

# INDEX OF UNPUBLISHED DECISIONS OF THE BOARD OF IMMIGRATION APPEALS

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BY BEN WINOGRAD



## 2017 EDITION

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(CONTAINS DECISIONS ISSUED THROUGH OCTOBER 11, 2017)

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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.

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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

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

#### Abandonment of LPR Status

[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 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)

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BY BEN WINOGRAD

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(*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**

[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 “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**

##### **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**

[C-M-O-G-](#), AXXX XXX 275 (BIA July 31, 2017) (indecency 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)

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[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 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**

[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)

[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)

[Al S. Watkins](#), A047 928 924 (BIA June 9, 2017) (reopens proceedings following submission of unpublished decision finding 35 Pa.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

[Semsair Paul](#), A098 508 518 (BIA May 30, 2017) (maintaining common nuisance under Ind. Code 35-

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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-](#), AXXX 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)

[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**

[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*)

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

[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**

[V-M-B-B-](#), AXXX 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**

[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

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statute is not divisible) (*Pauley*, Greer, Geller)—**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)

[M-B-](#), AXXX 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**

[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)

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

[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)

[Manuel Iruegas Gomez](#), A077 623 337 (BIA Jan. 13, 2014) (finds possession with intent to distribute under Iowa Code 124.401(1)(d) to be drug trafficking aggravated felony based on evidence in conviction record that police discovered 400 grams of marijuana and \$1,400 cash on kitchen table) (Guendelsberger)

[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)

[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**

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



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[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)

[Ramon Ghellere Espindola](#), A099 805 862 (BIA Dec. 4, 2012) (possession of marijuana with intent to distribute under Mass. Gen. Laws ch. 94C, § 32C drug trafficking aggravated felony) (Adkins-Blanch)

[Juan de de Jesus Perez-Agudelo](#), A012 340 064 (BIA Oct. 9, 2012) (upholds finding that respondent was convicted of drug trafficking aggravated felony because he could not demonstrate pursuant to *Matter of Castro Rodriguez*, 25 I&N Dec. 698 (BIA 2012), that his conviction of possession of marijuana for sale in violation of Cal. Health and Safety Code 11359 involved a small amount of marijuana for no remuneration) (*Leibowitz*, Guendelsberger, Holmes) (Note: the Supreme Court subsequently overruled *Matter of Castro Rodriguez* in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013))

[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)

[Sheldon Odinga Wilson](#), A042 163 324 (BIA Jan. 17, 2012) (finds respondent was convicted of drug trafficking aggravated felony because he could not demonstrate under *Matter of Castro Rodriguez*, 25 I&N Dec. 698 (BIA 2012), that his conviction for possession with intent to distribute involved a small amount of marijuana for no remuneration) (Miller) (Note: the Supreme Court subsequently overruled *Matter of Castro Rodriguez* in *Moncrieffe v. Holder*, 133 S. Ct. 1678 (2013))

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

[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**

[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**

[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**

[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

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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*, *Malphrus*)—**KEY DECISION**

**18 USC 16(a)—use of force clause**

[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

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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* (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



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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**

[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**

[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 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

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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**

[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)

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[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)

[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**

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[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)—**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)

[Benyiahia 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**

[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)—

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**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**

[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**

[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**

[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



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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 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)

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[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**

[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**

[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**

[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*)

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

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

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[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)

### **INA 101(a)(43)(U)—attempt or conspiracy**

[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**

### **Alien Smuggling—INA 212(a)(6)(E)(i), INA 237(a)(1)(E)**

[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**

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

[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)

### General

[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)

[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)

[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)

[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)

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

[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)

[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

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not qualify for personal use exception) (Guendelsberger)

[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)

[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)

[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)

### **Paraphernalia**

[Ernesto Rodrigo Lopez-Clemente](#), A078 686 322 (BIA June 16, 2017) (possession of drug paraphernalia under Ariz. Rev. Stat. 13-3415(A) not a controlled substance offense because state schedule is overbroad and identity of drug not an element of the offense) (*Pauley*, Greer, Mullane)—**KEY DECISION**

[Jose Luis Pimber-Cirerol](#), A019 117 585 (BIA Feb. 15, 2017) (possession of drug paraphernalia under Ariz. Rev. Stat. 13-3415 not an offense relating to controlled substance under *Mellouli v. Lynch*, 135 S. Ct. 1980 (2015)) (*Pauley*, Creppy, Greer)—**KEY DECISION**

[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)

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

[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

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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)

[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)

[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**

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

[Dario Enrique Espinoza Leon](#), A060 814 718 (BIA Aug. 17, 2016) (remands for further consideration of inadmissibility given that respondent was not convicted of any of the criminal charges stemming from arrest for allegedly carrying suitcase full of cocaine and DHS declined to introduce any evidence from criminal trial) (Greer)—**KEY DECISION**

[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)

[R-P-](#), AXXX XXX 024 (BIA Feb. 19, 2014) (respondent not inadmissible under INA 212(a)(2)(C) due to small amount of marijuana and lack of evidence of remuneration or commercial aspect to transaction) (Pauley)—**KEY DECISION**

