that IJ should have granted continuance for it to review bond motion that was filed three days prior to hearing) (Wilson)

## Post-Final Order Detention

### Pending Petition for Review

[O-R-R-](#), AXXX XXX 323 (BIA Oct. 18, 2018) (respondents need not be detained for a prolonged period to be entitled to a bond hearing under *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), and *Casas-Castrillon v. Dept. of Homeland Security*, 535 F.3d 942 (9th Cir. 2008)) (*Snow*, Kelly, Geller)

[M-S-D-](#), AXXX XXX 451 (BIA April 9, 2018) (holds IJ had jurisdiction to consider request for custody determination under *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), because he had a petition for review pending before the Ninth Circuit) (*Kelly*, Adkins-Blanch, Kelly)

[Edgar Daniel Nava](#), A099 317 368 (BIA Mar. 30, 2012) (reduces bond from \$20,000 to \$7,500 where respondent did not pose flight risk and possessed numerous positive equities) (*Greer*, Grant, Miller)

[Jose Lomeli-Becerra](#), A092 122 323 (BIA May 20, 2011) (no requirement that respondent be eligible for relief from removal or detained for "egregious" period to obtain bond pursuant to *Casas-Castrillon*, 535 F.3d 942 (9th Cir. 2008), while petition for review is pending) (Guendelsberger)

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[Luis Fernando Martinez](#), A089 748 621 (BIA Mar. 25, 2011) (respondent entitled to bond hearing pursuant to *Prieto-Romero v. Clark*, 534 F.3d 1053 (9th Cir. 2008), and *Casas-Castrillon v. Dept. of Homeland Security*, 535 F.3d 942 (9th Cir. 2008), while appeal before Ninth Circuit is pending) (C. King)

### **Pending Reinstatement of Removal**

[S-M-F-](#), AXXX XXX 137 (BIA April 20, 2020) (remands for further consideration of bond request under *Guerrero-Sanchez v. Warden York Cty. Prison*, 905 F.3d 208 (3d Cir. 2018), for detainee subject to final order with pending motion to reopen) (*Donovan*, Greer, Wilson)

[B-L-C-M-](#), AXXX XXX 733 (BIA Oct 18, 2018) (respondents in reinstatement proceedings in the Ninth Circuit entitled to bond hearings after six months under *Gonzalez v. Sessions*, No. 18-cv-01869-JSC (N.D. Cal. 2018)) (Greer)

[K-M-M-](#), AXXX XXX 348 (BIA Oct. 10, 2018) (respondents in reinstatement proceedings entitled to bond hearings after six months under *Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018)) (*Greer*, Cole, Donovan)

[C-E-F-B-](#), AXXX XXX 669 (BIA July 23, 2018) (respondents in withholding-only proceedings are entitled to bond hearings after six months until Ninth Circuit holds otherwise) (Snow)

[F-D-F-G-](#), AXXX XXX 910 (BIA Jan. 18, 2018) (respondents in withholding-only proceedings entitled to bond hearing after six months under *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011) (*Diouf II*)) (*Grant*, Adkins-Blanch, Mann)—**KEY DECISION**. See also [J-F-E-](#), AXXX XXX 079 (BIA Dec. 29, 2017).

[L-R-N-](#), AXXX XXX 278 (BIA March 10, 2015) (remands for further consideration of joint request for custody redetermination by mother and son; IJ erred in denying son's request for release based solely on desire to avoid family separation; IJ should consider releasing mother under 8 C.F.R. 1236.3(b)(2) if no legal guardian can be found for the child even though she is in "withholding only" proceedings) (Guendelsberger)—**KEY DECISION**

[David Antonio Quezada-Gonzalez](#), A099 539 214 (BIA Apr. 4, 2014) (detainees awaiting reinstatement of prior removal order are eligible for bond hearings under *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013), if detained more than six months) (Miller)—**KEY DECISION**

[Claudette Collen Hubbard](#), A030 085 111 (BIA Oct. 8, 2013) (remands for further consideration of bond under *Casas-Castrillon v. DHS*, 535 F.3d 942 (9th Cir. 2008), where IJ incorrectly balanced the positive and negative factors and government filed an unopposed motion to remand after the respondent filed petition for review) (*Greer*, Miller, Malphrus)

## X. DUE PROCESS

### Access to Government Documents

[Juan Lopez-Lopez](#), A205 920 665 (BIA Dec. 11, 2014) (says *Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010), “provides an alien with an absolute right to view the contents of his A-file”) (*Cole*, Wendtland, Pauley)—**KEY DECISION**

[Fernando Saenz-Ledesma](#), A024 938 852 (BIA June 13, 2014) (IJ should have continued proceedings to permit respondent to obtain and review a copy of the A-file, the contents of which could have confirmed eligibility to adjust status) (*Mullane*, Malphrus, Liebowitz)—**KEY DECISION**

[Ramiro Torres-Godinez](#), A205 765 589 (BIA Jan. 6, 2014) (cites INA 240(c)(2) for proposition that respondents “shall have access to the alien’s visa or other entry document” during proceedings) (*Grant*)

[Jose Antonio Monjazar-Fernandez](#), A200 611 977 (BIA Nov. 13, 2013) (finds proceedings fundamentally unfair where IJ failed to ask DHS whether it possessed evidence of respondent’s asserted admission; orders disclosure of records on remand under INA 240(c)(2)) (*Adkins-Blanch*, Hoffman, Manuel)—**KEY DECISION**

[Jose Rosario Cuevas](#), A095 282 946 (BIA May 7, 2012) (grants DHS interlocutory appeal of IJ requiring production of A-file; states that *Dent v. Holder*, 627 F.3d 365 (9th Cir. 2010), does not compel discovery beyond scope contemplated by INA and federal regulations) (*Malphrus*, Creppy, Mullane)

[Jose DeJesus Torres-Miranda](#), A088 361 024 (BIA Apr. 9, 2012) (states that *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), requires DHS to provide evidence relating to respondents’ mental competency) (*Greer*)

### Bias or Misconduct of Immigration Judge

[L-R-B-](#), AXXX XXX 849 (BIA May 12, 2020) (remands for new hearing where IJ conducted all questioning and did not give either attorney chance to ask questions) (*Gorman*, Mullane, Mann)

[P-G-P-](#), AXXX XXX 600 (BIA Feb. 28, 2020) (remands for new hearing because IJ engaged in ex parte conversation with unidentified individual after hearing in which his tone was insensitive and bordering on inappropriate) (*Wilson*, O’Connor, Donovan)

[D-M-B-](#), AXXX XXX 236 (BIA Jan. 27, 2020) (orders case heard by different IJ on remand based on unacceptably abusive and unprofessional behavior) (Mann)

[A-N-F-](#), AXXX XXX 985 (BIA Nov. 14, 2019) (IJ erred by introducing evidence from the internet relating to respondent’s application for relief, stating that an IJ may not “do independent research and submit evidence of his own accord”) (*Creppy*, Liebowitz, Noferi)

[J-G-C-A-](#), AXXX XXX 254 (BIA Sept. 19, 2019) (remands for new hearing before different IJ in light of inappropriate commentary made during hearing) (*Noferi*, Greer, O’Connor)

[S-E-A-](#), AXXX XXX 833 (BIA Sept. 6, 2019) (remands for new hearing before different IJ under *Matter of Y-S-L-C-*, 26 I&N Dec. 688 (BIA 2015), in light of unspecified comments) (*Greer*, Wendtland, Noferi)



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[C-Y-R-C-](#), AXXX XXX 937 (BIA March 27, 2019) (IJ created appearance of bias by stating that respondent's fear was not a basis for asylum and repeatedly categorizing her claim as a "*Matter of A-B*." case) (*Greer*, *Cole*, *O'Connor*)

[L-C-](#), AXXX XXX 072 (BIA March 11, 2019) (IJ had duty to sua sponte consider whether to recuse herself because she appeared on behalf of DHS at a master calendar hearing before being appointed) (*Liebowitz*, *Malphrus*, *Mullane*)

[D-G-A-](#), AXXX XXX 307 (BIA Feb. 22, 2019) (orders case to be heard by different IJ on remand in light of failure to grant continuances when warranted and issuance of incomplete decision following prior remand from the Board) (*Guendelsberger*, *Grant*, *Adkins-Blanch*)

[M-A-R-](#), AXXX XXX 017 (BIA Jan. 15, 2019) (remands for further proceedings before different IJ because IJ stated that prior Board decision was "wrong" and "incorrect" and ignored Board's instruction to make predictive factual findings regarding CAT claim) (*Crossett*)

[A-K-N-](#), AXXX XXX 792 (BIA Oct. 24, 2018) (remands for IJ to consider whether recusal is warranted because she previously served as DHS counsel during a prior round of proceedings; states that IJs have sua sponte obligation to identify when recusal might be warranted) (*Malphrus*, *Liebowitz*, *Mullane*)

[E-D-M-](#), AXXX XXX 050 (BIA Jan. 2, 2018) (orders new hearing where IJ went off the record to scream at respondent's attorney, mimic her voice, and call her disrespectful names) (*Pauley*, *Wendtland*, *Cole*)—**KEY DECISION**

[A-G-L-](#), AXXX XXX 744 (BIA July 12, 2017) (remands to different IJ in light of intemperate remarks during hearing) (*Grant*, *Adkins-Blanch*, *Guendelsberger*)

[M-J-R-](#), AXXX XXX 084 (BIA May 17, 2017) (IJ impermissibly acted as advocate by sua sponte calling two attendees from courtroom gallery and attempting to discredit their testimony) (*Wendtland*, *Greer*, *Pauley*)

[W-L-A-M-](#), AXXX XXX 560 (BIA Dec. 23, 2016) (orders case to be heard by different IJ on remand because IJ denied respondent opportunity to fully present claim after accusing attorney of ethical violations) (*O'Herron*, *Greer*, *Kendall-Clark*)—**KEY DECISION**

[Yesenia Iveth Pacheco-Figueroa](#), A205 733 029 (BIA May 6, 2016) (states that it was inappropriate for IJ to ask non-party to the proceeding about his immigration status and whether he helped respondent enter the United States) (*Kendall-Clark*, *Greer*, *O'Herron*)

[Ihab Darwish](#), A029 878 318 (BIA June 2, 2015) (upholds denial of motion for recusal based on filing of complaints against the IJ by attorney's law firm with the Office of Professional Responsibility and the Office of the Chief Immigration Judge) (*Holmes*)

[Alejandro Perez-Serrano](#), A205 394 591 (BIA Sept. 17, 2014) (criticizes IJ for accusing respondent's attorney of acting frivolously by seeking continuances and administrative closure; states that "rash and inflammatory comments impugning the motives of a party's attorney are not appropriate") (*Wendtland*, *Greer*, *Pauley*)

[Juan Aguilar-Perez](#), A027 190 905 (BIA Sept. 13, 2013) (rejects respondent's argument that underlying order should be set aside because IJ who presided over the hearing previously prosecuted the respondent's case while employed as DHS trial attorney) (*Malphrus*, *Creppy*, *Mullane*)

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[Maria Dalila Hernandez](#), A087 709 313 (BIA Sept. 21, 2011) (respondent did not receive fair hearing where the IJ entered order of removal during first appearance, did not provide opportunity to explain efforts to secure counsel, did not explain when he was taking pleadings to charges, did not ask if respondent had fear of returning to home country, and did not seek to ascertain immigration status of respondent's parents) (*Adkins-Blanch*, Guendelsberger, Miller)

[Raul Maldonado Ochoa](#), A028 892 793 (BIA June 30, 2011) (respondent did not receive fair hearing where IJ relied on the file of different alien during master calendar hearing, relied on conviction documents without giving respondent additional time to prepare an argument, characterized the respondent's immigration history as "dreary" and "sordid," and denied voluntary departure without considering positive equities) (Guendelsberger)

[Abu Bakarr Dizo-Kamara](#), A200 515 968 (BIA June 8, 2012) (IJ did not clearly explain respondent's appeal rights and accepted unsworn testimony from witness who was not identified in the record) (Holmes)

[Richard Michreka Nyamwange](#), A029 043 107 (BIA Mar. 17, 2011) (remands for new proceedings before different IJ where decision failed to provide adequate legal analysis of respondent's removability and contained undue criticism of respondent's counsel) (*Liebowitz*, Grant, Mullane)

## Development of Record

[Michael Mutukwa](#), A099 395 254 (BIA Oct. 25, 2013) (states that "[w]hile an Immigration Judge must not take on the role of advocate for an alien, it is appropriate for Immigration Judges to aid in the development of the record, particularly where an alien appears pro se and may be unschooled in the removal process.") (*Adkins-Blanch*)

## Ineffective Assistance of Counsel

### Compliance With *Matter of Lozada*

[Trang Ngoc Nguyen](#), A098 449 258 (BIA April 22, 2020) (remands for further consideration of ineffective assistance claim in light of evidence submitted on appeal that complaint against prior attorney was referred to disciplinary committee) (Hunsucker)

[Martiniano Patricio-Ojeda](#), A205 324 832 (BIA Aug. 9, 2019) (finds second attorney provided ineffective assistance by raising ineffective assistance claim against first attorney but not complying with *Matter of Lozada*) (*O'Connor*, Donovan, Wendtland)

[G-W-O-G-](#), AXXX XXX 283 (BIA May 20, 2019) (strict compliance with *Matter of Lozada* unnecessary because counsel admitted allegations and ineffectiveness was plain on face of record) (Cole)

[M-A-R-B-](#), AXXX XXX 007 (BIA April 16, 2019) (finds prior attorney provided ineffective assistance where current counsel provided reason for not filing bar complaint) (*Greer*, Cole, Wendtland)

[J-A-G-](#), AXXX XXX 316 (BIA April 3, 2019) (strict compliance with *Lozada* not required where ineffective assistance was apparent from the record because attorney submitted applications that contained errors and omissions regarding biographical information) (*Donovan*, Wendtland, O'Connor)

[Yesenia Corena-Vela](#), A209 022 861 (BIA March 18, 2019) (excuses compliance with *Matter of Lozada* because ineffective assistance was clear on the record where attorney mistakenly sent medical examination to USCIS rather than immigration court) (*Adkins-Blanch*, Mann, Morris)

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[Kiattisak Kaiwasang](#), A204 426 160 (BIA Dec. 31, 2018) (orders further consideration of motion to reopen alleging ineffective assistance of counsel where respondent failed to file bar complaint but explained why complaint was not filed) (*Adkins-Blanch*, Geller, Liebowitz)

[Gildardo Cortes-Reyes](#), A095 812 328 (BIA Jan. 26, 2018) (states that attorney's unexplained failure to meet mandatory filing deadline constitutes ineffective assistance on its face so as to excuse compliance with requirements of *Matter of Lozada*) (*Mullane*, Creppy, Liebowitz)—**KEY DECISION**

[Oscar Ramirez-Jimenez](#), A087 457 576 (BIA Aug. 30, 2017) (reopens proceedings despite failure to file bar complaint where respondent complied with first two requirements of *Matter of Lozada* and prior attorney conceded failure to notify of correct hearing date) (*Kelly*, Mann, Adkins-Blanch)—**KEY DECISION**

[Andrine Waruguru Wambui](#), A089 313 705 (BIA April 26, 2017) (submission of copy of bar complaint with representation that it was filed satisfied *Matter of Lozada*) (*Malphrus*, Leibowitz, Mullane)

[Leonidas Sazo-Hernandez](#), A206 497 081 (BIA March 6, 2017) (remands record due to ineffective assistance of counsel where prior attorney failed to file cancellation application by deadline and respondent substantially complied with *Matter of Lozada* requirements) (*Kelly*)

[Charanjit Singh](#), A205 491 215 (BIA Jan. 26, 2017) (prior attorney provided ineffective assistance by improperly stating respondent did not need to attend hearing; similarity of affidavits did not undermine compliance with *Matter of Lozada*) (*Mullane*, Creppy, Malphrus)

[John Adrian Maldonado-Guinanzaca](#), A205 873 454 (BIA Oct. 18, 2016) (remands record because IJ failed to render findings regarding whether respondent satisfied requirements of *Matter of Lozada*) (*Creppy*, Malphrus, Mullane)

[Maria Grave-Ortiz](#), A206 884 152 (BIA March 29, 2016) (finds ineffective assistance of prior counsel constituted exceptional circumstances despite failure to comply with requirements of *Matter of Lozada*, 19 I&N Dec. 637 (BIA 1988)) (*Grant*, O'Leary, Mann)

[Alkaly Keita](#), A098 071 179 (BIA July 16, 2015) (reopens proceedings where respondent failed to appear because attorney miscalendared date of hearing; strict compliance with *Matter of Lozada* not necessary because prejudice need not be demonstrated to rescind in absentia order based on exceptional circumstances) (*Grant*)—**KEY DECISION**

[Den Yi Lei](#), A047 597 940 (BIA Aug. 27, 2014) (rejects claim of ineffective assistance based on attorney's own deficient performance because attorney did not notify the state bar of the inadequacy of her own representation) (*Miller*)