[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)

### Crimes Involving Moral Turpitude—INA 212(a)(2)(A)(i), INA 237(a)(2)(A)(i)

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[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)

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[Manuel de Jesus Castillo Trejo](#), A059 745 573 (BIA March 3, 2017) (assault under Texas Penal Code 22.01(a)(1) not a CIMT because it encompasses reckless conduct and statute is not divisible) (*Grant*, Adkins-Blanch, Mann)

[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 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

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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. 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))

### **Property-Related Crimes**

[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*)



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[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*)

[Jorge Hernandez-Hernandez](#), A045 582 968 (BIA May 20, 2014) (fourth degree arson under N.Y.P.L. 150.05 not a CIMT because perpetrators need not have specific intent to damage property) (*Guendelsberger*, Hoffman, Adkins-Blanch)—**KEY DECISION**

### **Fraud and Theft-Related Crimes**

[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 CIMT 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 CIMT because offenders need only exhibit criminal negligence by having reason to believe property was stolen) (*Pauley*, Adkins-Blanch, Mann)—**KEY DECISION**

[Yunlei Wang](#), A099 882 279 (BIA June 8, 2017) (access device fraud under 18 U.S.C. 1029(a)(9) not a CIMT because it does not require actual or an intent to use hardware or software that has been configured to modify telecommunication identifying information) (*Wendtland*, Pauley, O'Connor)

[Cuong Vi Ngo](#), A057 771 073 (BIA June 8, 2017) (grand theft under Fla. Stat. 812.014 not categorically a CIMT 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))

[Thien Thin Nguyen](#), A073 279 229 (BIA May 16, 2017) (identity theft under Cal. Penal Code 530.5(a) not a CIMT under *Linares-Gonzalez v. Lynch*, 823 F.3d 508 (9th Cir. 2016)) (*Pauley*)

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

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

[Amos Zeith Benka Coker](#), A056 082 534 (BIA April 28, 2017) (identity theft under 18 Pa. Cons. Stat. 4120(a) not a CIMT) (*Pauley*, Greer, Mullane)

[Zorina Pangilinan](#), A046 403 539 (BIA April 26, 2017) (unauthorized use of personal identifying

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information of another under Cal. Penal Code 530.5(a)(5) not a CIME) (Pauley)

[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)

[Claudia Molina Pena](#), A089 526 024 (BIA Oct. 25, 2016) (notes withdrawal of DHS appeal of IJ decision holding that theft by unlawful taking under N.J. Stat. 2C:20-3A is not a CIME) (Holiona)

[Anselmo Carlos-Solis](#), A092 904 043 (BIA June 16, 2016) (shoplifting under Ariz. Rev. Stat. 13-1805 not a CIME because it does not require intent to permanently deprive owner of property) (Guendelsberger)

[Marie Boubbov](#), A091 779 680 (BIA April 29, 2016) (orders further consideration of whether embezzlement under Cal. Penal Code 504 is a CIME) (*Grant*, Mann, O'Leary)

[Jose Lopez-Guerra](#), A205 659 456 (BIA Jan. 7, 2016) (theft under Tex. Penal Code 31.03 is categorically a CIME) (*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 CIME) (*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 CIME 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 CIME) (*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 CIME because neither fraud, deceit, nor impairing government functions are inherent in statutory language) (*Adkins-Blanch*, Neal, *Grant*)—**KEY DECISION**

[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 a CIME) (Holmes)

[Karina J. Alvarez Fernandez](#), A046 941 394 (BIA Sept. 23, 2014) (third degree grand theft under Fla. Stat. 812.014 not a categorical CIME 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 CIME) (Manuel)

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

[Dieuvu Forvilus](#), A071 552 965 (BIA Jan. 28, 2014) (third degree theft under Fla. Stat. 812.014 not categorical CIME; statute not divisible because permanent and temporary takings are not

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[Emerita Casilla Nunez](#), A042 893 719 (BIA Nov. 20, 2013) (third degree theft under Alaska Stat. 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**



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[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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[Gaspar Rosas-Hernandez](#), A205 147 712 (BIA May 16, 2017) (aggravated driving or actual physical control while under the influence under Ariz. Rev. Stat. 28-1383(A)(1) not a CIMA because statute is not divisible) (*Liebowitz*, Cole, Malphrus)

[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 CIMA) (*O'Connor*, Pauley, Wendtland)

[Enrique Romero-Ramirez](#), A205 788 636 (BIA April 28, 2017) (possession of a motor vehicle part without identification number under Utah Code 4-1a-1313 not a CIMA) (*Cole*, Greer, Pauley)

[Nasir Ali Khan](#), A059 549 769 (BIA April 26, 2017) (leaving the scene of an accident under Cal. Veh. Code 20001(a) not a CIMA) (*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 CIMA) (*Creppy*, Malphrus, Mullane)

[F-A-M-](#), AXXX XXX 992 (BIA Jan. 26, 2017) (driving with suspended or revoked license after prior DUI under Cal. Veh. Code 14601.2(a) not a CIMA) (*Pauley*, Guendelsberger, Kendall-Clark)—**KEY DECISION**

[Minh Phan](#), A025 085 074 (BIA Dec. 30, 2016) (fleeing or eluding peace officer under Cal. Veh. Code 2800.2 not a CIMA) (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 CIMA 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 CIMA) (*Guendelsberger*, Malphrus, Geller)

[Adonay Villatoro](#), A094 085 163 (BIA Nov. 27, 2015) (Iowa Code 714.8(11) not a CIMA 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 CIMA) (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 CIMA in the Ninth Circuit) (*Pauley*, Guendelsberger, Greer)—**KEY DECISION**

[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

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state has prosecuted defendants entitled to affirmative defenses) (Creppy)—**KEY DECISION**

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[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

[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 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

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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)

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

[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 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

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[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)**

[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 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)

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[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)**

[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*, Malprhus, 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



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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

[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**

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**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)

[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 Ileri 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)**

[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)

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[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)**

[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 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)



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[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))

### Unlawful Presence—INA 212(a)(9)

#### Three- and Ten-Year Bars

[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**

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[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**

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

[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**

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[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 Protective Order—INA 237(a)(2)(E)(ii)**

[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*)

[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*)

[Akim Rahman](#), A079 687 751 (BIA Dec. 6, 2011) (respondent violated F-1 status by engaging in employment without authorization) (*Guendelsberger*)

## II. RELIEF FROM REMOVAL

### Abandonment of Applications

[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)

[Emerson Roberto Martinez-Fuentes](#), A206 718 042 (BIA Feb. 3, 2016) (remands for consideration of asylum application even though respondent failed to submit application by deadline set by immigration judge) (*O'Leary*)

[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*)

[Jesus Salvador Valle-Anguiano](#), A073 863 636 (BIA Dec. 30, 2015) (remands record for respondent to pursue adjustment of status despite failure to submit Form I-485 before the IJ or on appeal) (*Adkins-Blanch*, Grant, *O'Leary*)

[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 apprised 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*)

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[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)

[Brett Richard Godke](#), A059 435 050 (BIA May 16, 2014) (IJ should have reviewed existing Form I-751 submitted to USCIS and provided respondent additional opportunity to submit evidence in support of the petition) (*Manuel*, Guendelsberger, Hoffman)—**KEY DECISION**

[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)

[Mohamad Mahmoud Abdul Karim](#), A096 419 142 (BIA July 23, 2013) (IJ improperly deemed adjustment application abandoned where respondent failed to submit supporting medical and tax records, citing *Matter of Interiano-Rosa*, 25 I&N Dec. 264 (BIA 2010)) (Mullane, Creppy, Liebowitz)

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[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)

[Jose Elias Aguilar-Gonzalez](#), A208 786 831 (BIA Aug. 8, 2016) (IJ erred in precluding respondent from seeking relief due to pending criminal charges of which he had not been convicted) (*O'Leary*, O'Connor, Mann)

### Adjustment of Status

#### Affidavit of Support

[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)

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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**

### Bona Fides of Marriage

[Fatimo Eyitayo 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 *Matter of Tawfik*, 20 I&N Dec. 166 (BIA 1990)) (Manuel)

[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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[Patrick Jonah Kagau](#), A099 258 131 (BIA Apr. 26, 2012) (IJ committed clear error in finding prior visa petition was denied based on marriage fraud because neither the Notice Of Intent to Deny (“NOID”) nor the decision of the Field Office Director included a marriage fraud determination) (*Adkins-Blanch*, Hoffman, Manuel)

[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)**

[Jorge Argenis Velazquez-Garcia](#), A097 563 851 (BIA April 29, 2015) (on remand from *Velazquez-Garcia v. Holder*, 760 F.3d 571 (7th Cir. 2014), finds respondent “sought to acquire” LPR status under CSPA by hiring lawyer and filing FOIA request) (*Guendelsberger*, Malphrus, Geller)

### **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)

### **Discretionary Determinations**

[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 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))



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[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 contradicted statements in police report but failed to make any findings of fact regarding whether the incident resulted in conviction or to consider respondent’s positive equities) (*Creppy*)

[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*)

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[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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[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)

[Relio 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)

[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)

[Pablo Travieso-Izquierdo](#), A087 518 131 (BIA Aug. 12, 2013) (respondent was paroled into country and eligible to adjust status under the Cuban Adjustment Act despite having initially entered without inspection) (Grant)—**KEY DECISION**

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### **Legality of Marriage**

[Huyen V. Nguyen](#), A076 127 741 (BIA May 28, 2015) (remands record in light of decision in *Nguyen v. Holder*, 21 N.E. 3d 1023 (N.Y. 2014), holding marriages between a half-blood niece and uncle are



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[Mi Jung Kim](#), A098 768 574 (BIA Sept. 19, 2014) (reverses denial of adjustment application where IJ erroneously reviewed most recently denied I-485 rather than initial I-485) (*Pauley*, Greer, Donovan)—**KEY DECISION**