[Angela Reyes Rodriguez de Jesus](#), A087 321 551 (BIA Mar. 20, 2014) (remands record for further consideration of ineffective assistance claim denied by IJ because respondent filed complaint against former attorney with Supreme Court of the Virgin Islands rather than the Virgin Islands Bar Association; states that requirements of *Matter of Lozada* "need not be rigidly enforced where their purpose is fully served by other means") (*Manuel*)

[Hai Van Ho](#), A096 733 063 (BIA Apr. 30, 2013) (reopens proceedings despite failure to fully comply with requirements of *Matter of Lozada* where attorney conceded failure to advise respondent of hearing) (*Adkins-Blanch*, Guendelsberger, Hoffman)

[Hiliario Cisneros-Sanchez](#), A079 791 113 (BIA Nov. 13, 2013) (ineffective assistance plain on face of

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record due to failure to file adjustment application by court-imposed deadline) (*Grant*, Adkins-Blanch, Guendelsberger)

[Roderick Peralta Morin](#), A098 270 728 (BIA Mar. 26, 2012) (strict compliance with *Matter of Lozada* not necessary where attorney concedes ineffective assistance and files bar complaint against himself) (*Malphrus*, Guendelsberger, Liebowitz)

[Robinson Cordero Perez](#), A079 739 416 (BIA Jan. 31, 2012) (attorney failed to file his adjustment application by the court-imposed deadline; strict compliance with *Matter of Lozada* not necessary because counsel conceded responsibility for missing the filing deadline) (Hoffman)

#### **Failure to Advise Client**

[J-F-A-H-](#), AXXX XXX 011 (BIA Jan. 19, 2017) (prior attorney did not meaningfully explore eligibility for asylum) (*Adkins-Blanch*, Kendall-Clark, Guendelsberger)

[Wildin David Guillen-Acosta](#), A206 799 049 (BIA July 15, 2016) (prior counsel was deficient in failing to inform respondent of possibility of applying for asylum) (*Kendall-Clark*, Greer, O'Herron)

[Tenisini Taufalele](#), A200 673 398 (BIA Feb. 5, 2016) (attorney provided ineffective assistance by failing to advise respondent of documentation to submit with adjustment application, failing to prepare respondent for questioning about criminal history, and filing deficient affidavit of support) (Pauley)

[Juan Martinez-Alvarez](#), A200 759 323 (BIA May 29, 2014) (law firm neglected to file motion to substitute counsel after attorney handling the respondent's case left the firm and did not advise the respondent of the court-imposed deadline to submit his adjustment application) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Rabih Almasri](#), A075 415 097 (BIA Mar. 25, 2011) (attorney provided ineffective assistance by failing to explain type of evidence required to obtain favorable exercise of discretion for LPR cancellation) (Miller)

#### **Failure to Appeal**

[L-C-O-](#), AXXX XXX 443 (BIA Feb. 13, 2018) (finds prior attorney provided ineffective assistance by failing to timely file appeal and that respondent was entitled to presumption of prejudice because he was denied of the appellate process entirely) (*Creppy*, Malphrus, Liebowitz)—**KEY DECISION**

#### **Failure to Contest Removability**

[Junior Austin Kahn](#), A094 642 783 (BIA Feb. 28, 2020) (prior attorney provided ineffective assistance of counsel by failing to argue that indecent exposure under Iowa Code 709.9 was not a CIMT) (*Wendtland*, Donovan, Swanwick)

[Jose Manuel Barrios Rojas](#), A090 145 871 (BIA Feb. 7, 2014) (counsel provided ineffective assistance by failing to contest removability where records of conviction did not establish controlled substance involved in one drug offense or that respondent possessed more than 30 grams of marijuana for other drug offense) (Miller)

#### **Failure to Explain Rights**

[Azim Aziz Hooda](#), A205 132 314 (BIA June 20, 2016) (prior attorney provided ineffective assistance

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by seeking voluntary departure without respondent's consent and failing to inform him of consequences of failing to comply with voluntary departure order) (Kendall-Clark)

[Estella Ibonne Arrendono](#), A200 760 314 (BIA Feb. 9, 2015) (finds prior attorney provided ineffective assistance by failing to tell respondent an updated medical examination was required to pursue her adjustment application, failing to request a continuance to obtain an updated medical examination, failing to advise the respondent of her right to appeal, and telling the respondent that the immigration judge would arrest her if she failed to accept voluntary departure) (*Pauley*, Cole, Wendtland)

[Stefano Raul Lissia](#), A093 144 363 (BIA Nov. 15, 2013) (finds prior attorney provided ineffective assistance by failing to explain consequences of waiving right to appeal) (Holmes)

### **Failure to File Application or Documents**

[Shornette Marie Samuels-Foster](#), A087 061 696 (BIA July 30, 2020) (attorney provided ineffective assistance by submitting medical examination to USCIS rather than immigration court) (*Donovan*, Goodwin, Monsky)

[Cristian Aneury Diaz Arvelo](#), A056 024 351 (BIA March 6, 2020) (remands to consider claim that prior attorney provided ineffective assistance by failing to timely file application for LPR cancellation of removal) (*Mullane*, Adkins-Blanch, Kelly)

[M-J-R-M-](#), AXXX XXX 473 (BIA Oct. 31, 2019) (finds ineffective assistance obvious on face of record where attorney missed one-year asylum filing deadline by submitting application to USCIS rather than immigration court) (*Cassidy*, Creppy, Liebowitz)

[F-D-P-V-](#), AXXX XXX 181 (BIA June 13, 2019) (prior attorney provided ineffective assistance by not timely filing asylum application and not requesting such documentation until three days prior to merits hearing) (*Adkins-Blanch*, Morris, Mann)

[C-T-G-](#), AXXX XXX 551 (BIA May 24, 2019) (grants motion to remand based on ineffective assistance of counsel where attorney failed to file asylum application by deadline set by IJ) (*Donovan*, Greer, Wendtland)

[M-A-R-B-](#), AXXX XXX 007 (BIA April 16, 2019) (prior attorney provided ineffective assistance by failing to file evidence by court-imposed deadline or with request to accept late-filed evidence) (*Greer*, Cole, Wendtland)

[Luis Badillo Garcia](#), A206 905 350 (BIA March 14, 2019) (filing of wrong application for cancellation of removal constitutes prima facie evidence of ineffective assistance of counsel) (Adkins-Blanch)

[E-R-M-](#), AXXX XXX 987 (BIA June 19, 2018) (remands for respondent to have additional opportunity to pursue application for cancellation of removal where prior attorney failed to comply with court deadlines and was subsequently disbarred) (Greer)

[Claudio Martez-Sanchez](#), A205 006 914 (BIA Feb. 22, 2018) (prior attorney provided ineffective assistance of counsel by failing to submit application for cancellation of removal for nonpermanent residents) (*Kelly*, Mann, Adkins-Blanch)

[Juan Camacho-Luz](#), A206 016 499 (BIA May 10, 2017) (attorney provided ineffective assistance by failing to submit documents and leaving law firm week before hearing without providing detailed notes for next attorney assigned to case) (*Grant*, Adkins-Blanch, Mann (dissenting))



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[Erdwin Banegas Berrios](#), A208 058 470 (BIA Aug. 22, 2016) (attorney provided ineffective assistance by failing to timely submit applications) (O'Connor)

[Ali Aminzadem](#), A028 218 004 (BIA May 20, 2016) (prior attorney provided ineffective assistance of counsel by failing to filing an application necessary to seek LPR cancellation of removal) (O'Leary)

[Harpreet Singh Multani](#), A206 885 165 (BIA Oct. 15, 2015) (prior attorney provided ineffective assistance by failing to file asylum application) (Holmes)

[Rajinder Singh](#), A205 935 843 (BIA Jan. 20, 2015) (prior attorney failed to file asylum application by required deadline) (Miller)

[David Kirwa Kurgat](#), A089 003 420 (BIA Apr. 25, 2014) (respondent established prima facie case of ineffective assistance based on allegations that prior attorney failed to prepare and submit Affidavit of Support (Form I-864) in connection with adjustment application) (Wendtland)

[Hiliario Cisneros-Sanchez](#), A079 791 113 (BIA Nov. 13, 2013) (ineffective assistance plain on face of record due to failure to file adjustment application by court-imposed deadline) (*Grant*, Adkins-Blanch, Guendelsberger)

[Robinson Cordero Perez](#), A079 739 416 (BIA Jan. 31, 2012) (attorney failed to file his adjustment application by the court-imposed deadline; strict compliance with *Matter of Lozada* not necessary because counsel conceded responsibility for missing the filing deadline) (Hoffman)

[Tatiana Vasquez](#), A098 079 947 (BIA Mar. 31, 2011) (failure to file entry of appearance and failure to notify court of respondent's change of address) (*Liebowitz*, Grant, Malphrus)

#### **Failure to File Brief**

[Juan Guillen-Arvizu](#), A091 425 613 (BIA Jan. 7, 2016) (prior attorney provided ineffective assistance by failing to file brief on appeal) (Holmes)

#### **Failure to Investigate**

[Blanca Lopez Gutierrez](#), A099 294 885 (BIA June 17, 2016) (prior attorneys failed to adequately investigate whether respondent satisfied seven-year continuous residence requirement to seek LPR cancellation) (Kendall-Clark)

#### **Failure to Make Argument**

[M-T-](#), AXXX XXX 165 (BIA Oct. 18, 2019) (prior attorney provided ineffective assistance by failing to raise FGM as an additional basis for asylum claim) (*Kelly*, Adkins-Blanch, Liebmann)

[H-G-P-H-](#), AXXX XXX 178 (BIA July 9, 2019) (prior attorney provided ineffective assistance by not properly preparing a witness list, being unable to articulate a specific particular social group, and being unable to cite relevant case law from the Board or relevant circuit) (Donovan)

[L-Y-O-B-](#), AXXX XXX 267 (BIA Nov. 2, 2015) (prior attorney provided ineffective assistance by failing to argue that respondent qualified for asylum under *Matter of A-R-C-G-*, 26 I&N Dec. 388 (BIA 2014)) (*Greer*, Neal, O'Herron)

[Hector Alfonso Ordonez-Marroquin](#), A078 947 716 (BIA Sept. 17, 2015) (prior attorney provided



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ineffective assistance by failing to argue that respondent was not notified of hearing at which he was ordered removed in absentia) (Holmes)

### **Failure to Notify Client of Hearing**

[Evelyn Yamileth Cortez Avalos](#), A206 894 559 (BIA May 2, 2018) (reopens proceedings sua sponte where attorney filed bar complaint against himself for confusing respondent with another client and advising her that she did not need to appear for her hearing) (*Wendtland*, O'Connor, Pauley)

[Andrei Jose Picado](#), A200 440 226 (BIA Sept. 25, 2013) (failure to inform respondent that motion to change venue was denied or that he had to appear at his scheduled hearing; failure to appear at hearing or make alternative arrangements for representation; filing untimely appeal with the Board and untimely motion to reopen with the IJ) (Miller)

[Eden Francois](#), A075 442 065 (BIA June 6, 2013) (failure to advise respondent of hearing at which he was ordered removed in absentia) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Maria Guadalupe Ochoa-Alcantar](#), A076 610 961 (BIA Apr. 30, 2013) (reopens proceedings sua sponte where respondent was ordered removed in absentia due to ineffective assistance of counsel, was married to LPR with serious health issues, and appeared eligible for cancellation) (*Hoffman*, Guendelsberger, Adkins-Blanch)

[Mahamadou Cisse](#), A097 981 226 (BIA Oct. 5, 2012) (attorney misinformed respondent of the time of the hearing) (*Adkins-Blanch*, Manuel, Guendelsberger)

[Cestmir Drkula](#), A098 939 865 (BIA Apr. 7, 2011) (prior attorney failed to notify respondent before he withdrew from case) (*Grant*, Malphrus, Miller)

[Maria Aurora Montes de Rodriguez](#), A043 950 329 (BIA Feb. 11, 2011) (attorney failed to mail hearing notice to respondent's correct address) (*C. King*, Adkins-Blanch, Guendelsberger)

[Miguel Angel Gutierrez-Melendez](#), A076 882 990 (BIA Feb. 11, 2011) (numerous attorneys and paralegals mistakenly advised respondent that he did not need to appear at master calendar hearing) (Holmes)

### **Failure to Seek Relief**

[Luci Lopez-Delgado](#), A074 299 253 (BIA May 15, 2019) (reopens proceedings due to ineffective assistance because prior counsel failed to pursue adjustment of status based upon approved immediate relative petition) (Grant)

[Margarita Barrera-Ceja](#), A200 827 191 (BIA Feb. 5, 2014) (prior attorney conceded failing to seek voluntary departure or administrative closure) (Kendall-Clark)

### **Failure to Submit Evidence**

[J-I-O-M-](#), AXXX XXX 263 (BIA June 16, 2020) (prior attorney provided ineffective assistance by failing to timely submit evidence of qualifying child's medical condition, witness list, or pre-hearing statement on hardship) (Kelly)

[Ricardo Sanchez](#), A205 830 444 (BIA Nov. 16, 2018) (following remand in *Sanchez v. Sessions*, 894 F.3d 858 (7th Cir. 2018), reopens proceedings based on ineffective assistance of counsel upon finding reasonable possibility that respondent would have received non-LPR cancellation of removal had his

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attorney presented additional evidence relating to the good moral character and exceptional and extremely unusual hardship requirements) (Kendall Clark)

[Stavros Chrysanthopoulos](#), A205 684 299 (BIA Jan. 8, 2018) (attorney who filed prior motion to reopen provided ineffective assistance by failing to submit any evidence relating to the bona fides of the marriage) (Grant)

[Xingchen Ye](#), A078 694 496 (BIA Nov. 8, 2013) (failure to submit evidence of continued ties to United States of client charged with abandoned LPR status) (*Mullane*, Malphrus, Mann)

[Marco Tulio Ramirez Samuel](#), A043 998 246 (BIA Aug. 2, 2013) (failure to pursue applications for asylum or adjustment of status) (*Guendelsberger*, Malphrus, Kendall-Clark)

[Maria Ireri Rivas](#), A089 573 062 (BIA June 24, 2013) (failure to seek review of USCIS denial of Petition to Remove the Conditions of Residence (Form I-751); failure to present evidence that respondent's claim of U.S. citizenship on college application was not for any purpose or benefit under state law) (Miller)

### **Improper Concession**

[T-S-Y-](#), AXXX XXX 914 (BIA Nov. 16, 2018) (grants motion to reopen alleging ineffective assistance of counsel where prior attorney wrongly conceded five-year LPR status requirement for cancellation of removal was subject to stop-time rule) (*Kendall Clark*, Guendelsberger, Grant)

[Anna Margebadze](#), A096 021 996 (BIA Mar. 21, 2011) (attorney prejudiced respondent by conceding inadmissibility for fraud under INA 212(a)(6)(C)(i), rendering her ineligible to adjust status) (Holmes)—**KEY DECISION**

### **Losing Documents**

[Himanshu Patel](#), A046 743 862 (BIA Apr. 4, 2011) (respondent prejudiced by attorney losing copies of documents relating to the bona fides of his marriage) (Cole)

### **Miscellaneous**

[Allam Rabassa Salas](#), A205 122 568 (BIA Aug. 6, 2020) (prior attorney provided ineffective assistance by having respondent's mother rather than his wife file a visa petition on his behalf and by failing to investigate clerical error in record of conviction) (*Wilson*, Donovan, Greer)

[N-C-C-A-](#), AXXX XXX 749 (BIA July 16, 2020) (prior attorney provided ineffective assistance by failing to inform the IJ or the Board of five new qualifying relatives obtained while cancellation application was still pending) (*Morris*, Liebowitz, Hunsucker)

[Harjinder Singh](#), A208 570 121 (BIA Dec. 27, 2019) (rescinds in absentia order due to ineffective assistance where prior attorney failed to enter courtroom and alert the IJ that the respondent was stuck in traffic) (*Hunsucker*, Creppy, Liebowitz)

[O-H-D-](#), AXXX XXX 710 (BIA Dec. 13, 2019) (ineffective assistance plain on face of record where attorney was unaware of biometrics requirement for asylum applicants) (*Guendelsberger*, Kendall Clark, Grant)

[M-J-R-M-](#), AXXX XXX 473 (BIA Oct. 31, 2019) (reverses finding that respondent waived ineffective assistance claim by failing to retain attorney from different law firm) (*Cassidy*, Creppy, Liebowitz)

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[R-M-V-](#), AXXX XXX 106 (BIA Sept. 12, 2019) (prior attorney provided ineffective assistance by not instructing respondent to have children medically evaluated, not filing cancellation application prior to call-up deadline, not renewing motion for continuance at merits hearing, and not requesting a bond hearing) (Wendtland)

### **Unauthorized Practice of Law**

[S-S-S-](#), AXXX XXX 836 (BIA May 23, 2019) (prior attorney provided ineffective assistance of counsel by allowing non-attorney to draft prior motion under attorney's name) (Grant)

[Zaudi Khan](#), A076 682 242 (BIA Apr. 14, 2011) (respondent previously represented by attorneys who were suspended and expelled from practicing before EOIR) (Kendall-Clark)

[Michael Prosper Kodjo Bediako](#), A078 886 757 (BIA Feb. 9, 2011) (Board could not rely on representations made by former attorney who continued to represent respondent after law license was suspended) (Pauley)

### **Interpreters**

[I-C-](#), AXXX XXX 932 (BIA Feb. 28, 2020) (remands for further consideration of asylum claim where IJ deemed application abandoned because respondent could not understand interpreter) (*Greer*, O'Connor, Wendtland)

[M-S-](#), AXXX XXX 912 (BIA Oct. 11, 2019) (IJ erred by failing to obtain certified court interpreter in the language the respondent speaks) (*Creppy*, Liebowitz, Cassidy)

[Gladis Flores-Arvalo](#), A205 418 545 (BIA April 25, 2019) (remands record where IJ had to repeatedly admonish interpreter for not correctly interpreting responses to questions and one such error occurred during a crucial question) (Kelly)

[I-A-L-P-](#), AXXX XXX 093 (BIA April 5, 2019) (remands for new hearing where respondent provided specific examples of interpreter error and Board received a memorandum from the Office of the Chief Immigration Judge's Language Services Unit stating that the interpreter had been disqualified after a hearing evaluation) (Adkins-Blanch)

[X-W-](#), AXXX XXX 022 (BIA March 11, 2019) (remands for new hearing in light of alleged errors by interpreter who was later disqualified as a result of a hearing evaluation) (*Liebowitz*, Malphrus, Creppy)

[I-T-](#), AXXX XXX 449 (BIA Jan. 28, 2019) (respondent was denied fair hearing because interpreter made numerous errors and exhibited hostility toward the respondent's attorney) (*Adkins-Blanch*, Kelly, Mann)

[R-L-P-](#), AXXX XXX 958 (BIA Oct. 12, 2017) (remands for further consideration of bond motion because respondent was unable to testify at hearing due to lack of interpreter) (Neal)

[America Ambrosio-Domingo](#), A208 898 064 (BIA May 12, 2017) (orders new hearing where Mam-speaking respondent did not understand proceedings conducted in Spanish) (*Mann*, Kelly, Grant)—**KEY DECISION**

[Jose Hernandez Mendoza](#), A208 090 199 (BIA Aug. 4, 2016) (interpreter erroneously translated Spanish expression "se me hizo facil" as "that it seemed easy," rather than "I didn't really think

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about the consequences”) (*Grant*, Malphrus, Geller)

[Abdou Koudous Adissa](#), A205 656 760 (BIA June 20, 2013) (vacates IJ decision and remands for new proceedings where pro se respondent did not validly waive his right to legal representation by saying “I will speak to you”; further states that respondent should be offered interpreter on remand) (*Guendelsberger*, Hoffman, Manuel)

[Mi Hwang Huh](#), A045 809 070 (BIA Jan. 9, 2013) (denies respondent’s claim of being denied a fundamentally fair hearing by absence of interpreter because respondent was never called to testify) (*Guendelsberger*)

[Merilande Da Silva-Oliveira Albino](#), A200 189 375 (BIA Feb. 28, 2012) (remands for further proceedings because translator was not present at hearing and entire dialogue took place between IJ and respondent’s attorney) (Kendall-Clark)

### Mental Competency

[M-H-](#), AXXX XXX 674 (BIA June 16, 2020) (IJ should have conducted mental competency evaluation in light of respondent’s difficulty communicating, repeated statements that his “brain was not working,” and his attorney’s belief that he may suffer from PTSD) (Pepper)

[J-M-D-](#), AXXX XXX 522 (BIA May 20, 2020) (remands for IJ to consider mental competency in light of letter from lawyer with Legal Orientation Program at detention facility stating that respondent cannot recall his basic information including family’s address or own immigration history) (Greer)

[J-R-E-](#), AXXX XXX 917 (BIA Feb. 27, 2020) (IJ should have conducted competency determination where pro se respondent had difficulty staying on task during his testimony and testified that he had received blows to the head in Honduras) (Donovan)

[R-S-](#), AXXX XXX 256 (BIA Feb. 21, 2020) (remands record because IJ did not conduct sufficient competency determination under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011)) (*Liebowitz*, Morris, Hunsucker (dissenting))

[K-A-P-](#), AXXX XXX 662 (BIA Jan. 13, 2020) (remands record for competency determination because IJ did not address issue in his decision after it was raised by counsel) (Noferi)

[M-V-](#), AXXX XXX 682 (BIA Dec. 5, 2019) (IJ should have performed competency evaluation after DHS submitted records containing evidence of incompetency) (Greer)

[L-E-C-](#), AXXX XXX 316 (BIA Nov. 7, 2019) (mental competency assessment required to determine whether respondent was capable of self-removal under 8 C.F.R. 1241.7) (Greer)

[G-Q-M-](#), AXXX XXX 907 (BIA Oct. 30, 2019) (IJ should have made competency determination in light of memorandum in file written by social worker stating that respondent did not understand why he was detained or purpose of removal proceedings) (*Wilson*, Baird, Greer)

[J-J-M-G-](#), AXXX XXX 629 (BIA Sept. 26, 2019) (exercises jurisdiction despite waiver of appeal by respondent in light of questions concerning his mental competency) (*Cole*, Greer, Wendtland)

[B-S-R-](#), AXXX XXX 958 (BIA Sept. 3, 2019) (remands for IJ to evaluate respondent’s mental competency in light of records indicating he was prescribed an antipsychotic medication and reported experiencing auditory hallucinations) (Greer)

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[P-A-S-](#), AXXX XXX 417 (BIA July 11, 2019) (reverses finding that respondent was mentally competent to participate in proceedings given that he had been diagnosed with schizophrenia and exhibited symptoms including paranoia, auditory hallucinations, and delusions) (*Greer*, *Wendtland*, *Donovan*)

[O-G-O-M-](#), AXXX XXX 082 (BIA June 7, 2019) (IJ should have conducted full mental competency evaluation where respondent had been diagnosed with major depressive disorder with psychotic features and was taking unspecified medication) (*Cole*)

[R-N-P-](#), AXXX XXX 737 (BIA June 4, 2019) (reopens proceedings for further consideration of respondent's CAT claim in light of declaration from psychologist that prior trauma and intellectual disabilities may have contributed to her failure to set forth history of abuse in Mexico during prior hearing) (*Guendelsberger*)

[J-V-C-](#), AXXX XXX 875 (BIA May 10, 2019) (IJ should have conducted an assessment of respondent's competency given his statement to the IJ that he was suffering from "psychological trauma" and was taking nine or ten unidentified pills daily) (*Donovan*, *Wendtland*, *Noferi*)

[J-P-](#), AXXX XXX 963 (BIA March 8, 2019) (IJ should have conducted competency assessment in light of indicia of incompetency in the record, including requirement that respondent obtain a mental health screening as a condition of probation and a letter from an employee of the Florence Immigrant and Refugee Rights Project stating that he "clearly does not fully comprehend information provided to him") (*Wendtland*)

[G-T-R-](#), AXXX XXX 284 (BIA Feb. 22, 2019) (remands for IJ to conduct competency hearing given that respondent was potential class member of the *Franco-Gonzalez* settlement agreement) (*Mann*, *Kelly*, *Adkins-Blanch*)

[L-A-V-E-](#), AXXX XXX 171 (BIA Feb. 15, 2019) (IJ should have assessed competency under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), even though respondent obtained legal representation following release from custody) (*Greer*)

[Y-N-F-](#), AXXX XXX 018 (BIA July 18, 2017) (IJ should have conducted competency inquiry in light of respondent's mental health issues and DHS' explicit request for competency finding) (*Greer*, *Kelly*, *Kendall Clark*)

[Nickoyan Nkrumah Wallace](#), A041 654 413 (BIA Feb. 26, 2016) (remands records because IJ did not comply with the framework set forth in *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011)) (*Greer*)

[Macjhay Yagao](#), A044 946 445 (BIA Jan. 6, 2016) (IJ failed to conduct mental competency assessment despite request by DHS) (*Greer*, *O'Herron*, *Neal*)

[Alphonse Pierre](#), A047 900 205 (BIA Sept. 25, 2015) (remands for mental competency determination and states that DHS "has an obligation to provide the court with relevant materials in its possession that would inform the court about the respondent's mental competency") (*Greer*)—**KEY DECISION**

[Narindra Lall](#), A046 107 800 (BIA May 15, 2015) (reopens proceedings in light of evidence that respondent lacked sufficient mental competency to understand advisals in NTA regarding duty to inform court of change of address) (*Holmes*, *Greer*, *O'Herron*)

[Lewis Nyayiemu Rogito](#), A087 484 820 (BIA April 30, 2015) (remands with instructions to assess respondent's mental competency) (*O'Herron*)

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[Jesus Gregorio Manzano-Ruiz](#), A206 407 386 (BIA Jan. 20, 2015) (remands record for IJ to re-assess respondent's mental competency and need for safeguards under INA 240(b)(3), including presence of counsel) (Holmes)

[Rakesh Kumar Natvarbhai Patel](#), A200 961 784 (BIA Dec. 18, 2014) (remands record for further consideration of motion to reopen *in absentia* order where IJ failed to consider psychological evaluation addressing respondent's mental competency) (Guendelsberger)

[Hildegardo Jaime Davila-Ortiz](#), A034 324 746 (BIA Sept. 17, 2014) (grants DHS motion to reopen and remands the record for IJ to assess respondent's mental competency) (Kendall-Clark)

[J. German Benitez-Lopez](#), A092 298 255 (BIA May 29, 2014) (finds IJ determination that respondent was mentally incompetent not clearly erroneous, but remands for consideration of safeguards aside from administrative closure, such as facilitation of medical treatment or change of venue to location closer to family members) (*Greer*, Kendall-Clark, Neal)

[Armando Castillo-Ocampo](#), A205 489 036 (BIA Feb. 7, 2014) (upholds finding that respondent is mentally competent under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011)) (Adkins-Blanch)

[Juan Aguilar-Perez](#), A027 190 905 (BIA Sept. 13, 2013) (rejects respondent's argument that removal order cannot be reinstated because he was mentally incompetent at his prior removal hearing) (*Malphrus*, Creppy, Mullane)

[Juan Jose Benitez Recino](#), A201 176 938 (BIA Sept. 10, 2013) (dismisses claim that respondent was not sufficiently competent to appear unrepresented before IJ despite letter from the ACLU and a notice from DHS stating that he may be eligible for class membership in *Franco-Gonzales v. Holder*, CV 10-02211 DMG (C.D. Cal. 2011)) (Kendall-Clark)

[Gladys Margarita Hernandez](#), A095 080 333 (BIA Aug. 23, 2013) (remands to consider argument that respondent is entitled to equitable tolling of TPS registration deadline on account of mental incompetence and physical illness) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Redentor Celino Castrence](#), A040 495 188 (BIA June 21, 2013) (denies motion to reopen based on respondent's asserted inability to competently represent himself; finds stroke respondent suffered prior to proceedings did not affect ability to understand proceedings) (*Kendall-Clark*, Neal, Greer)

[Jose DeJesus Torres-Miranda](#), A088 361 024 (BIA Apr. 9, 2012) (states that *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), requires DHS to provide evidence relating to respondents' mental competency) (Greer)

### Notice of Apparent Eligibility for Relief

[H-F-A-V-](#), AXXX XXX 416 (BIA May 11, 2020) (IJ failed to notify respondent of ability to apply for withholding of removal or protection under the CAT after he expressed fear of returning to Mexico) (*Swanwick*, Greer, Wilson)

[Cresenciano Martinez-Torres](#), A206 861 386 (BIA March 26, 2020) (remands record because IJ failed to advise pro se respondent of requirements for obtaining voluntary departure) (*Cassidy*, Hunsucker, Creppy)

[J-A-T-C-](#), AXXX XXX 039 (BIA Dec. 16, 2019) (IJ failed to advise then pro se respondent of potential eligibility for cancellation of removal under INA 240A(b)(2) despite statement that he had been abused by his stepfather and he was listed on a Form I-360 filed by his mother) (Adkins-Blanch)



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[Ammar Ahmed Haddadi](#), A206 402 840 (BIA May 10, 2019) (remands record because IJ failed to advise respondent of potential eligibility for post-conclusion voluntary departure) (*Guendelsberger*, Grant, Kendall Clark)

[O-D-A-E-](#), AXXX XXX 354 (BIA Jan. 7, 2019) (remands record because IJ failed to advise pro se respondent of right to apply for asylum after he expressed fear of returning to Nicaragua because of political repression by the government) (Kendall Clark)

[F-C-S-](#), AXXX XXX 350 (BIA Jan. 2, 2019) (IJ failed to advise respondent of right to apply for asylum after stating that he left Honduras due to problems with gangs; IJ failed to advise respondent of right to apply for cancellation of removal despite evidence indicating that he might have a U.S. citizen infant daughter) (Grant)

[Jorge Gonzalez-Pizano](#), A207 915 073 (BIA Nov. 9, 2018) (IJ erred in failing to advise respondent of potential eligibility for post-conclusion voluntary departure after he declined to waive appeal) (*Kelly*, Snow, Geller)

[Pete Teichroeb-Peters](#), A093 518 654 (BIA Jan. 13, 2017) (IJ failed to advise respondent of apparent eligibility for pre- or post-conclusion voluntary departure under 8 C.F.R. 1240.11(a)(2)) (Grant)

[Jenny Yesenia Leiva-Acosta](#), A208 893 554 (BIA Dec. 16, 2016) (remands record where IJ did not sufficiently advise respondents of availability of relief, make forms available, or advise them that they would be ordered removed if they did not seek relief by a specified date) (*Mann*, Adkins-Blanch, Grant)

[Moses Chukwujiekwu Josiah](#), A204 053 513 (BIA June 23, 2016) (IJ failed to advise respondent of potential eligibility for asylum or withholding under 8 CFR 1240.11(c)(1)(i)) (Grant)

[Calixto Rene Arana-Sanchez](#), A205 278 468 (BIA March 14, 2016) (IJ failed to advise respondent of potential eligibility for post-conclusion voluntary departure) (O’Leary)

[Tafari St. Aubyn Lewis](#), A210 109 301 (BIA Jan. 5, 2016) (IJ violated 8 CFR 1240.11(b) by failing to advise respondent of right to file a renewed Form I-751) (Grant)

[Marco Delgado-Lopez](#), A205 152 331 (BIA Nov. 12, 2015) (IJ failed to advise respondent of potential eligibility for asylum and withholding of removal after he expressed fear of returning to Mexico) (*Adkins-Blanch*)

[Amadou Mockhtar Dia](#), A093 433 947 (BIA Oct. 29, 2015) (IJ violated 8 C.F.R. 1240.11(a)(2) by failing to advise respondent of his potential eligibility for adjustment of status in connection with 212(h) waiver) (Grant)—**KEY DECISION**

[Cirano Abertano Leon-Nogales](#), A205 140 051 (BIA Nov. 7, 2013) (remands record because IJ neglected to advise respondent of potential eligibility for non-LPR cancellation under 8 CFR 1240.11(a)(2)) (Adkins-Blanch)

[Isaias Rodriguez-Ovalle](#), A070 090 008 (BIA Apr. 2, 2010) (remands record where IJ failed to advise respondent of apparent eligibility for NACARA relief as required by 8 CFR 1240.11(a)(2)) (Pauley)

## Pro Se Respondents

[Y-M-](#), AXXX XXX 250 (BIA Oct. 8, 2020) (remands for further consideration where IJ ignored statements in pro se respondent's declaration, did not ask sufficient questions about claim during hearing, did not explain why he afforded corroborating evidence little weight, and provided no explanation for denial of CAT claim) (*Morris*, Geller, Liebowitz)

[V-G-A-A-](#), AXXX XXX 002 (BIA Sept. 17, 2020) (remands for further consideration of asylum claim because IJ failed to ask sufficient questions of pro se respondent) (Kelly)

[R-H-G-](#), AXXX XXX 417 (BIA Jan. 13, 2020) (remands proceedings sua sponte to afford pro se respondent an additional opportunity to submit his asylum application) (Grant)

[M-F-S-](#), AXXX XXX 136 (BIA July 19, 2019) (grants motion to remand in light of evidence that respondent was only confined for a period of 170 days following testimony while he was unrepresented that he served approximately eight months in jail) (Liebmann)

[M-A-](#), AXXX XXX 355 (BIA July 2, 2019) (declines to consider pro se request to withdraw motion to reopen from respondent who was represented by counsel absent evidence that counsel was aware of the request) (*Kendall Clark*, Guendelsberger, Grant)

[Esteban Cota-Morris](#), A215 658 915 (BIA June 11, 2019) (remands for further proceedings where pro se respondent was ordered removed at first hearing, appeared by video conference with six other respondents, and was not given opportunity to testify about his reasons for not wanting to leave the United States) (Kendall Clark)

[E-O-R-A-](#), AXXX XXX 056 (BIA Nov. 8, 2018) (remands for further consideration of asylum application because IJ never considered whether pro se respondent qualified based on being a member of a particular social group consisting of his immediate family) (*Guendelsberger*, Adkins-Blanch, Kendall Clark)