[Sung Min Hong](#), A097 143 991 (BIA Apr. 29, 2014) (remands to consider whether respondent maintained lawful status due to the “interfiling” of second Form I-140 that was later approved) (Wendtland)

[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**

[Dashnor Norra](#), A088 207 785 (BIA Mar. 21, 2014) (respondents maintained “lawful status” between filing of applications for extension of nonimmigrant status in October 2005 and approval in March 2009, even though approval notice stated that extensions were only valid until May 2006) (*Pauley*, Greer, Cole)—**KEY DECISION**

[Ivica Trupcevic](#), A096 155 870 (BIA Nov. 7, 2013) (filing of application to extend nonimmigrant status does not confer “lawful status” under Section 245(k); delay in adjudicating application does not qualify for regulatory exception for “technical violations resulting from inaction of the Service”) (Wendtland, Pauley, Donovan)

[Lorna Maynigo](#), A094 876 389 (BIA July 31, 2013) (DHS withdraws appeal of IJ decision holding that extension of employment authorization under 8 CFR 274a.12(b)(2) satisfied maintenance of “lawful status” requirement of INA 245(k) because respondent was in period of “authorized stay”) (*Malphrus*, Creppy, Mullane)—**KEY DECISION**

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[Athikar Mounig](#), A079 196 338 (BIA July 18, 2014) (remands for further consideration of adjustment application where respondent submitted affidavit of support (Form I-864) and medical exam (Form I-693) while appeal was pending) (*Mann*, Creppy, Mullane)

[Miguel Angel Teves](#), A089 627 272 (BIA July 1, 2014) (IJ improperly required respondent to submit updated medical examination (Form I-693) in support of adjustment application under then-existing USCIS guidance) (*Pauley*, Cole, Wendtland)

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[Rocael Rodas-Ambrocio](#), A200 557 411 (BIA Apr. 9, 2015) (remands record in light of evidence submitted on appeal that respondent's U.S. citizen sister filed visa petition with priority date of April 28, 2001, rendering him eligible to adjust status under INA 245(i)) (Geller)

[Pankajkumar Patel](#), A088 152 759 (BIA June 18, 2014) (remands for further consideration of request for a continuance because IJ did not have benefit intervening decision in *Matter of Butt*, 26 I&N Dec. 108 (BIA 2013)) (*Mann*, Creppy, Mullane)

[So Ann Taneisha Morgan](#), A099 166 966 (BIA Apr. 3, 2014) (adjustment applicants under INA 245(i) can overcome fraud with INA 212(i) waiver) (Greer)

[Javed Anwar](#), A077 044 013 (BIA Dec. 30, 2013) (LCA not "properly filed" under 8 CFR 245.10(a)(3) because it was not filed in state where petitioning employer was located) (Grant)

[Kamleshwar Prasad](#), A099 681 885 (BIA Dec. 13, 2013) (Apr. 30, 2001, deadline to establish eligibility under INA 245(i) not subject to equitable tolling due to ineffective assistance of counsel) (Greer)

[Nishad Yogesh Pandya](#), A088 276 788 (BIA Aug. 22, 2013) (IJ committed clear error in finding respondent submitted no evidence establishing that his father was the same person named as the beneficiary of a labor certification filed prior to April 30, 2001) (*Pauley*, Greer, Cole)

[Jorge Ramirez Banda](#), A086 922 186 (BIA July 9, 2013) (remands to consider eligibility to adjust under Section 245(i) in light of *Garfias-Rodriguez v. Holder*, 702 F.3d 504 (9th Cir. 2012), and five-factor retroactivity test set forth in *Montgomery Ward & Co. v. FTC*, 691 F.2d 1322 (9th Cir. 1982)) (*Guendelsberger*, Adkins-Blanch, Grant)

[Dolores Soliz-Vigil](#), A077 240 379 (BIA May 31, 2013) (respondent eligible for adjustment under INA 245(i) because more than ten years elapsed since the entry of in absentia removal order) (*Guendelsberger*, Manuel, Hoffman)

[Joao Silva Laudelino](#), A088 268 610 (BIA Dec. 14, 2012) (denies 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)

[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)

[Luis Alejandro Enriquez-Palafox](#), A075 446 189 (BIA Mar. 29, 2011) (denial of visa petition filed on or before April 30, 2001, that was "approvable when filed" does not preclude grandfathered

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[Victor Hugo Alvarado Cortez](#), A070 781 971 (BIA Mar. 10, 2014) (proof of active parenting and continuing financial support by stepparent not required to find a child eligible for a visa petition) (*Donovan*, *Hoffman*, *Adkins-Blanch*)

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[Wilphonse Jean](#), A079 682 996 (BIA Sept. 1, 2017) (reopens and terminates proceedings sua sponte to let respondent to apply for adjustment before USCIS follow reentry under grant of advance parole) (*Guendelsberger*)

[Widens Norcilus](#), A072 041 927 (BIA June 2, 2017) (remands record upon finding IJ should have adjudicated unopposed motion to terminate proceedings to allow him to adjust status before USCIS) (*Pauley*, *O'Connor*, *Wendtland*)

[Rafael Fernandes Pacheco](#), A089 677 735 (BIA May 30, 2017) (reinstates and terminates proceedings to let respondent pursue adjustment application before USCIS) (*Guendelsberger*)

[Michael Jeune](#), A079 346 938 (BIA May 15, 2017) (reopens and terminates proceedings sua sponte to adjust before USCIS where respondent was granted TPS, returned under grant of advanced parole, and was father of three U.S. citizen children) (*Guendelsberger*)

[Sandra Viviane Soares Santos](#), A079 446 316 (BIA Feb. 27, 2017) (reinstates and terminates proceedings to let respondent pursue adjustment application before USCIS) (*Kendall Clark*)

[Guillermo Lopez](#), A096 616 343 (BIA Jan. 29, 2016) (reverses decision denying joint motion to terminate to allow respondent to adjust status before USCIS, stating that absence of an approved visa petition was not grounds to deny joint motion in light of evidence of bona fides of the marriage) (*Pauley*, *Cole*, *Wendtland*)

### **Unauthorized Employment**

[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**

[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*)

[Socchea Yav](#), A089 655 240 (BIA Aug. 13, 2013) (filing of adjustment application does not stop period of unauthorized employment under INA 245(k)) (*Pauley*)

[Edita Magdirila Baua](#), A097 167 177 (BIA June 27, 2013) (upholds denial of employment-based adjustment application where respondent previously worked without employment authorization) (*Holmes*)

## Asylum and Withholding

### Ability and Willingness of Government To Protect

[H-B-](#), AXXX XXX 608 (BIA July 26, 2016) (government of Bangladesh unable to protect respondent from members of Awami League) (*Pauley*, Greer, Wendtland)

### Changed Country Conditions

[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)

### Corroboration

[G-R-M-](#), AXXX XXX 331 (BIA June 2, 2017) (holds that respondents sufficiently corroborated claim 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

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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**

[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)

### **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**

[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,

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### 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**

### **Gangs and Cartels**

[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)

### **Gender-Based Claims**

[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)

### **Internal Relocation**

[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**

[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**

### **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)

### **Mental Health Claims**

[T-G-](#), AXXX XXX 353 (BIA April 6, 2017) (remands record for unrepresented respondent to apply for



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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)

#### Nexus

[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**

#### 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 Deadline

[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**

[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)

#### Particular Social Group

[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)

[L-M-E-G-](#), AXXX XXX 997 (BIA Aug. 23, 2016) (“Honduran women unable to leave a domestic relationship” is a cognizable PSG) (*Liebowitz*, O'Herron, Greer)—**KEY DECISION**

[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**

[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)

[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)

[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)



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### Particularly Serious Crimes

[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)

### Persecution

[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*)

### Rebuttable Presumption of Future Harm

[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**

### 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**

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### **Right to Apply**

[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))

### **Serious Nonpolitical Crimes**

[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)

### **Unaccompanied Minors**

[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**

[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)

[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 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))

[Hubert Lukasz Gul](#), A055 902 141 (BIA May 29, 2013) (remands records 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, per *Matter of Almanza*, 24 I&N Dec. 771 (BIA 2009)) (Hoffman)

[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)

[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 exceptional and extremely unusual 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)

[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)

[B-V-C-J-](#), AXXX XXX 939 (BIA Aug. 3, 2013) (finds two of U.S. citizen children born with heart defects would suffer exceptional and extremely unusual hardship in Mexico; 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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[K-C-](#), AXX XXX 101 (BIA June 24, 2014) (likelihood that U.S. citizen daughters would be subject to female genital mutilation (FGM) in Senegal amounts to exceptional and extremely unusual hardship) (*Cole*, *Greer*, *Miller*)—**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*)

[Maria Isabel Perez-Castro](#), A095 266 046 (BIA Sept. 5, 2012) (respondent ineligible for non-LPR cancellation for failure to show conviction for second degree burglary under Colo. Rev. Stat. 18-4-203(1) was not CIMT) (*Pauley*)

[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; qualifying relatives would suffer exceptional and extremely unusual 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**

[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**

[Gregorio Vergara](#), A076 110 704 (BIA Mar. 8, 2011) (LPR not disqualified from seeking non-LPR cancellation by virtue of LPR status) (*Pauley*)

[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*)

**Special Rule Cancellation—INA 240A(b)(2)**

[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**

[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*)

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[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

[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

[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 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)

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[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-](#), AXXX 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)) (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)



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[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

[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)

[V-V-](#), AXXX XX3 678 (BIA Oct. 4, 2013) (remands record where IJ failed to consider evidence relating to prison conditions in Thailand or applicability of *Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2008)) (Adkins-Blanch)

[A-H-](#), AXX XXX 769 (BIA Aug. 8, 2006) (upholds grant of deferral of removal to respondent previously tortured by Algerian security services) (Pauley)

### NACARA (Nicaraguan Adjustment and Central American Relief Act)

[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



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respondent of apparent eligibility for NACARA relief as required by 8 CFR 1240.11(a)(2)) (Pauley)