[M-M-](#), AXXX XXX 202 (BIA Aug. 15, 2018) (remands for consideration of asylum application where pro se respondent submitted Form I-589 while case was on appeal and his claim was supported by country conditions information regarding South Sudan) (*Kelly*, Adkins-Blanch, Snow)

[A-N-S-](#), AXXX XXX 436 (BIA June 11, 2018) (vacates finding that pro se respondent conceded being deportable for having been convicted of two CIMTs not arising from a single scheme of misconduct where IJ provided no explanation of what moral turpitude means) (*Pauley*, Cole, Wendtland)

[John Deng Wol Wol](#), A094 695 752 (BIA May 7, 2018) (vacates finding that pro se respondent conceded abandoning LPR status because he did not understand the significance of his admissions) (*Pauley*, Greer, Wendtland)

[E-C-Q-](#), AXXX XXX 146 (BIA Nov. 17, 2017) (pro se respondent was deprived of full and fair hearing because the IJ scheduled merits hearing only two weeks after receiving asylum application and denied request for continuance to retain attorney and secure corroborating evidence) (*Kendall Clark*, Guendelsberger, Grant)

[Rodolfo Matos Aquiles](#), A074 023 013 (BIA Oct. 20, 2017) (remands records to give respondent additional opportunity to seek relief from removal because he appeared pro se before IJ and had been LPR for 22 years) (*Grant*, Kelly, Mann)

[Fernando Cedillo-Cedillo](#), A209 763 977 (BIA June 1, 2017) (remands record because it was not clear

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whether detained, pro se respondent understood ramifications of decision to decline to seek asylum or withholding of removal) (*Grant*, Adkins-Blanch, Mann)

[Antonin Marholt](#), A208 506 084 (BIA Aug. 29, 2016) (remands record to allow respondent to apply for any form of relief to which he might be entitled) (Mann)

[Maria Antonia Lugo de Esperance](#), A200 481 736 (BIA Feb. 18, 2015) (remands record sua sponte for de novo review of TPS application denied by USCIS for unrepresented respondent who failed to request such review) (Guendelsberger)

[Andre Luckman Ibrahim](#), A097 680 747 (BIA Jan. 28, 2015) (reverses denial of continuance to submit updated financial and medical documentation where respondent was unrepresented and existing evidence only grew stale because IJ continued proceedings for three years on his own motion) (*Pauley*, Wendtland, Cole)

[Patrick Kipkurui Rotich Kemboi](#), A097 683 060 (BIA May 29, 2014) (failure of pro se respondent to pay filing fee for motion to reopen does not require denial of motion) (Manuel)

[Christian Gerardo Solis Rojas](#), A205 572 958 (BIA Mar. 19, 2014) (remands record because IJ did not adequately inform pro se respondent of all available forms of relief) (*Guendelsberger*, Manuel, Hoffman)

[Francisco Javier Montes Flores](#), A205 215 638 (BIA Feb. 3, 2014) (accepts appeal by certification and remands record to permit pro se respondent with U.S. citizen spouse and four U.S. citizen children to pursue relief from removal) (Holmes)

[Michael Mutukwa](#), A099 395 254 (BIA Oct. 25, 2013) (states that “[w]hile an Immigration Judge must not take on the role of advocate for an alien, it is appropriate for Immigration Judges to aid in the development of the record, particularly where an alien appears pro se and may be unschooled in the removal process.”) (Adkins-Blanch)

[Ismael Rangel-Yllescas](#), A201 101 348 (BIA Oct. 17, 2013) (remands where IJ failed to advise unrepresented respondent of potential eligibility for voluntary departure) (Grant)

[Pedro Diaz-Vidales](#), A205 765 609 (BIA Oct. 7, 2013) (remands to provide additional opportunity to seek voluntary departure where pro se respondent may have misunderstood significance of an order of removal) (Adkins-Blanch)

[Mario Nunez Parra](#), A092 283 469 (BIA Nov. 16, 2012) (inculpatory statements regarding prior marijuana use by unrepresented respondent in response to IJ’s questions were not sufficient for DHS to carry its burden under *Matter of Rivens*, 25 I&N Dec. 623 (BIA 2011)) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Reinaldo Edelmio Alcantara-Herrera](#), A095 086 531 (BIA Jul. 12, 2012) (when pro se respondent appears without an attorney after previously receiving a continuance to secure counsel, IJs should consider respondent’s explanations regarding efforts to retain representation in considering whether to grant further continuance) (*Adkins-Blanch*, Guendelsberger, Hoffman)—**KEY DECISION**

[Flower Vallecilla-Gonzalez](#), A075 271 719 (BIA Apr. 11, 2011) (remands to let pro se respondent seek asylum and cancellation of removal where IJ did not adequately explain consequences of failing to submit applications by prescribed deadline) (*Cole*, Wendtland, Pauley (dissenting))

[Jesus Manuel Corral-Chavira](#), A092 800 902 (BIA Feb. 1, 2011) (pro se respondent could not have

knowingly conceded to having been convicted of aggravated felony burglary offense) (Pauley)

## Proportionality of Removal

[Jose Maria Islas-Gonzalez](#), A205 497 397 (BIA Oct. 11, 2013) (declines to consider argument that removal of respondent would violate principles of proportionality under Due Process Clause) (Malphrus)

[Rogelio Blackman Hinds](#), A035 197 709 (BIA Aug. 16, 2013) (cannot consider argument by long-time LPR who served in the Marine Corps that removal constituted a disproportionate penalty in violation of the Due Process Clause) (Greer)

[Jesus Loya-Terrazas](#), A010 544 171 (BIA Nov. 26, 2012) (upholds removal order against respondent admitted as LPR in 1956 based on drug trafficking aggravated felony) (Pauley)

## Right to Counsel

[J-S-P.](#), AXXX XXX 869 (BIA Aug. 4, 2020) (remands record for new hearing because IJ did not directly ask respondent whether he desired representation) (*Mann*, Gorman, Mullane)

[S-C-C.](#), AXXX XXX 840 (BIA June 28, 2019) (remands for further proceedings because IJ did not expressly find that respondent waived right to counsel after prior attorney withdrew) (*Morris*, Liebowitz, Mullane)

[S-D.](#), AXXX XXX 094 (BIA Jan. 8, 2018) (remands record because IJ failed to provide list of free and low-cost legal service providers) (Adkins-Blanch)

[Yanira Alcaraz-Barajas](#), A092 407 275 (BIA Dec. 20, 2017) (respondent did not validly waive right to counsel where she did not affirmatively state that she was waiving right and IJ made no further inquiries at future proceeding) (Kendall Clark)

[Amarchi Chuckwuemeka Ajero](#), A060 006 491 (BIA Dec. 19, 2017) (remands record because IJ failed to provide list of free and low-cost legal service providers) (*Adkins-Blanch*, Kelly, Grant)

[Efrain Santos-Gijon](#), A208 837 339 (BIA June 22, 2017) (IJ denied respondent's right to counsel by providing only two weeks to find attorney) (*Pauley*, Mann, Grant)

[Gustavo Gaitan](#), A205 712 334 (BIA March 31, 2017) (remands record because respondent was not given reasonable and realistic period of time to obtain counsel) (*Grant*, Mann, Pauley)

[Rosa Elva Figueroa Mendoza](#), A208 598 824 (BIA March 2, 2017) (waiver of counsel not knowing and voluntary where IJ did not discuss implications of appearing without counsel or inquire into whether respondent could show reasonable cause for continuance to obtain counsel) (Guendelsberger)—**KEY DECISION**

[Rafael Gutierrez-Martinez](#), A205 648 373 (BIA Aug. 10, 2016) (grants additional opportunity to appear with counsel for pro se respondent who requested continuance because recently retained attorney could not appear on day of hearing) (O'Connor)

[Dimas Aquielo Mendosa-Sosa](#), A074 868 193 (BIA June 17, 2016) (orders further proceedings because IJ overlooked filing of entry of appearance and motion to appear telephonically two days prior to hearing) (Pauley)

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[Saul Alberto Baltazar-Salcedo](#), A205 934 715 (BIA April 18, 2016) (provides additional opportunity to retain counsel for respondent who initially indicated a desire to proceed *pro se* but later indicated that he had contracted with an attorney to represent him) (Grant)

[Mariano Rafael-Paz](#), A202 070 379 (BIA Jan. 29, 2016) (grants interlocutory appeal and reverses decision denying motion to be represented by students at Cornell Law School) (Adkins-Blanch)

[Marco Antonio Rodriguez-Gutierrez](#), A204 502 251 (BIA Dec. 8, 2015) (remands record to provide respondent another opportunity to appear with legal representative where affidavits reflected confusion as to whether the respondent had retained an attorney) (Grant)

[A-M-R-D-](#), AXXX XXX 596 (BIA Sept. 10, 2015) (IJ violated 8 C.F.R. 1240.10(a) by failing to advise respondent of availability of free legal service providers or ascertain whether she was provided the correct list) (*Wendtland*, Greer, Pauley)—**KEY DECISION**

[Luis Arturo Redrovan-Quinteros](#), A087 513 649 (BIA June 18, 2014) (remands for further proceedings because record contained no Form EOIR-28 for attorney who conceded removability and IJ did not ask respondent whether attorney was authorized to speak on his behalf) (*Wendtland*, Donovan, Pauley (dissenting))

[Luis Alonso Castillo](#), A094 305 773 (BIA Apr. 9, 2014) (nine-day continuance over holiday period for detained respondent who did not speak English not sufficient time to retain counsel) (*Wendtland*, Greer, Pauley)

[Andre Philip Cole](#), A206 193 520 (BIA Mar. 7, 2014) (remands record because respondent's attorney was not mailed hearing notice despite having submitted entry of appearance (Form EOIR-28)) (*Manuel*, Guendelsberger, Hoffman)

[Victor Manuel Contreras](#), A091 313 427 (BIA Feb. 5, 2014) (remands record because IJ failed to properly advise respondent of availability of free and low-cost legal services) (Guendelsberger)

[Rogelio Chavez-Rubio](#), A205 656 470 (BIA Jan. 30, 2014) (IJ failed to ask whether respondent waived right to counsel after attorney hired to represent him failed to appear) (*Guendelsberger*, Adkins-Blanch, Manuel)

[Augustin Moreno-Duarte](#), A200 867 579 (BIA Oct. 21, 2013) (pro se respondent not advised of right to counsel after accredited representative who filed a notice of appearance failed to appear at hearing) (Guendelsberger)

[K-O-](#), AXXX XXX XXX (BIA Aug. 27, 2013) (IJ failed to comply with the requirement in 8 CFR 1240.11(c)(1)(iii) to specifically advise respondents who express a fear of persecution of right to counsel in removal proceedings and to provide list of individuals available to provide representation in asylum proceedings on a pro bono basis) (*Wendtland*, Donovan, Pauley (dissenting))—**KEY DECISION**

[Juan Melvin Perez-Baez](#), A079 213 261 (BIA Aug. 26, 2013) (IJ should have granted continuance to obtain counsel where letter sent by respondent to pro bono organization was returned as undeliverable) (*Pauley*, *Wendtland*, *Cole*)

[Miriam Nekesa Barasa](#), A087 905 491 (BIA Aug. 22, 2013) (remands record where IJ granted only one continuance to obtain counsel and respondent stated at second master calendar hearing that her attorney "backed out on her") (Grant)

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[Fernando Barajas Acevedo](#), A087 906 037 (BIA Aug. 15, 2013) (respondent knowingly and intelligently waived his right to counsel by stating “I’m ready” when asked if prepared to represent himself) (Pauley)

[Hervens Timothe](#), A023 590 819 (BIA Aug. 9, 2013) (remands to provide respondent reasonable opportunity to obtain counsel after IJ ordered removal at second master calendar hearing despite assertion that organization was attempting to find attorney to represent him) (*Greer*, Neal, Kendall-Clark)—**KEY DECISION**

[Abdou Koudous Adissa](#), A205 656 760 (BIA June 20, 2013) (vacates IJ decision and remands for new proceedings where pro se respondent did not validly waive his right to legal representation by saying “I will speak to you”; further states that respondent should be offered interpreter on remand) (*Guendelsberger*, Hoffman, Manuel)

[Pablo Nunez Serrano](#), A041 402 248 (BIA June 20, 2013) (remands record where IJ did not ask whether respondent wanted to seek legal representation, did not require respondent to plead to allegations in the NTA, did not determine whether respondent was eligible for relief from removal, and did not ask whether respondent wanted to reserve appeal rights) (Hoffman)

[Robin Joselito Barrios de Leon](#), A087 472 600 (BIA June 14, 2013) (grants motion to remand due to lack of transcript for respondent’s initial removal hearing, lack of oral confirmation that respondent received list of legal service providers, and lack of evidence that the respondent knowingly and intelligently waived the right to be represented by counsel) (Manuel)

[Gustavo DeJesus Garcia-Lainez](#), A205 655 936 (BIA June 12, 2013) (vacates order of removal where IJ mistakenly believed respondent wanted to proceed with hearing rather than receive more time to obtain counsel) (*Guendelsberger*, Adkins-Blanch, Hoffman)

[Ricardo Lozano-Alvarez](#), A205 502 364 (BIA Nov. 7, 2012) (remands for new hearing where respondent was ordered removed during initial appearance less than a month after being served with NTA despite requesting additional time to secure counsel) (Hoffman)

[Joy Atila Litaba](#), A200 224 355 (BIA Sept. 11, 2012) (reverses denial of continuance and remands to give respondent meaningful opportunity to consult with counsel and seek relief from removal) (Manuel)

[Jose Javier Linares-Valencia](#), A059 170 269 (BIA Aug. 23, 2012) (remands record where IJ did not advise LPR of his right to be represented by counsel or ascertain whether he wished to proceed without an attorney; did not ask respondent if he conceded removability; did not explain why he found the respondent’s conviction constituted a CIMA or why the respondent was ineligible for a waiver; and did not issue a separate oral or written decision) (*Adkins-Blanch*, Hoffman, Guendelsberger)

[Reinaldo Edelmio Alcantara-Herrera](#), A095 086 531 (BIA Jul. 12, 2012) (when pro se respondent appears without an attorney after previously receiving a continuance to secure counsel, IJs should consider respondent’s explanations regarding efforts to retain representation in considering whether to grant further continuance) (*Adkins-Blanch*, Guendelsberger, Hoffman)—**KEY DECISION**

[Andrey M. Farafonov](#), A077 690 710 (BIA Dec. 5, 2011) (vacates order of removal upon finding LPR respondent was not afforded an adequate opportunity to retain counsel because he was not initially provided a list of free legal service providers and was not permitted to make phone calls by the facility where he was being detained) (*Adkins-Blanch*, Donovan, Guendelsberger)—**KEY DECISION**



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[Ji Yoon Chung](#), A089 125 468 (BIA Oct. 17, 2011) (remands for new hearing before different IJ where pro se respondent was ordered removed at initial master calendar hearing despite request for more time to obtain counsel) (*Grant*, Malphrus, Mullane)

[Sang Mae Lee](#), A089 125 467 (BIA Oct. 11, 2011) (respondent did not receive fair hearing where IJ entered removal order at the first master calendar hearing despite request for time to obtain counsel) (*Mullane*, Creppy, Malphrus)

### Right to Rebut Government Evidence

[Guadalupe Ramirez Moran](#), A095 445 013 (BIA Dec. 18, 2014) (IJ should have afforded respondent an opportunity to rebut statements in Form I-213 that she engaged in alien smuggling) (*Malphrus*, Mullane, Grant)

### Stipulated Removal Orders

[Yader Montenegro-Benavides](#), A215 561 934 (BIA May 9, 2019) (DHS failed to establish validity of waiver by failing to respond to motion to reopen stipulated order of removal) (*Cole*, Wendtland, Greer)

[Baltazar Bucio Avalos](#), A088 721 069 (BIA Sept 2, 2015) (IJ violated 8 C.F.R. 1003.25(b) by entering stipulated order of removal without ascertaining whether the respondent validly waived right to a hearing) (Guendelsberger)

[Edwin Alexander Aquino-Artero](#), A206 432 493 (BIA July 8, 2014) (vacates stipulated removal order because IJ decision did not address whether waiver of a hearing was voluntary, knowing, and intelligent under 8 CFR 1003.25(b)) (Holmes)

[Adolman E. Sanchez Turcios](#), A094 415 405 (BIA Mar. 8, 2012) (vacates stipulated order of removal where respondent withdrew consent prior to entry) (Pauley)

[William Francisco Ayala-Chan](#), A200 244 079 (BIA Jan. 13, 2012) (vacates stipulated order of removal where respondent's waiver of rights, including right to appeal, was not knowing and intelligent) (*Adkins-Blanch*, Hoffman, Guendelsberger)—**KEY DECISION**

### Video Teleconference

[Guat Ngoh Lim](#), A055 549 920 (BIA Apr. 22, 2013) (declines to consider interlocutory DHS appeal challenging denial of motion to appear by video teleconference) (Grant)

## XI. CONVICTIONS AND POST-CONVICTION RELIEF

### Admissions of Criminal Activity

[R-V-B.](#), AXXX XXX 271 (BIA Jan. 27, 2020) (requirements of *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), apply in determining validity of admission for all immigration purposes, not just grounds of inadmissibility) (Noferi)