[Jose R. Nolasco](#), A94 127 863 (BIA Mar. 12, 2004) (respondent not prohibited from NACARA special rule cancellation based on ground of removability for which he was not charged and found deportable) (*Cole*, Filppu, Hess)—**KEY DECISION**

## Nonimmigrant Status

### T Status

[W-S-](#), AXXX XXX 033 (BIA June 8, 2017) (reopens and terminates proceedings following grant of T nonimmigrant status) (Guendelsberger)

[M-D-D-C-](#), AXXX XXX 677 (BIA Sept. 14, 2015) (administratively closes proceedings in light of filing of application for T nonimmigrant status) (Guendelsberger)

[O-G-C-M-](#), A200 152 829 (BIA July 8, 2014) (reopens and terminates proceedings pursuant to 8 CFR 214.11(d)(9) against respondent who was no longer removable after receiving a T visa) (Guendelsberger)

### U Status

[Jose Andres Obando-Segura](#), A205 118 486 (BIA Oct. 6, 2017) (remands to consider whether to continue proceedings pending adjudication of petition for U nonimmigrant status submitted while case was on appeal) (Kelly)

[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**

[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)

[E-E-M-](#), AXXX XXX 295 (BIA July 10, 2017) (remands record because IJ failed to address request for continuance by six-year-old respondent who was derivative of mother's U visa application) (Kelly)

[Ricardo Garcia-Diaz](#), A202 026 513 (BIA June 29, 2017) (IJ failed to consider factors in *Matter of Sanchez-Sosa*, 25 I&N Dec. 807 (BIA 2012), in denying request for continuance to await processing of U visa application) (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**

[Bao Wu Wang](#), A029 113 475 (BIA May 19, 2017) (reopens and terminates proceedings sua sponte in light of respondent's receipt of U nonimmigrant status) (Kendall Clark)

[Ignacio Castaneda Galindo](#), A095 726 150 (BIA April 10, 2017) (remands record to let respondent seek continuance following submission of U visa application and corresponding police report on appeal) (Grant)

[Saturnino Medrano-Herrera](#), A206 786 746 (BIA Feb. 16, 2017) (IJ failed to consider likelihood that U visa petition would be granted before denying request for continuance) (*Pauley*, Adkins-Blanch,

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Grant)

[Ernesto Martinez-Antonio](#), A206 304 248 (BIA Feb. 14, 2017) (remands record in light of evidence submitted on appeal consisting of signed law enforcement certification and completed U visa application) (Pauley)

[Bethel Wolfgan Mbaba](#), A209 158 298 (BIA Feb. 3, 2017) (remands record for consideration of continuance in light of filing of U visa application with USCIS during pendency of appeal) (Grant)

[Kenia Maleyvi Solorzano Martinez](#), A200 192 464 (BIA Oct. 19, 2016) (grants motion to remand in light of evidence of potential eligibility to qualify for a U visa, including signed law enforcement certification and filing of petition with USCIS) (Pauley)

[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)

[Gustavo Ruiz](#), A206 862 055 (BIA Aug. 8, 2016) (IJ failed to review evidentiary submission before denying request for continuance pending adjudication of U visa application) (Pauley)

[Fermin Becerra Escobedo](#), A207 114 965 (BIA Aug. 5, 2016) (IJ failed to apply factors in *Matter of Sanchez Sosa*, 25 I&N Dec. 807 (BIA 2012), and *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), in determining whether to continue or administratively close proceedings pending adjudication of respondent's wife's U visa application) (*Mann*, O'Leary, O'Connor)

[Fernando Salgado-Hernandez](#), A206 263 000 (BIA June 7, 2016) (respondent's criminal record did not justify denial of continuance to pursue U visa because he could apply for a waiver of inadmissibility) (*O'Leary*, Adkins-Blanch, Mann)

[Sunilkumar Ramabhal Patel](#), A205 131 752 (BIA June 3, 2016) (IJ erred in denying request for continuance to file U visa petition based on crime occurring only two weeks before) (O'Leary)

[Martha Patricia Garcia-Castillo](#), A092 395 313 (BIA Sept. 17, 2015) (remands for further proceedings in light of filing of application for U nonimmigrant status accompanied by required law enforcement certification) (Holmes)

[Fernando Flores-Maceda](#), A205 506 988 (BIA June 15, 2015) (remands for further proceedings in light of marriage to U visa holder who filed a Petition for Qualifying Family Member (Form I-918A) on respondent's behalf) (Grant)

[Joel Vera-Lopez](#), A205 154 644 (BIA Sept. 8, 2014) (grants motion to remand over DHS opposition in light of the submission of a law enforcement certification (Form I-918B) indicating potential eligibility for U nonimmigrant status) (Hoffman)

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[Birgit Esther Urban](#), A091 397 634 (BIA Aug. 13, 2014) (grants motion to remand in light of evidence submitted on appeal that respondent filed U visa petition with USCIS accompanied by required law enforcement certification) (Pauley)