[Gilberto Garcia-Gonzalez](#), A205 724 242 (BIA May 6, 2019) (vacates finding that respondent admitted violating 42 U.S.C. 408(a)(7)(B) because DHS did not adequately define the crime in understandable terms and respondent did not admit that he acted with the intent to deceive) (*Wendtland*, Donovan, Cole (dissenting))

[Leonardo Martinez-Garcia](#), A200 679 434 (BIA May 25, 2018) (statement on cross-examination that respondent had “tried drugs” did not qualify as an “admission” under *Matter of K-*, 7 I&N Dec. 594 (BIA 1957), because he was not advised of definition and elements of the offense) (*Crossett*, Cole, Pauley (concurring))

[Victor Manuel Martinez](#), A029 084 542 (BIA July 30, 2014) (respondent not inadmissible based on “admission” of controlled substances offense where the conviction was subsequently vacated, he pleaded nolo contendere, and he admitted only to the fact of conviction when being questioned by immigration officers) (*Pauley*, Cole, Greer)

[Ramon Garcia-Fonseca](#), A075 535 094 (BIA June 5, 2014) (guilty plea that results in something less than a “conviction” is not tantamount to an “admission” of the crime) (*Pauley*, Wendtland, Cole)

### Convictions

#### Categorical and Modified Categorical Approach

[Onesta Reyes](#), A031 123 346 (BIA April 24, 2019) (DHS may not sustain aggravated felony charge by demonstrating that conviction necessarily satisfied one of multiple generic offenses) (Greer, Wendtland, O'Connor (dissenting))

[Fazilath Firasath Omero](#), A056 143 178 (BIA April 18, 2019) (affirms that categorical approach applies to foreign convictions) (Greer)

[Jose Enrique Leguia Chuquichaico](#), A087 180 005 (BIA March 29, 2019) (requirement that respondent register as a sex offender under West Virginia law not an “element” under the categorical approach because it is civil rather than punitive in nature) (*Donovan*, Rosen, Wendtland)

[Felipa Von Glahn](#), A042 438 943 (BIA Aug. 3, 2018) (reopens proceedings for respondent to seek cancellation of removal in light of intervening decision in *Gordon v. United States Att’y Gen.*, 861 F.3d 1314 (11th Cir. 2017), holding that a charging document may only be examined under the modified categorical approach to determine which element of a divisible statute an alien was convicted of, not the actual conduct of the alien) (Grant)

[Miguel Angel Martinez-Guzman](#), A092 617 875 (BIA Nov. 13, 2017) (rejects DHS argument that respondents must cite multiple cases to satisfy “realistic probability” requirement) (Pauley)—**KEY DECISION**

[Franklin Chukwuma Nwagbo](#), A040 079 914 (BIA Feb. 27, 2015) (reopens proceedings sua sponte in

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light of assertion that 1997 attempted burglary no longer qualifies as a removable offense under *Descamps*) (Miller)

[Clayton Hugh Anthony Stewart](#), A043 399 408 (BIA Feb. 11, 2015) (Md. Crim. Law, Code Ann. 7-104, is not divisible for purposes of modified categorical approach because Maryland courts have found it contains alternative means of committing the offense rather than alternative elements upon which a jury must agree in order to convict) (*Pauley*, Malphrus, Guendelsberger)—**KEY DECISION**

[Arnold Manuel Warmels](#), A055 195 818 (BIA Dec. 23, 2014) (fourth degree assault under Ky. Rev. Stat. 508.030(1)(a) not divisible because two mental states that may support a conviction—“intentionally” and “recklessly”—are not separate elements upon which a jury must agree in order to convict) (Holmes)—**KEY DECISION**

[Edwin Alexander Jandrews-Aguiluz](#), A073 674 189 (BIA Nov. 13, 2014) (orders further consideration of whether credit card theft under former Md. Code Art. 27 § 145(c)(1) is a CIMT or aggravated felony theft offense; instructs IJ to consider whether “realistic probability” exists that the statute could have been applied to defendants who did not intend to deprive cardholder of use of credit card) (*Pauley*, Mullane, Greer)

[Craig Hanush Thompson](#), A044 854 402 (BIA Oct. 1, 2014) (IJ not permitted to consider allegations in order of restitution under modified categorical approach) (*Pauley*, Greer, Guendelsberger)—**KEY DECISION**

[Lorenzo Perez Flores](#), A095 419 451 (BIA July 28, 2014) (declines to consider lab report finding respondent was convicted of possessing cocaine because report was not relied upon by criminal court) (Grant)

[Camilo Ernesto Sanchez Fajardo](#), A077 675 707 (BIA June 27, 2014) (IJ improperly consulted police report under modified categorical approach because it was not incorporated into the plea) (*Liebowitz*, Malphrus, Mullane)

[Luis Miguel Ramirez-Moz](#), A072 377 892 (BIA Mar. 31, 2014) (*Descamps v. United States*, 133 S.Ct. 2276 (2013), overrules *Matter of Lanferman*, 25 I&N Dec. 721 (BIA 2012), on whether criminal statute is divisible) (Cole)—**KEY DECISION**

[Lorenzo Martinez-Delgado](#), A074 103 780 (BIA Mar. 11, 2014) (third degree sexual assault under Wis. Stat. 939.2 is divisible but record does not support sexual abuse of minor conviction because respondent pleaded no contest, nothing in record indicated factual basis for offense, and victim’s age not an element of the crime) (*Pauley*, Malphrus, Guendelsberger)

[Raul Sainz-Rivera](#), A091 684 104 (BIA Mar. 10, 2014) (driving under the influence on suspended license under Ariz. Rev. Stat. 28-1383(A)(1) is not a categorical CIMT; statute not divisible because “driving” and being in “actual physical control” of a vehicle are not alternative elements as to which jurors must unanimously agree) (*Pauley*, Guendelsberger, Greer)—**KEY DECISION**

[Dieuvu Forvilus](#), A071 552 965 (BIA Jan. 28, 2014) (third degree theft under Fla. Stat. 812.014 not a categorical CIMT; statute not divisible because permanent and temporary takings are alternative means of committing offense rather than alternative elements about which jurors must agree to convict) (*Pauley*, Guendelsberger, Greer)—**KEY DECISION**

[Jorge Alberto Contreras](#), A044 176 076 (BIA Jan. 14, 2014) (cites *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013), for proposition that “if an alien’s conviction for a marijuana distribution offense fails to establish that the offense involved either remuneration or more than a small amount of marijuana, it

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is not an aggravated felony under the Act”) (Guendelsberger)

[Salvador Espinoza Gonzalez](#), A021 576 036 (BIA Dec. 13, 2013) (Arizona sexual abuse not categorical aggravated felony and not divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013)) (Holmes)

[Victor Enrique Tally-Barrios](#), A041 736 376 (BIA Oct. 8, 2013) (fourth degree sexual offense under former Md. Code Ann. Art. 27, § 464C, not divisible under *Descamps v. United States*, 133 S. Ct. 2276 (2013) (*Adkins-Blanch*, Greer, Miller)—**KEY DECISION**

[Pablo Quintero-Madrigal](#), A090 394 871 (BIA Oct. 4, 2013) (finds “realistic possibility” that statute is applied to offenses that are not CIMTs in light of case reversing conviction because defendant was entitled to affirmative defense) (Creppy)—**KEY DECISION**

[Salvador Hernandez-Garcia](#), A097 472 829 (BIA Sept. 20, 2013) (resisting arrest under Cal. Penal Code 69 not a categorical CIMT and statute not divisible under *Descamps v. United States*, 133 S.Ct. 2276 (2013), because neither the threat of use of deadly force nor injury to the victim is an element of the offense) (*Pauley*, Greer, Malphrus (dissenting))—**KEY DECISION**

[Sergio Gonzalez-Manjarrez](#), A093 108 092 (BIA May 22, 2013) (unlawful possession of a controlled dangerous substance with intent to distribute under 63 Okla. Stat. Ann. 2-401 not categorical drug trafficking aggravated felony in light of *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013), because it did not necessarily involve remuneration or more than a small amount of marijuana) (*Pauley*)

[Eliza Valdez Bernudez Bautista](#), A035 383 901 (BIA May 22, 2013) (conviction for misuse of a Social Security Number under 42 U.S.C. 408(a)(8) an aggravated felony under INA 101(a)(43)(M)(i) under the modified categorical approach; states that *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013), did not implicitly overrule *Matter of Lanferman*, 25 I&N Dec. 721 (BIA 2012), that the modified categorical approach may be applied to all statutes regardless of structure) (*Pauley*) (Note: Under the Supreme Court’s intervening decision in *Descamps v. United States*, 133 S.Ct. 2276 (2013), the statute of conviction would likely be found not to be divisible.)

[Ireneusz Fraczek](#), A030 973 737 (BIA May 9, 2013) (terminates proceedings where respondent was convicted under a divisible statute (Section 53A-103 of the Connecticut General Statutes, criminalizing third degree burglary) and entered an “*Alford* plea” without admitting facts required to support a finding that he burglarized a dwelling) (*Pauley*, Greer, Guendelsberger). (Note: Under the Supreme Court’s intervening decision in *Descamps v. United States*, 133 S.Ct. 2276 (2013), the statute of conviction would likely be found not to be divisible)—**KEY DECISION**

[Dhyana Aderne Goltz](#), A045 296 896 (BIA June 12, 2012) (upholds termination of proceedings where DHS did not establish that respondent’s conviction under sections 200.481 and 200.485 of the Nevada Revised Statutes was a domestic violence crime under the modified categorical approach) (Cole) (Note: The Board subsequently [denied](#) DHS’ motion to reconsider)

[Benyahia Hebbar](#), A079 374 882 (BIA Jun. 11, 2012) (pre-sentence investigation reports cannot be considered under the modified categorical approach) (*Mullane*, Greer, *Pauley*)

[Agostino Accardo](#), A035 089 741 (BIA Mar. 15, 2012) (plea colloquy does not support finding of removability under modified categorical approach because respondent did not assent to the proffer of the factual basis for the plea) (*Guendelsberger*, Liebowitz, Malphrus)—**KEY DECISION**

[Ruben Montenegro-Ruiz](#), A041 095 571 (BIA May 31, 2011) (conviction for battery constituting domestic violence under Nev. Rev. Stat. 33.018, 200.481(1)(a), and 200.485 not “crime of violence”

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because minute order did not state that the respondent pleaded guilty “as charged”) (Pauley)

[Gilberto Dominguez-Gutierrez](#), A201 021 861 (BIA Mar. 21, 2011) (taking the identity of another under Ariz. Rev. Stat. 13-2008 not CIMT under *Beltran-Tirado v. INS*, 213 F.3d 1179 (9th Cir. 2000); breadth of statute creates “realistic possibility” that individual might be prosecuted for non-turpitudinous conduct) (*J. King*, Adkins-Blanch, Guendelsberger)—**KEY DECISION**

[Jesus Enrique Mendoza-Benitez](#), A092 161 477 (BIA Jan. 18, 2011) (proceedings terminated where respondent entered guilty plea pursuant to *People v. West*, 477 P.2d 409 (Cal. 1970), and record did not establish controlled substance that formed basis for conviction) (*Cole*, Greer, Pauley)

### **Existence of Conviction**

[H-H-D.](#), AXXX XXX 798 (BIA Dec. 21, 2018) (entry into pretrial diversion under Ala. Code 12-23-5 not a “conviction” for immigration purposes because respondent was not required to be found guilty, to plead guilty or nolo contendere, or to admit sufficient facts to warrant a finding of guilt) (*Greer*, Donovan, Cole (dissenting))

[Mark Lawrence Davies](#), A058 550 298 (BIA July 30, 2018) (grants motion to reconsider and holds that an administratively entered judgment of guilt due to the respondent’s failure to appear in court does not qualify as a conviction for immigration purposes) (*Kendall Clark*, Guendelsberger, Grant)

[Mario Harold Flores](#), A043 945 828 (BIA Nov. 29, 2017) (New Jersey “disorderly persons offenses” does not qualify as convictions for immigration purposes) (Grant)

[Armando Pacheco-Sanchez](#), A205 462 394 (BIA March 10, 2017) (placement in a diversion program under Cal. Penal Code 1000.3 prior to 1997 did not qualify as a “conviction” for immigration purposes because statute did not then require finding or admission of guilt to participate in the program) (*Creppy*, Liebowitz, Mullane)

[Claudia Molina Pena](#), A089 526 024 (BIA Oct. 25, 2016) (notes withdrawal of DHS appeal of IJ decision holding that violation of New Jersey disorderly persons offense not a “conviction” for immigration purposes) (Holiona)

[Ema Gomez-Mitchell](#), A099 199 518 (BIA Jan. 20, 2015) (respondent not convicted for immigration purposes by signing plea agreement admitting that company submitted false Medicaid claims; states that the doctrine of piercing the corporate veil “cannot be used in removal proceedings to attribute a corporation’s conviction to a shareholder and corporate officer who was never charged or convicted of a crime individually”) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

[Gurson Oswald Gourzong](#), A038 201 760 (BIA June 12, 2015) (judgment by Special Court-Martial qualifies as a “conviction” for immigration purposes) (Guendelsberger)

[Raul Galvez Valdovinos](#), A090 066 373 (BIA Nov. 21, 2014) (deferred entry of judgment for a controlled substance violation in California not a “conviction” under *Lujan-Armendariz v. INS*, 222 F.3d 728 (9th Cir. 2000); *Nunes-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (en banc), which overruled *Lujan-Armendariz*, only applies prospectively) (*Creppy*)

[Patricia Esmeralda Valladares Bardales](#), A094 098 339 (BIA Jan. 20, 2012) (disposition under Massachusetts law by continuation without a finding (CWO) and unsupervised probation before judgment constitutes “conviction” for immigration purposes) (Pauley)

[Yessy Lizeth Ortiz-Caceras](#), A055 864 797 (BIA Jan. 6, 2012) (deferred adjudication under Tenn.



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Code 40-35-313 is “conviction” for immigration purposes) (Pauley)

[Aldair Ivan Cervantes](#), A200 630 917 (BIA Dec. 8, 2011) (assessment of court costs constitutes “penalty” under INA 101(a)(48)(A) sufficient to qualify as a “conviction,” per *Matter of Cabrera*, 24 I&N Dec. 459 (BIA 2008)) (*Adkins-Blanch*, Guendelsberger, Malphrus)

[Edward Mercado](#), A095 443 759 (BIA Mar. 1, 2011) (deferral of entry of judgment and subsequent withdrawal of plea not conviction for immigration purposes under *Retuta v. Holder*, 591 F.3d 1181 (9th Cir. 2010)) (Kendall-Clark)

### **Finality of Conviction**

[V-A-J-](#), AXXX XXX 968 (BIA Feb. 3, 2020) (reopens and remands for further consideration of whether conviction was final for immigration purposes in light of late-filed direct appeal and letter from appellate criminal counsel indicating intent to challenge conviction on the merits) (Wendtland)

[V-E-A-](#), AXXX XXX 466 (BIA Oct. 10, 2019) (upholds termination of proceedings in light of evidence that respondent submitted untimely appeal of criminal convictions giving rise to charges of removability) (Kendall Clark)

[Rubben Gregorio Mejia Peralta](#), A047 445 437 (BIA Sept. 27, 2019) (terminates proceedings under *Matter of J.M. Acosta*, 27 I&N Dec. 420 (BIA 2018), in light of late-filed but pending appeal challenging underlying criminal conviction on basis of ineffective assistance of counsel) (Kendall Clark)

[Milton Rafael Castillo](#), A042 889 639 (BIA May 2, 2019) (upholds termination of proceedings in light of letter from criminal appellate attorney attesting that respondent’s case was on direct appeal and related to a substantive defect in the underlying proceedings) (Kendall-Clark)

[Austin Dennis](#), A094 710 227 (BIA Jan. 10, 2019) (grants DHS motion to dismiss without prejudice because convictions underlying charge of deportability were on direct appeal) (Neal)

[Ramon Abimael Zapata Peralta](#), A063 451 726 (BIA Oct. 17, 2018) (grants joint motion to terminate proceedings without prejudice because the criminal conviction underlying the crime of removability was on direct appeal) (Kendall Clark)

[Cesar Rafael Martinez Gomez](#), A063 611 6022 (BIA Oct. 12, 2018) (terminates proceedings with non-opposition of DHS under *Matter of J.M. Acosta*, 27 I&N Dec. 420 (BIA 2018), because conviction underlying charge of removability was on direct appeal) (*Mullane*, Malphrus, Morris)

[Jesus Javier de Jesus-Rosario](#), A056 514 289 (BIA March 31, 2017) (remands record after acceptance of late-filed appeal rendering conviction not final for immigration purposes) (Guendelsberger)

[Waldy Mena Lopez](#), A044 132 788 (BIA Dec. 15, 2016) (reverses termination of proceedings but remands for consideration of administrative closure while direct appeal is pending) (*Pauley*, Wendtland, Cole (dissent))

[Kevin Calvin Vasley Lowe](#), A061 494 852 (BIA Dec. 6, 2016) (remands record in light of granting of motion allowing respondent to file late appeal) (Mann)

[Mario Lino Barbosa Souto](#), A040 144 389 (BIA Dec. 5, 2016) (remands record in light of evidence that criminal conviction underlying charge of removability was on direct appeal) (Pauley)



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[Benjamin Valentin Brito](#), A056 358 016 (BIA April 22, 2016) (reopens and terminates proceedings because convictions underlying the charges of removability were on direct appeal) (Guendelsberger)

[Michael Tachie Mensah](#), A205 497 725 (BIA Feb. 18, 2016) (remands record in light of evidence that criminal conviction that resulted in denial of voluntary departure was still on direct appeal) (Holmes)

[Harvey Neville Thomas](#), A027 043 777 (BIA Feb. 27, 2015) (remands for further consideration of finality of conviction for immigration purposes in light of grant of motion for late-filed appeal under N.Y. Crim. Proc. Law 460.30) (Guendelsberger)

[Francisco Alberto German](#), A045-320-817 (BIA Nov. 21, 2014) (orders further fact-finding on finality of conviction where state appellate court accepts late appeal under N.Y.P.L. 460.30) (Grant)

[Kirk Gabriel Laurencin](#), A060 176 754 (BIA Nov. 5, 2014) (terminates proceedings without prejudice where criminal convictions were on direct appeal) (Kendall-Clark)

[Rainiere Antonio De La Cruz Brito](#), A060 135 193 (BIA Nov. 26, 2013) (conviction not final because respondent filed direct appeal of sole conviction listed in NTA) (Grant)

[Carl Alphanso Thompson](#), A045 613 869 (BIA Sept. 30, 2013) (terminates proceedings following reinstatement of direct appeal of criminal conviction) (Holmes)

[Sallahadin Birhan](#), A076 911 298 (BIA Apr. 23, 2012) (conviction is final for immigration purposes regardless of whether respondent exhausted his direct appeals; dissenting opinion argues that definition of “conviction” in INA 101(a)(48) does not trump finality requirement in *Matter of Ozkok*, 19 I&N Dec. 546 (BIA 1988)) (*Pauley*, Mullane, Greer (dissenting))

### **Timing of Conviction**

[Victor J. Ocampo-Lopez](#), A200 557 585 (BIA Jan. 6, 2017) (imposition of term of imprisonment following violation of probation does not change date of conviction for underlying crime) (*Mullane*, Malphrus, Guendelsberger)

### **Post-Conviction Relief**

#### **Pardons**

[Phetsamone Khamsouk](#), A025 263 749 (BIA Dec. 27, 2019) (reopens and terminates proceedings sua sponte following receipt of gubernatorial pardon for conviction that served as sole basis for aggravated charge of deportability) (Guendelsberger)

[Wayzaro Yashimabet Walton](#), A041 657 485 (BIA Dec. 5, 2019) (grant of full and absolute pardon by Connecticut Board of Pardons and Paroles is equivalent to pardon from state Governor) (*Grant*, Guendelsberger, Kendall-Clark)

[Sok Krouch](#), A027 350 406 (BIA Oct. 22, 2019) (reopens and terminates proceedings sua sponte over DHS opposition in light of receipt of full and unconditional pardon by Governor of Washington for conviction underlying sole basis of removability) (Goodwin)

[R-R-C.](#), AXXX XXX 271 (BIA Sept. 6, 2019) (grants motion to reopen withholding-only proceedings in light of grant of full and absolute pardon of the aggravated felony conviction that previously precluded her from applying for withholding of removal under the INA) (Grant)

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[R-D-](#), AXXX XXX 410 (BIA Dec. 13, 2018) (gubernatorial pardon of aggravated felony conviction applies to both ground of deportability and eligibility for cancellation of removal) (*Liebowitz, Morris, Malphrus*)

[Ai Sen Bounthong](#), A040 408 560 (BIA Aug. 15, 2017) (reopens proceedings sua sponte in light of full and unconditional gubernatorial pardon) (*Guendelsberger*)

[Chao Xing Chen](#), A039 001 115 (BIA Aug. 2, 2017) (reopens and terminates proceedings sua sponte in light of full and unconditional gubernatorial pardon for offense that qualified as aggravated felony) (*Kelly, Grant, Pauley*)

[James Martin Lawlor](#), A038 733 245 (BIA Aug. 16, 2013) (terminates proceedings after respondent receives full and unconditional pardon from Governor of Ohio) (*Greer, Cole, Pauley*)

[Pedro Ramos Garcia](#), A092 167 389 (BIA July 12, 2013) (reopens and remands for further proceedings in light of full and unconditional pardon granted from Governor of California) (*Holmes*)

[Dong Van Nguyen](#), A027 392 198 (BIA June 12, 2012) (reopens proceedings after respondent receives full and unconditional pardon for conviction forming grounds of deportability under INA 237(a)(2)(A)(ii) (two or more crimes involving moral turpitude) and INA 237(a)(2)(A)(iii) (aggravated felony), but remands for lodging of additional charges under INA 237(a)(2)(C) (firearms offense) per *Matter of Suh*, 23 I&N 626 (BIA 2003)) (*Miller*)

### **Vacatur / Withdrawals of Guilty Pleas**

[C-J-](#), AXXX XXX 108 (BIA Oct. 5, 2020) (convictions vacated under Cal. Penal Code 1473.7 no longer valid for immigration purposes) (*Greer, Wilson, Baird*)

[Wenross St. George Perry](#), A208 244 345 (BIA Aug. 19, 2020) (reopens and terminates proceedings sua sponte following vacatur of conviction underlying charges of deportability because respondent was not informed of immigration consequences of his plea) (*Riley, Grant, Mullane (dissenting)*)

[Carlos Jaimes](#), A207 897 108 (BIA July 24, 2020) (vacatur under Cal. Penal Code 1473.7 are available only in cases of legal invalidity or actual innocence; states that failure to advise or understand immigration consequences is a substantive and/or procedural defect that vitiates a conviction, not a vacatur to avoid immigration consequences) (*Grant, Mann, Mullane*)

[J-A-B-E-](#), AXXX XXX 748 (BIA June 26, 2020) (whether deferred entries of judgment vacated under Cal. Penal Code 1203.43 remain valid for immigration purposes must be determined on case-by-case basis) (*O'Connor, Greer, Donovan*)

[B-W-](#), AXXX XXX 187 (BIA June 17, 2020) (conviction no longer valid for immigration purposes in light of vacatur because respondent was not properly advised of immigration consequences of plea) (*Gemoets, Hunsucker, Morris*)

[Ahmed Hamdy Elamary](#), A060 339 401 (BIA May 6, 2020) (remands for further consideration of whether vacated conviction remained valid for immigration purposes in light of intervening order from criminal court clarifying that proceedings were reopened on due process grounds) (*Foote*)

[Antonio Antunez Delgado](#), A096 342 377 (BIA April 29, 2020) (finds conviction vacated under Calif. Penal Code 1473.7(3) no longer valid for immigration purposes) (*Grant*)

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[Gary Maurice Fearon](#), A046 845 833 (BIA April 17, 2020) (rejects DHS argument that conviction remained valid for immigration purposes because state court order vacating conviction was drafted by respondent's attorney) (Morris)

[C-H-C-](#), AXXX XXX 630 (BIA March 30, 2020) (holds that vacatur under Cal. Penal Code 1473.7 must be given effect for immigration purposes because it requires a procedural or substantive defect in underlying criminal proceedings) (Goodwin)

[Jairo D. Saballos Gutierrez](#), A055 619 844 (BIA Oct. 2, 2019) (reopens and terminates proceedings in light of vacatur of conviction underlying ground of removability based on defense attorney's failure to advise respondent of immigration consequences) (Kendall Clark)

[Nino Anthony Lucente](#), A014 977 291 (BIA Aug. 2, 2019) (reopens proceedings sua sponte following vacatur of conviction under Ohio Rev. Code 2943.031 due to trial court's failure to advise respondent of the possible immigration consequences) (Grant)

[Sarith Som](#), A027 754 193 (BIA July 24, 2019) (reopens and terminates proceedings sua sponte following vacatur of criminal conviction because respondent's criminal defense attorney did not advise him of the immigration consequences of his plea) (Grant)

[Georgys Xavier Ceballos Morales](#), A055 970 495 (BIA June 26, 2019) (terminates proceedings in light of evidence that respondent was permitted to withdraw his plea because his criminal counsel failed to advise him of the immigration consequences) (Kelly)

[Richard Patrick Robinson](#), A041 457 759 (BIA May 31, 2019) (IJ clearly erred in finding insufficient evidence that conviction was vacated for procedural or substantive defects where minutes indicated that plea was not knowing and intelligent) (*Malphrus*, Noferi, Mullane)

[Daniel Jose Torres](#), A029 229 962 (BIA May 31, 2019) (states that vacatur of convictions under Cal. Penal Code 1473.7 are only available in cases of legal invalidity or actual innocence) (Kendall Clark)

[Erick Javier Villatoro Padilla](#), A043 562 927 (BIA May 15, 2019) (terminates proceedings following vacatur of conviction under Cal. Penal Code 1473.7 because DHS did not satisfy burden of demonstrating that vacatur was solely for immigration reasons) (Guendelsberger)

[Pedro Raidel Isaac Napoles](#), A202 143 020 (BIA April 22, 2019) (guilty plea vacated because attorney did not advise respondent of adverse immigration consequences no longer a conviction for immigration purposes) (*Malphrus*, Creppy, Mullane)

[Jose Valencia-Mata](#), A095 717 786 (BIA April 19, 2019) (grants motion to reopen to apply for cancellation of removal in light of evidence showing that respondent withdrew his guilty plea to a 2006 drug offense under Cal. Penal Code 1473.7) (Kendall Clark)

[Florence Chinyere Nnani](#), A029 892 018 (BIA April 3, 2019) (reopens and terminates proceedings in light of vacatur of criminal conviction because defense attorney failed to advise her of the immigration consequences of her plea) (Guendelsberger)

[Taner Kapan](#), A030 985 636 (BIA March 8, 2019) (terminates proceedings following vacatur of criminal conviction because respondent was not advised of potential immigration consequences of guilty plea) (*Cole*, Donovan, Wendtland)

[H-C-G-](#), AXXX XXX 868 (BIA Feb. 21, 2019) (reverses prior finding that respondent's conviction remained valid for immigration purposes in light of evidence demonstrating that conviction was not

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vacated pursuant to Tex. Penal Code 12.45) (*Greer*, Cole, Donovan)

[Abraham Uribe](#), A200 505 536 (BIA Feb. 19, 2019) (reopens and terminates proceedings sua sponte in light of a criminal court granting his request to withdraw his guilty plea to the controlled substance-related offense pursuant to Cal. Penal Code 1203.43) (Grant)

[Javier Pego-Guerrero](#), A046 333 848 (BIA Feb. 15, 2019) (terminates proceedings in light of evidence that a criminal court allowed respondent to withdraw the guilty plea underlying the ground of removability and granted him a trial on the charge) (Kelly)

[J-R-T-L-](#), AXXX XXX 488 (BIA Oct. 2, 2018) (deferred prosecution for possession of cocaine under N.C. Gen. Stat. 90-95(d)(2) no longer valid for immigration purposes following grant of motion to vacate because plea was not the product of an informed choice) (*Morris*, Creppy, Mullane)

[Raul Flores Rodriguez](#), A073 846 406 (BIA Sept. 14, 2018) (reopens proceedings sua sponte in light of vacatur of conviction for which IJ previously pretermitted application for cancellation of removal) (*Kendall Clark*, Grant, Guendelsberger)

[Erjon Xhetani](#), A048 146 222 (BIA Aug. 3, 2018) (finds prior conviction no longer valid for immigration purposes following vacatur pursuant to agreement stating that respondent pleaded guilty under the mistaken belief that he would suffer no immigration consequences upon the completion of his deferred adjudication program) (*Creppy*, Liebowitz, Geller)

[Mark Nathaniel Thomas](#), A044 250 141 (BIA Feb. 27, 2018) (reopens and terminates proceedings sua sponte following vacatur of sole conviction underlying charge of removability) (Kendall Clark)

[C-R-A-](#), AXXX XXX 329 (BIA Feb. 23, 2018) (reverses finding of inadmissibility based on vacated conviction upon finding *Renteria-Gonzalez v. INS*, 322 F.3d 804 (5th Cir. 2002), no longer applicable in light of *Gaona-Romero v. Gonzales*, 497 F.3d 694 (5th Cir. 2007)) (*Pauley*, Snow, Kelly)

[B-E-P-](#), AXXX XXX 744 (BIA Dec. 8, 2017) (remands record following vacatur of conviction because respondent did not receive adequate notice of the immigration consequences of his plea) (*Pauley*, Creppy, Mullane (dissenting))

[David Castro-Camacho](#), A058 107 973 (BIA March 30, 2017) (remands record following vacatur of criminal conviction due to ineffective assistance of counsel) (Pauley)

[Stefano Righi](#), A200 386 011 (BIA Jan. 26, 2017) (remands motion to reopen in light of vacatur of his conviction resulting from possible violation of Sixth Amendment rights) (Grant)

[Jeannine Evelin Stevens](#), A036 377 883 (BIA Jan. 19, 2017) (reopens and terminates proceedings in light of vacatur of conviction due to lack of advice of immigration consequences) (Guendelsberger)

[Uriel Garcia Macedo](#), A092 058 021 (BIA Dec. 1, 2016) (reopens proceedings sua sponte following vacatur of criminal conviction and remands for findings regarding basis for vacatur) (Kendall-Clark)

[Jesus Ramos](#), A091 679 605 (BIA July 19, 2016) (reopens and terminates proceedings sua sponte over DHS opposition in light of state court order vacating conviction for failure to advise of potential immigration consequences in violation of Cal. Penal Code 1016.5) (Guendelsberger)

[Jose Maria Delgado Fernandes](#), A089 408 582 (BIA July 6, 2016) (terminates proceedings following vacatur on substantive grounds of sole conviction underlying charges of removability) (Grant)

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[Richard Austin Palmer](#), A061 494 802 (BIA June 9, 2016) (IJ erred in finding conviction vacated solely for immigration reasons where both parties agreed that vacatur was based on ineffective assistance by criminal attorney) (*Guendelsberger*, Kendall-Clark, Holiona)

[Felipe Granados Solano](#), A075 540 798 (BIA Nov. 27, 2015) (drug convictions expunged under Cal. Penal Code 1203.4 prior to *Nunez-Reyes v. Holder*, 646 F.3d 684 (9th Cir. 2011) (en banc), not valid for immigration purposes) (Grant)

[Zsolt Bara](#), A205 668 646 (BIA July 24, 2015) (conviction no longer valid for any immigration purposes where vacatur was issued both in the interests of justice and to cure any possible Sixth Amendment violations) (*Holmes*, Miller, Holiona)—**KEY DECISION**

[Jose Antonio Cue](#), A072 552 808 (BIA Feb. 5, 2015) (reopens proceedings sua sponte where convictions underlying charges of removability were vacated and nolle prossed because plea procedures did not comply with Florida Criminal Rule 3.1 72(c)(8)) (*Holmes*)

[Jacinto Moises Carbonell-Desliz](#), A074 054 226 (BIA Jan. 13, 2014) (reopens proceedings sua sponte in light of vacatur of conviction because respondent was not advised by criminal court of Sixth Amendment right to counsel) (Miller)

[Jose Eustate](#), A047 128 564 (BIA Dec. 20, 2013) (remands for further consideration of motion to reopen in absentia order after underlying criminal conviction is vacated) (Grant)

[Marten Lorenzo Ventura-Arias](#), A057 144 173 (BIA Nov. 18, 2013) (reopens and terminates proceedings after respondent was permitted to withdraw plea because chemist who tested samples in the criminal case had been accused of misconduct) (*Holmes*)

[Carlos Eenesto Valle Iglesias](#), A043 995 062 (BIA Sept. 18, 2013) (terminates proceedings following stipulation from both parties that conviction underlying both grounds of removability was vacated based on ineffective assistance of counsel) (*Holmes*)

[Dave Lall](#), A095 571 038 (BIA Aug. 27, 2013) (reopens proceedings sua sponte over DHS objection and remands to determine basis for vacatur of conviction) (Miller)

[Sewdat Rajpaul](#), A058 358 908 (BIA Aug. 15, 2013) (reopens proceedings sua sponte after state court vacates conviction for attempted assault in the second degree in violation of N.Y.P.L. 110-120.05-02 and allows respondent to plead guilty to menacing in the third degree in violation of N.Y.P.L. 120.15) (*Holmes*)

[Ignacio Javier Perez-Hernandez](#), A092 259 726 (BIA July 18, 2013) (reopens proceedings sua sponte after respondent's criminal conviction vacated under Cal. Penal Code 1016.5 because he was not advised of potential immigration consequences prior to entering guilty plea) (Miller)

[Mamoudou Camara](#), A076 433 169 (BIA June 17, 2013) (terminates proceedings where underlying conviction was vacated pursuant to *Padilla v. Kentucky*, 559 U.S. 356 (2010)) (*Guendelsberger*)