[Maciel Carrillo-Nunez](#), A200 226 594 (BIA Mar. 28, 2014) (IJ erred in denying unopposed request for continuance submitted after filing of petition for U status supported by signed law enforcement certification) (*Hoffman*, Adkins-Blanch, Guendelsberger)

[Lionel Ramos-Chavez](#), A024 255 707 (BIA Mar. 28, 2014) (grants motion to remand over DHS after filing of petition for U status supported by approved law enforcement certification) (Adkins-Blanch)

[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)

[Eunice Nsheka Miller](#), A098 421 064 (BIA Jan. 22, 2014) (reopens and terminates proceedings sua sponte pursuant to 8 CFR 214.14(c)(5)(i) after application for U nonimmigrant status was granted) (Miller)

[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 appeal was pending) (Adkins-Blanch)

[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)

### **V Status**

[Rodrigo Gonzalez Sanchez](#), A098 263 984 (BIA Feb. 8, 2011) (remands to let respondent apply for V status while awaiting priority date to become current) (Pauley)

### **Removal of Conditions on LPR Status**

[Ricardo J. Sinclair](#), A095 965 914 (BIA June 23, 2011) (IJ erred in denying request for termination of conditions on permanent resident status; states that the failure to produce affirmative evidence of bona fides does not by itself establish that marriage is sham) (*Adkins-Blanch*, Guendelsberger, Holmes)—**KEY DECISION**

## Special Immigrant Juvenile (SIJ) Status

[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 I-360) (Liebowitz)

[V-M-P-O-](#), AXXX XXX 125 (BIA July 19, 2017) (remands record following reopening and approval of Form I-360 while case was on appeal) (Pauley)

[O-S-N-M-](#), AXXX XXX 633 (BIA July 10, 2017) (reverses IJ decision terminating proceedings but grants administrative closure while beneficiary of approved SIJS petition waits for priority date to become current) (*Kendall Clark*, Neal, Adkins-Blanch)

[Jimmy Giovanni Perez-Figueroa](#), A206 165 088 (BIA May 19, 2017) (reverses denial of joint motion to reopen and terminate proceedings sua sponte in light of respondent's potential eligibility to adjust under INA 245(h) as special immigrant juvenile) (*Cole*, Greer, Wendtland)

[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)

[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*)

[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)

[Wilson Reynoso-Mendez](#), A206 077 560 (BIA Nov. 18, 2016) (IJ erred in denying request for continuance in light of pendency of state court guardianship petition and that respondent was previously unrepresented) (*Greer*, Kendall-Clark, O'Herron)

[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)

[J-A-L-](#), AXXX XXX 205 (BIA Oct. 12, 2016) (reopens proceedings sua sponte in light of approval of Form I-360) (*O'Herron*, Greer, Kendall-Clark)

[R-L-O-H-](#), AXXX XXX 490 (BIA Sept. 19, 2016) (declines to consider interlocutory DHS appeal challenging denial of a motion to recalendar proceedings that were administratively closed pending adjudication of Form I-360) (Kendall-Clark)

[J-A-H-M-](#), AXXX XXX 192 (BIA Sept. 1, 2016) (remands record in light of evidence submitted on appeal that respondent became beneficiary of approved Form I-360) (Greer)

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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**

[K-F-R-F-](#), AXXX XXX 533 (BIA June 14, 2016) (reopens proceedings sua sponte in light of grant of Form I-360 and faults IJ for questioning whether underlying petition was correctly approved) (*Greer*, Kendall-Clark, O'Herron)

[K-A-C-Y-](#), AXXX XXX 560 (BIA June 13, 2016) (reopens proceedings in light of issuance of predicate state court order and filing of Form I-360 with USCIS) (O'Herron)

[K-N-M-T-](#), AXXX XXX 495 (BIA May 31, 2016) (IJ erred in denying continuance where there was no dispute that a dependency petition had been filed in the appropriate state court) (*Greer*, Kendall Clark, O'Herron)

[K-M-A-G-](#), AXXX XXX 053 (BIA March 24, 2016) (respondents established good cause for continuance by requesting opportunity to file dependency petition in state court) (*O'Herron*, Neal, Greer)

[A-J-J-](#), AXXX XXX 419 (BIA March 10, 2016) (remands record in light of intervening approval of Form I-360 and submission of adjustment application) (Pauley)

[J-J-M-V-](#), AXXX XXX 700 (BIA Jan. 19, 2016) (remands for further consideration of whether to continue or administratively closing proceedings pending the adjudication of a state court petition) (Greer)

[N-R-R-](#), AXXX XXX 938 (BIA Dec. 14, 2015) (IJ erred in denying continuance where there was no dispute that respondent filed dependency petition in state court and timely hearing on the petition had been scheduled) (Greer)

[J-G-B-V-](#), AXXX XXX 018 (BIA Dec. 7, 2015) (remands record in light of evidence regarding petition for SIJS and lack of opposition by DHS) (*Guendelsberger*, O'Leary, Holiona)

[M-K-S-T-](#), AXXX XXX 711 (BIA Nov. 30, 2015) (grants motion to remand in light of approval of petition for SIJS) (Grant)