[Daniel Sierra](#), A074 026 895 (BIA June 1, 2011) (reopens proceedings for consideration of 212(h) waiver after vacatur of one of respondent's two marijuana convictions) (*Cole*, Filppu, Pauley)

[Son Hoang Nguyen](#), A097 683 305 (BIA May 16, 2013) (reopens proceedings sua sponte where underlying criminal conviction for attempted cocaine possession was vacated on due process grounds) (Manuel)



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[William Enrique Alvarado Melendez](#), A094 405 564 (BIA May 10, 2013) (convictions vacated under *Padilla v. Kentucky*, 559 U.S. 356 (2010), no longer valid for immigration purposes notwithstanding the Fifth Circuit's decision in *Renteria-Gonzalez v. INS*, 322 F.3d 804 (5th Cir. 2002)) (*Malphrus*, Creppy, Grant)

[Abduljabar Ahmed Mazid](#), A043 308 397 (BIA Apr. 12, 2013) (reopens and terminates proceedings in light of evidence that respondent's criminal conviction was vacated pursuant to *Padilla v. Kentucky*, 130 S. Ct. 1473 (2010)) (Holmes)

[Luis Alberto Gonzalez-Banda](#), A078 469 139 (BIA Mar. 21, 2011) (DHS bears burden of proving conviction was vacated solely for immigration purposes pursuant to *Nath v. Gonzales*, 467 F.3d 1185 (9th Cir. 2006) (Pauley))—**KEY DECISION**

[Charles H. Bresiac](#), A091 402 355 (BIA Mar. 15, 2013) (reopens and terminates proceedings in light of evidence demonstrating respondent's criminal conviction was vacated because he was not advised of potential immigration consequences before entering guilty plea) (*Mann*, Adkins-Blanch, Guendelsberger)

[Lufty Abraham Abassy Oqueli](#), A029 886 971 (BIA Dec. 30, 2011) (terminates proceedings after conviction underlying charge of removability is vacated; states that "whether the Georgia court acted in accordance with its own state law is not an issue appropriate for resolution in immigration proceedings") (Pauley)—**KEY DECISION**

[Susana Lilibeth Ferreira-Neves](#), A036 464 449 (BIA Feb. 25, 2011) (reopens proceedings sua sponte and remands for consideration of cancellation of removal where aggravated felony conviction was vacated due to unspecified constitutional deficiencies) (Kendall-Clark)

[Nowel Q. Dela Cruz](#), A057 056 093 (BIA Feb. 8, 2013) (grants DHS motion to reopen proceedings based on vacatur of criminal conviction, but remands rather than terminates because DHS indicated intent to lodge additional charge of removability) (Holmes)

[Jose Noel Meza-Perez](#), A029 269 568 (BIA Feb. 28, 2011) (reopens proceedings sua sponte after respondent's conviction vacated under Cal. Penal Code 1016.5 because he was not advised of potential immigration consequences prior to entering guilty plea)

[Lindon Ingram](#), A055 557 778 (BIA Jan. 21, 2011) (remands record for further fact-finding after filing of request for post-conviction relief while appeal to Board was pending) (C. King)—**KEY DECISION**

[Delroy Patterson](#), A035 685 599 (BIA Jan. 10, 2011) (proceedings reopened and terminated sua sponte where convictions were vacated on double jeopardy grounds and due to ineffective assistance of counsel) (C. King, Adkins-Blanch, J. King)

[Francisco Jose Alvarez Troncoso](#), A057 287 860 (BIA Jan. 6, 2011) (remands to consider termination of proceedings after respondent permitted to withdraw guilty plea due to ineffective assistance of counsel and because plea was not made knowingly, voluntarily, or intelligently) (Pauley)

[Chun Lam Chan](#), A047 957 053 (BIA Jan. 6, 2011) (proceedings terminated after vacatur of conviction where respondent was never advised of immigration consequences of plea) (J. King)

[Betania Generosa Madera](#), A041 592 043 (BIA Jan. 5, 2011) (proceedings reopened sua sponte after vacatur of underlying criminal conviction due to deficiency in search warrant) (Kendall-Clark)



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### Record Modifications

[Teresa Flores Razo](#), A092 326 584 (BIA Jan. 31, 2014) (reopens proceedings and remands for fact-finding after minute order from trial court strikes “embezzlement” and reference to the respondent’s employer from indictment) (Guendelsberger)

### Sentence Modifications

[Joseph Lloyd Thompson](#), A041 352 799 (BIA Dec. 23, 2019) (on remand from *Matter of Thomas & Matter of Thompson*, 27 I&N Dec. 556 (A.G. 2019), remands for IJ to consider whether respondent’s sentence modification was based on a substantive or procedural defect in the underlying criminal proceeding) (Creppy, Hunsucker, Noferi)

[Michael Vernon Thomas](#), A035 549 938 (BIA Dec. 23, 2019) (on remand from *Matter of Thomas & Matter of Thompson*, 27 I&N Dec. 556 (A.G. 2019), remands for IJ to consider whether respondent’s sentence clarification was based on a substantive or procedural defect in the underlying criminal proceeding) (Creppy, Hunsucker, Noferi)

[Ernesto Rios Rodriguez](#), A073 814 738 (BIA Dec. 2, 2019) (reopens proceedings sua sponte following vacatur of two-year sentence for criminal conviction, noting that DHS bears burden in Ninth Circuit of demonstrating that conviction remains valid for immigration purposes) (Wilson)

[Kofi Amouzougan](#), A078 765 761 (BIA Feb. 1, 2019) (rejects DHS argument that sentence reduction was not valid because court failed to use phrase “nunc pro tunc”) (Donovan)

[Orlando O’Brian Fearon](#), A087 249 433 (BIA Nov. 28, 2018) (grants full faith and credit to order from trial court clarifying that respondent was sentenced to one year of probation rather than a probated confinement sentence) (Crossett, Wendtland, Donovan)

[Jaime Andrade Madrigal](#), A043 463 680 (BIA Feb. 22, 2018) (terminates proceedings in follow reduction of sentence to 364 days under Calif. Penal Code 18.5 and rejects DHS’ request to overturn *Matter of Cota-Vargas*, 23 I&N Dec. 849 (BIA 2005)) (Guendelsberger, Liebowitz, Malphrus (concurring))

[Michael Hideo Wolff](#), A208 835 308 (BIA Feb. 2, 2018) (upholds termination of proceedings after felony conviction is reduced to a misdemeanor under Cal. Penal Code 17(b)) (Creppy)

[Raul Gonzalez](#), A092 143 856 (BIA Feb. 2, 2018) (reopens and terminates proceedings sua sponte following the reduction of the sentence for possession of cocaine to a simple drug misdemeanor under Cal. Penal Code 1170.18(G)) (Guendelsberger, Kendall-Clark, Grant)

[Donald Josue Bone Manzanarez](#), A047 542 190 (BIA Dec. 9, 2015) (remands for consideration of whether respondent was convicted of offense punishable by one year or longer in light of an order modifying conviction from felony to misdemeanor) (Pauley)

[Francisco Manuel Mata-Martinez](#), A044 108 993 (BIA Oct. 22, 2015) (Utah convictions no longer qualified as an aggravated felony theft offense due to reduction of charges to class B misdemeanors punishable by up to six months) (Pauley, Guendelsberger, Malphrus)

[Jose Toledo-Alvarado](#), A204 259 296 (BIA Feb. 26, 2014) (remands record where reduction of sentence to 364 days could affect respondent’s eligibility for relief) (Guendelsberger)

[Jorge Ivan Bautista-Santos](#), A043 996 234 (BIA Oct. 7, 2013) (grants joint motion to remand after

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state trial court clarifies that 12-month sentence for misdemeanor theft by taking was to be served entirely on probation and included no period of confinement) (Miller)

[Jean Daniel Ahlijah](#), A205 829 470 (BIA Sep. 26, 2013) (remands record following reduction of respondent's sentence for receiving stolen property from 12 to 6 months) (Guendelsberger)

[Edgar Ortega](#), A045 624 720 (BIA Sept. 23, 2013) (grants motion to remand after respondent is resentenced from five years' to three days' confinement for offenses previously found to qualify as aggravated felony crimes of violence) (Pauley)

[Jeffry Nelson](#), A058 001 093 (BIA July 31, 2013) (reopens and terminates proceedings where respondent's conviction no longer qualifies as an aggravated felony in light of the reduction of his sentence to 364 days, per *Matter of Cota-Vargas*, 23 I&N Dec. 829 (BIA 2005)) (Manuel)

[Maria Regina Enriquez](#), A090 496 769 (BIA July 26, 2013) (upholds termination of proceedings where respondent withdrew plea to possession of stolen vehicle under Nev. Rev. Stat. 205.273(b)(1) and received sentence of three days with credit for time served for pleading guilty to gross misdemeanor conspiracy possession of a stolen vehicle, per *Matter of Cota-Vargas*, 23 I&N Dec 849 (BIA 2005)) (Cole, Pauley, Donovan)

[Luis Alberto Lopez-Romero](#), A074 268 627 (BIA July 22, 2013) (upholds finding that respondent was convicted of theft-related aggravated felony despite entry of post-sentencing order clarifying that the respondent was sentenced to ten years of probation rather than confinement) (Pauley)

[Lacy Ann Shaw](#), A074 650 611 (BIA May 20, 2011) (rejects DHS argument that sentence modification should be disregarded because it was issued in violation of state law, stating that it was "not proper for us to look behind a state court order to determine if it was issued in conformity with state law") (Grant)—**KEY DECISION**

[Oliverio Millan-Villegas](#), A091 874 177 (BIA Jan. 28, 2011) (rejects DHS argument that sentence clarification was invalid under Georgia law; states that the Board has "no authority to weigh in on what types of orders a state trial court may issue") (Cole)

## XII. SUMMARY REMANDS

### Audio Difficulties and Incomplete Transcripts

[N-N-R-](#), AXXX XXX 122 (BIA Jan. 24, 2020) (remands record because transcript did not include portions of respondent's direct and cross-examination) (*O'Connor*, Noferi, Greer)

[D-V-V-](#), AXXX XXX 216 (BIA Jan. 10, 2020) (remands record based on defective transcript because voir dire and direct examination of respondent's expert were not transcribed) (Kelly)

[G-M-](#), AXXX XXX 735 (BIA Dec. 13, 2019) (remands record because transcript did not include respondent's testimony in support of his application for relief) (Grant)

[J-S-L-](#), AXXX XXX 953 (BIA Nov. 25, 2019) (remands for further proceedings because transcript was missing portion of hearing at which IJ held lengthy discussion with psychologist who evaluated respondent) (Baird)

[G-V-G-M-](#), AXXX XXX 366 (BIA July 10, 2019) (remands for new hearing because transcript contained 53 instances in which DHS attorney's statements were "indiscernible") (*Morris*, Liebmann, Mullane)

[A-S-H-](#), AXXX XXX 391 (BIA June 14, 2019) (remands record where important testimony was missing from the transcript because the IJ went off record in the middle of the hearing) (*Kendall Clark*, Guendelsberger, Grant)

[Vijay Kumar](#), A215 648 504 (BIA March 19, 2019) (remands record because hearing was not completely recorded and transcript did not contain advisals to pro se respondent) (*Mann*, Adkins-Blanch, Morris)

[Magin Tapia-Cruz](#), A092 431 879 (BIA July 26, 2017) (remands record where transcript did not reflect whether pleadings were taken or basis for issuance of removal order) (Pauley)

[Jonathan Jemenez Nuezca](#), A087 714 293 (BIA March 28, 2017) (remands record where Digital Audio Recording of IJ decision was defective) (Guendelsberger)

[Evelyn Mildred Paz-Ochoa](#), A206 765 278 (BIA April 20, 2016) (remands record because IJ denied continuance in off-the-record conversation that the Board was unable to review) (Grant)

[Julio Cesar Delgado-Garcia](#), A205 570 293 (BIA Aug. 18, 2015) (remands records where alleged waiver of appeal and request for continuance to seek counsel were not recorded) (Grant)

[Bryan Emmanuel Raudales-Zuniga](#), A206 795 052 (BIA June 11, 2015) (hearing was not recorded and IJ's summary did not reflect whether respondent waived appeal) (Holmes)

[Darwin Alfredo Sanchez-Gonzalez](#), A200 775 544 (BIA June 9, 2015) (remands record due to inability to discern from the transcript whether respondent requested voluntary departure) (Grant)

[D-R-A-](#), AXXX XXX 935 (BIA May 6, 2015) (remands record where respondent disputed having received instructions at prior hearing that was not properly recorded involving request for a continuance to pursue Special Immigrant Juvenile status) (*O'Herron*, Holmes, Adkins-Blanch)

[Erick Ricardo Plascencia](#), A206 650 761 (BIA Feb. 9, 2015) (remands record for second time due to indiscernible notations rendering the transcript incomplete and failure of IJ to issue separate oral or

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written decision) (Holmes)

[Jose Fabio Alpizar](#), A028 898 871 (BIA Dec. 4, 2014) (transcript of hearing ended with the IJ stating, “We’ll go off the record in this case”) (Miller)

[Jose Adalid Mendoza-Dias](#), A077 794 526 (BIA June 21, 2013) (remands record because, *inter alia*, EOIR database does not contain a digital audio recording of the hearing) (Hoffman)

[Robin Joselito Barrios de Leon](#), A087 472 600 (BIA June 14, 2013) (grants motion to remand due to lack of transcript for respondent’s initial removal hearing, lack of oral confirmation that respondent received list of legal service providers, and lack of evidence that the respondent knowingly and intelligently waived the right to be represented by counsel) (Manuel)

[Javier Torres Ponce](#), A028 803 028 (BIA Apr. 3, 2012) (returns record where recording of hearing is incomplete because IJ never came back on record after half-hour recess) (Miller)

[Juan Carlos Delira Mata](#), A095 691 856 (BIA Mar. 5, 2013) (returns record where recording of the hearing was missing and could not be transcribed) (Holmes)

[Jane Moiko Baker](#), A200 303 818 (BIA Feb. 28, 2013) (returns record where audio recording abruptly cut off during course of hearing) (Holmes)

[Eden Garcia-Castro](#), A090 065 334 (BIA Dec. 29, 2011) (returns record where audio recording of hearing contained too many indiscernibles to permit appellate review) (Kendall-Clark)

### For IJ to Consider in First Instance

[Eber Salgado-Gutierrez](#), A205 154 421 (BIA Feb. 27, 2015) (remands for consideration of claim on appeal that prior attorney provided ineffective assistance of counsel by failing to seek relief in light of Board’s limited fact-finding ability) (*Malphrus*, Mullane, Creppy)

[Atif Sultan](#), A096 252 000 (BIA May 22, 2012) (remands record to consider adjustment application; states that DHS arguments regarding eligibility should be addressed by the IJ) (Pauley)

### IJ Failure to Consider Evidence

[S-Y-Z-R-](#), AXXX XXX 323 (BIA Feb. 24, 2020) (remands for further consideration of asylum application because evidence that detained pro se respondent attempted to submit prior to her hearing was not “received” by the immigration court until after she was ordered removed) (Cassidy)

[Delvin Sanchez Velazquez](#), A204 404 385 (BIA Nov. 1, 2018) (remands for further consideration of motion to reopen that IJ denied based on mistaken belief that respondent failed to submit affidavit) (*Geller*, Kelly, Snow)

[Elocastico Guillermo Pacas](#), A094 189 099 (BIA May 30, 2014) (remands record for further consideration of eligibility for TPS where IJ conceded after issuing oral decision that she “missed” evidence relating to respondent’s physical presence) (Guendelsberger)

[Sumithra Keerthi Prasanna Fernando Conganige](#), A088 035 796 (BIA May 28, 2013) (remands where IJ overlooked two affidavits supporting respondent’s claim to not receiving notice of the removal hearing at which she was ordered removed in absentia) (Grant)

## **IJ Failure to Explain**

[Lazaro Randy Diaz Javech](#), A095 512 138 (BIA Nov. 5, 2015) (remands record because IJ provided confusing instructions regarding applications for relief and erroneously said respondent's mother was required to sign applications) (Grant)

[Flower Vallecilla-Gonzalez](#), A075 271 719 (BIA Apr. 11, 2011) (remands record to let pro se respondent seek asylum and cancellation of removal where IJ did not adequately explain consequences of failing to submit applications by prescribed deadline) (*Cole*, Wendtland, Pauley (dissenting))

## **IJ Failure to Take Pleadings**

[J-L-A-C-](#), AXXX XXX 709 (BIA Feb. 14, 2020) (remands record because IJ found respondent removable under charge not listed in NTA and record did not contain Form I-261 ("Additional Charges of Inadmissibility/Deportability")) (*Hunsucker*, Liebowitz, Mullane)

[Eligio Trujillo-Mavie](#), A205 656 755 (BIA April 22, 2016) (remands record because IJ did not require respondent to plead to allegations of fact and charge of removability in NTA) (*Grant*, Mann, O'Leary)

## **Inadequacy of IJ Decision**

[L-G-T-M-](#), AXXX XXX 426 (BIA Oct. 7, 2020) (remands record because analysis in IJ's decision involved facts of case involving different respondent) (*Grant*, Mullane, Mann)

[M-G-R-](#), AXXX XXX 260 (BIA Sept. 17, 2020) (remands record because IJ failed to address portion of motion to reopen claiming that respondent was eligible for asylum based on changed country conditions) (Cassidy)

[V-M-B-G-](#), AXXX XXX 925 (BIA Sept. 11, 2020) (single sentence in IJ decision stating that respondent did not establish eligibility for CAT not sufficient to enable meaningful appellate review) (*O'Connor*, Wilson, Donovan)

[J-A-G-B-](#), AXXX XXX 204 (BIA Sept. 8, 2020) (remands for further consideration of motion to rescind in absentia order where IJ failed to address assertions that motion for telephonic appearance had been granted and respondent had previously filed asylum application) (*O'Connor*)

[J-O-N-](#), AXXX XXX 919 (BIA July 22, 2020) (remands for issuance of complete decision where IJ said he was "not going to reiterate the respondent's testimony for those of you who are reviewing this. This Court presumes that you will review the transcript") (Gorman)

[Florinda Faviola Lorenzo](#), A094 218 653 (BIA May 27, 2020) (remands for further consideration of MTR where IJ issued form order stating only that "[t]he Court agrees with the reasons stated in opposition to the motion") (Goodwin)

[R-M-P-](#), AXXX XXX 064 (BIA May 14, 2020) (remands for preparation of new decision where IJ mistakenly inserted three pages of text from a case involving a separate respondent) (Morris)

[Adiel Carranza-Santamaria](#), A215 901 484 (BIA May 5, 2020) (remands for issuance of complete decision where IJ denied MTR solely "on account of the reasons set forth in the opposition filed") (Grant)

[H-S-](#), AXXX XXX 554 (BIA April 28, 2020) (remands for issuance of complete decision where IJ

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assumed the parties' familiarity with the underlying facts) (Gorman)

[Camille Uhrig](#), A076 488 413 (BIA April 23, 2020) (remands for IJ to issue complete decision where prior decision failed to address portion of MTR seeking reopening to apply for adjustment of status) (Goodwin)

[Z-B-A-B-](#), AXXX XXX 107 (BIA April 22, 2020) (remands for IJ to issue complete decision where order denying MTR stated only that "submitted materials [were] not sufficient to call into question the 4/3/18 decision") (*Hunsucker*, Creppy, Liebowitz)

[V-O-R-M-](#), AXXX XXX 245 (BIA April 22, 2020) (remands for IJ to issue complete decision where order denying MTR stated only that "[t]he Court declines to exercise its sua sponte authority to reopen these matters") (Goodwin)

[Will Balmore Garcia-Herrera](#), A026 399 937 (BIA April 21, 2020) (remands for further consideration of MTR where IJ issued form order stating "[r]emoval order is almost 35 years old. No basis in law or fact to reopen this case") (O'Connor)

[S-M-D-F-](#), AXXX XXX 606 (BIA April 8, 2020) (remands for issuance of complete decision where IJ denied MTR by checking box on form order stating that respondent failed to demonstrate changed circumstances) (Cassidy)

[E-C-G-](#), AXXX XXX 085 (BIA Jan. 21, 2020) (remands for more developed decision because IJ made only single finding of fact and attempted to adopt DHS' closing statement for other findings) (Goodwin)

[Solomon Maada Palmer](#), A200 406 136 (BIA Jan. 14, 2020) (remands for further consideration of motion to reopen sua sponte because IJ issued a form order stating only that he agreed with the reasons stated in opposition to the motion) (Gorman)

[A-H-J-](#), AXXX XXX 590 (BIA Dec. 23, 2019) (remands for further consideration of motion to reopen where IJ stated only that the "evidence does not demonstrate materially changed country conditions since the February 2018 denial") (Guendelsberger)

[Armando Isai Molina-Manzano](#), A209 824 455 (BIA Dec. 20, 2019) (remands for further consideration of MTR because IJ order stated only that the "Court agrees with the reasons(s) stated in the opposition to the motion") (Grant)

[J-A-M-C-](#), AXXX XXX 970 (BIA Dec. 13, 2019) (states that a "decision on a motion that simply indicates agreement with an opposition filed by an opposing party is insufficient to place the respondent and this Board on notice of the specific reasons for the decision") (Goodwin)

[Junior Antonio Mercedes](#), A046 217 038 (BIA Aug. 9, 2019) (remands record because IJ failed to address request for equitable tolling of motion to reopen deadline or whether respondent was eligible for nunc pro tunc relief) (Wendtland)

[Steven Vazquez Martinez](#), A045 236 330 (BIA July 3, 2019) (orders further consideration of whether respondent was convicted of a firearms offense because IJ did not identify whether he used the categorical and modified categorical approaches and did not discuss Puerto Rican case law treatment of the applicable statutes) (Wendtland)

[Javier Levy Garcia-Banegas](#), A098 879 948 (BIA March 29, 2019) (remands for further consideration of motion to reopen where IJ checked box stating that motion was denied for reasons stated in DHS



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opposition but record did not contain a brief filed by DHS) (Morris)

[Manoel Flor Gomes](#), A097 749 716 (BIA March 8, 2019) (remands for further consideration of motion to reopen where IJ issued form order saying citing *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), but providing no explanation for what proposition the case was being used) (Adkins-Blanch)

[J-C-J-](#), AXXX XXX 442 (BIA March 4, 2019) (remands for preparation of separate oral or written decision because IJ improperly incorporated summary of proceedings contained at end of transcript and written closing from DHS) (*Guendelsberger*, Grant, Kendall Clark)

[Baljit Singh Bains](#), A061 071 300 (BIA Aug. 24, 2018) (remands record because the respondent contested removability and the IJ failed to issue a separate written or oral decision addressing the motion to terminate proceedings) (*Liebowitz*, Creppy, Hunsucker)

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[Marta Elizabeth Chajon-Avila](#), A209 117 713 (BIA May 25, 2018) (orders further consideration of motion to reopen where IJ checked box stating “[t]he court agrees with the reasons stated in the opposition to the motion”) (*Kelly*, Pauley, Adkins-Blanch)

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[Jose Heriberto Cadet](#), A027 646 311 (BIA June 26, 2017) (remands record where IJ issued summary decision against respondent who requested a continuance to find an attorney and did not concede the charges of removability) (Pauley)

[Rogelio Reyes Rodriguez](#), A205 920 648 (BIA June 23, 2017) (remands record because IJ failed to meaningfully discuss request for administrative closure under factors set forth in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012)) (Grant)

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[I-M-P-H-](#), AXXX XXX 457 (BIA March 22, 2017) (IJ decision did not contain findings of fact or analysis regarding claim of ineffective assistance of counsel or whether numerical and time limits on motions to reopen should be equitably tolled) (Greer)

[Edith Esperansa Sanabria-Martinez](#), A070 169 937 (BIA March 22, 2017) (remands for issuance of full decision where IJ did not meaningfully address arguments in motion to reopen) (Grant)

[Adrian Escalona Dominguez](#), A201 245 549 (BIA March 7, 2017) (IJ’s decision was not typed, was difficult to read, and did not provide meaningful basis for appellate review) (Malphrus)

[Nigel Omar Smith](#), A210 178 324 (BIA Feb. 15, 2017) (IJ’s decision was devoid of legal analysis relating to allegation that respondent was convicted of firearms offense) (Grant)

[Manuel Emilio Melo](#), A043 691 095 (BIA Feb. 15, 2017) (IJ failed to apply categorical approach in determining whether conviction qualified as CIMT) (Pauley)

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[Abdul R. Musah](#), A076 553 210 (BIA Jan. 18, 2017) (IJ denied motion to reopen sua sponte using form order that failed to address issues raised in the motion) (*Grant*, Adkins-Blanch, Mann)

[Gregorio Antiveros-Rodriguez](#), A200 241 339 (BIA Dec. 30, 2016) (IJ issued summary order of removal without addressing the request for administrative closure) (*O'Connor*, Grant, Mann)

[Felipe Perez Lopez](#), A208 055 200 (BIA Nov. 8, 2016) (reopens proceedings and remands record based on intervening developments and IJ's failure to prepare separate decision and to consider whether to reopen proceedings sua sponte) (Grant)

[Bryan Evans Gamez-Diaz](#), A200 108 936 (BIA Nov. 2, 2016) (IJ did not prepare separate oral or written decision adequately addressing whether respondent failed to appear due to exceptional circumstances) (Grant)

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[Pablo Aguilar-Garcia](#), A089 270 019 (BIA Oct. 11, 2016) (IJ used form order and failed to specifically address arguments in motion to reopen) (O'Connor)

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[Jose Marildo Goncalves](#), A206 278 919 (BIA Sept. 29, 2016) (IJ decision referred to findings and conclusions embedded in transcript and thus did not provide an adequate basis for appellate review) (Pauley)

[Jesus Blanco-Acuna](#), A205 631 914 (BIA Sept. 29, 2016) (IJ failed to meaningfully address whether to continue proceedings to allow respondent to pursue provisional unlawful presence waiver) (Grant)

[Carlton Anthony Green](#), A300 321 132 (BIA Sept. 19, 2016) (denial of motion to reopen was limited to checklist stating that respondent failed to meet the requirements for reopening) (Grant)

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[Victor Manuel Moreno-Leyva](#), A206 413 255 (BIA March 7, 2016) (IJ failed to issue a decision setting forth the basis for denial of motion to administratively close proceedings) (Guendelsberger)

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[Guardado Osmin](#), A094 497 543 (BIA Jan. 8, 2016) (orders further consideration of motion to reopen because IJ decision did not provide meaningful basis for appellate review) (Guendelsberger)

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[Raquel Luzia Ferreira Pereira](#), A099 202 663 (BIA Sept. 2, 2015) (remands record where IJ denied motion to reopen by use of a stamp with a brief handwritten note on a copy of the respondent’s motion) (Grant)

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[Jorge Arturo Cazarin Cabrera](#), A205 500 769 (BIA July 16, 2015) (remands record where IJ denied motion to reopen solely for the reasons stated in the DHS’ opposition) (Grant)

[Zoila Enunice Elvir-Guevara](#), A098 589 427 (BIA July 2, 2015) (IJ failed to address claim regarding husband’s grant of prosecutorial discretion or equities supporting request for sua sponte reopening) (Grant)

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[Valery Muriel Perez Toro](#), A200 204 318 (BIA March 10, 2015) (remands record because IJ denied sua sponte motion to reopen as untimely) (Pauley)

[Mardin Jeovany Moz Giron](#), A047 300 159 (BIA Jan. 15, 2015) (remands record because IJ did not meaningfully address arguments in motion to reopen) (Grant)

[Mario Mancia Lopez](#), A094 417 094 (BIA Nov. 4, 2014) (IJ’s ruling consisted of a stamp stating that respondent’s motion to reopen was denied) (Grant)

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[Sang Han Yang](#), A091 254 530 (BIA Mar. 23, 2014) (remands record because IJ decision did not contain sufficient factual and legal analysis to enable adequate appellate review; states that “incorporating by reference to the record of proceedings, including the DHS’s brief, is not sufficient”) (Pauley)

[Chong Sik Kim](#), A098 728 227 (BIA Feb. 19, 2014) (remands record where IJ discussion of DHS burden of proof was contained in transcript and incorporated “by reference” into decision) (Pauley)

[Mohammed Anwar Hazuri](#), A034 373 877 (BIA Jan. 16, 2014) (remands record where IJ denied motion to reopen without engaging in fact-finding or providing analysis) (Hoffman)

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[Maritza Salcido-Rocha](#), A200 832 424 (BIA Sept. 26, 2013) (IJ failed to address assertion that respondent appeared in court on same day after being ordered removed in absentia) (Grant)

[Glendon A. White](#), A024 619 428 (BIA Sept. 19, 2013) (sustains DHS appeal and remands record where the IJ did not fully explain why Record of Sworn Statement (Form I-877) was insufficient to establish removability) (*Mullane*, *Liebowitz*, *Creppy*)

[Jose Gabriel Martinez](#), A094 190 065 (BIA Sept. 5, 2013) (remands record where IJ issued form order stating, “The Court adopts the DHS opposition as its own findings of fact and conclusions of law”) (Manuel)

[Raul Eduardo Juarez](#), A201 215 858 (BIA Aug. 30, 2013) (expresses concern about manner in which IJ conducted hearing, failure of decision to make factual findings about respondent’s eligibility for voluntary departure) (Adkins-Blanch)

[Juan Carlos Gomez](#), A041 591 459 (BIA Aug. 30, 2013) (remands record where IJ denied derivative citizenship claim without evaluating the sufficiency of the evidence, including delayed birth certificate listing a U.S. citizen as respondent’s father) (Cole)

[Jose de Jesus Alvarez Gudino](#), A095 748 846 (BIA June 26, 2013) (remands for further proceedings where IJ failed to address whether FBI rap sheet used to establish respondent’s alienage was properly authenticated) (*Creppy*)

[Jose Adalid Mendoza-Dias](#), A077 794 526 (BIA June 21, 2013) (remands motion to reopen proceedings at which respondent was ordered removed in absentia because, *inter alia*, IJ decision contains insufficient factual findings and is devoid of legal analysis) (Hoffman)

[Ronei Ferreira-De Souza](#), A096 181 961 (BIA Mar. 28, 2013) (remands case where IJ denial of motion

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[Osama Mikho Orah](#), A096 742 979 (BIA Dec. 10, 2012) (remands denial of motion to reopen based on ineffective assistance of counsel where IJ denied claim in a two-sentence order) (Manuel)

[Julian Ricardo Castillo](#), A041 590 059 (BIA Nov. 6, 2012) (remands case where IJ merely cited charging documents submitted by the DHS in support of finding respondent was convicted of an aggravated felony) (Pauley)

[Jose Javier Linares-Valencia](#), A059 170 269 (BIA Aug. 23, 2012) (returns case for further proceedings where IJ did not advise LPR of right to be represented by counsel or ascertain whether he wished to proceed without an attorney; did not ask respondent if he conceded removability; did not explain why he found the respondent's conviction constituted a crime involving moral turpitude or why the respondent was ineligible for a waiver; and did not issue a separate oral or written decision) (*Adkins-Blanch*, Hoffman, Guendelsberger)

[Felicitimo Cambronero Lorbes](#), A078 003 871 (BIA June 26, 2012) (remands record where IJ did not explain basis for conclusion that respondent was U.S. citizen) (Guendelsberger)

[Hilario Rivas-Melendrez](#), A030 799 483 (BIA June 28, 2012) (remands record where decision denying motion to reopen sua sponte failed to provide meaningful basis for appellate review) (Pauley)

[Abu Bakarr Dizo-Kamara](#), A200 515 968 (BIA June 8, 2012) (remands record where IJ did not prepare separate decision on the merits, did not clearly explain respondent's appeal rights, and accepted unsworn testimony from witness who was not identified in the record) (Holmes)

[Maria Sabastiana Gonzalez-Ventura](#), A076 318 715 (BIA Mar. 25, 2011) (remands record where IJ did not clearly state reasons for denying the motion to reopen, describe the facts considered to be misstated, or provide legal authority for decision) (C. King)

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[Reginald Caremise](#), A209 161 828 (BIA May 19, 2020) (grants motion to remand to apply for adjustment of status in light of respondent's marriage to U.S. citizen while case was on appeal) (Swanwick)

[Hamza Hussein Idries](#), A200 355 063 (BIA Oct. 12, 2016) (grants motion to remand in light of respondent's marriage to U.S. citizen and filing of visa petition while case was on appeal) (Grant)

[Victor Manuel Gonzalez Hernandez](#), A206 412 832 (BIA Oct. 4, 2016) (grants motion to remand for respondent to apply for non-LPR cancellation of removal in light of dismissal of criminal charges while the case was on appeal) (Pauley)

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[Brenda Dumlao Pumaras](#), A044 943 630 (BIA Mar. 10, 2014) (grants motion to remand to apply for waiver under INA 237(a)(1)(H) despite withdrawal of request before IJ) (Hoffman)

[Pedro Mateo Mateo](#), A029 376 113 (BIA Mar. 10, 2014) (grants DHS motion to remand to let respondent seek protection under the CAT after IJ deemed application abandoned because it was not filed by court-imposed deadline) (Holmes)

[Wilfredo Hernandez-Garcia](#), A094 217 628 (BIA Feb. 26, 2014) (remands record to permit respondent to apply for voluntary departure based on intervening marriage to LPR intending to file visa petition on his behalf) (Manuel)

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[Lindon Ingram](#), A055 557 778 (BIA Jan. 21, 2011) (remands for further fact-finding after filing of request for post-conviction relief while appeal to Board was pending) (C. King)—**KEY DECISION**

[S-G-](#), AXXX XXX 756 (BIA Dec. 14, 2009) (motion to remand granted where evidence was previously unavailable and addressed some of the reasons for IJ's denial of asylum application) (Pauley)

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[Pau Soc Chau](#), A028 009 220 (BIA May 8, 2015) (record indicated that respondent was born in Thailand and is citizen of Cambodia but IJ ordered him removed to Vietnam) (Guendelsberger)