[M-Y-I-E-](#), AXXX XXX 979 (BIA Nov. 10, 2015) (remands record in light of filing of Form I-360 and approval of petition for SIJS) (Grant)

[C-C-D-J-](#), A202 058 964 (BIA Oct. 29, 2015) (remands record following issuance of state court order of dependency and filing of Form I-360) (Greer)

[O-I-M-P-](#), AXXX XXX 085 (BIA Oct. 8, 2015) (grants motion to reopen based on state court order appointing general guardian and pendency of application before USCIS) (*O'Herron*, Neal, Greer)

[M-A-J-](#), AXXX XXX 274 (BIA Sept. 30, 2015) (grants motion to remand after granting of dependency

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petition and filing of application with USCIS; says denial of request for continuance while dependency petition was still pending “was not a good utilization of Immigration Court and Board resources”) (*Greer*, O’Herron, Neal)—**KEY DECISION**

[J-C-D-R-](#), AXXX XXX 705 (BIA Sept. 29, 2015) (remands record in light of filing of dependency petition on respondent’s behalf after issuance of IJ decision denying continuance) (Holmes)

[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)

[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-O-V-V-](#), AXXX XXX 740 (BIA June 19, 2015) (IJ should not have required respondent to submit copy of state court petition where there was no dispute that petition was filed or hearing was pending) (Holmes)

[J-F-](#), AXXX XXX 328 (BIA June 19, 2015) (remands for further proceedings regarding status of state court petition where IJ ordered removal at second master calendar hearing despite request for more time to obtain counsel and without asking DHS’ position on a continuance) (Holmes)

[J-S-P-](#), AXXX XXX 178 (BIA June 17, 2015) (states that “absent compelling reasons, an Immigration Judge should, as a general practice, continue or administratively close proceedings to await adjudication of a pending state proceeding that could serve as a predicate order for SIJ status”) (Holmes)—**KEY DECISION**

[M-G-M-M-](#), AXXX XXX 194 (BIA June 1, 2015) (cases involving unaccompanied minors seeking SIJ status should be administratively closed or reset pending proceedings in state or juvenile court) (Holmes)—**KEY DECISION**

[J-A-G-](#), AXXX XXX 711 (BIA May 20, 2015) (IJ erred in ordering removal after attorney declined to submit copy of juvenile dependency petition filed with state court in support of application for SIJ status) (*Greer*, Holmes, O’Herron)

[G-I-C-T-](#), AXXX XXX 791 (BIA May 12, 2015) (orders further consideration of eligibility for SIJ status in light of evidence submitted on appeal that probate court case was initiated against respondent’s father) (Holmes)

### Temporary Protected Status (TPS)

[Oscar Euceda-Rueda](#), A077 479 978 (BIA Nov. 10, 2016) (grants motion to reopen to seek administrative closure based on grant of TPS) (*Adkins-Blanch*, Mann, O’Connor)—**KEY DECISION**

[Anibal de Jesus Fuentes](#), A094 762 542 (BIA March 18, 2015) (remands for further fact-finding regarding request for equitable tolling of deadline to seek TPS) (*Guendelsberger*, Neal, Cole)

[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*)

[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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[Carlos Adalberto Galdamez](#), A095 073 731 (BIA Mar. 13, 2014) (upholds denial of TPS because driving without a license under Ark. Code Ann. 27-16-301 and 27-50-305(a) is misdemeanor) (Guendelsberger)

[Abdullah A. Tunis](#), A087 335 805 (BIA Feb. 20, 2014) (remands record where IJ failed to adequately address claim of eligibility for TPS; requires DHS to submit administrative record maintained by USCIS regarding respondent's prior TPS applications) (Manuel)

[Esau Lara](#), A097 322 982 (BIA Dec. 16, 2013) (mother's residence and presence cannot be imputed to child to establish eligibility for TPS) (Mullane)

[Jose H. Hernandez](#), A094 054 192 (BIA Nov. 25, 2013) (DHS withdraws appeal of decision finding respondent eligible TPS because Georgia traffic offenses do not constitute "misdemeanors" for federal immigration purposes) (Holmes)—**KEY DECISION**

[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**

[Jose Amaya-Portillo](#), A094 216 651 (BIA July 16, 2013) (upholds denial of TPS where respondent offered no evidence beyond in-court testimony to establish requisite periods of continuous residence and physical presence) (Grant)

### **Voluntary Departure**

#### **Ability to Reenter Foreign Country**

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#### **Application Requirements**

[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)

#### **Arriving Aliens**

[Daniel B. Newman](#), A029 682 240 (BIA March 16, 2015) (respondent qualified as an arriving alien despite having entered the country without inspection because he was paroled into the United States when he returned from a trip to the U.S. Virgin Islands) (Mullane)

[Helio Alves Ribeiro](#), A070 981 726 (BIA June 23, 2011) (arriving aliens eligible for voluntary departure after but not before conclusion of proceedings) (*Grant*, Creppy, Malphrus)

#### **Basis for Reopening**

[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)



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[Gabriel Luna-Bricento](#), A205 270 408 (BIA July 25, 2016) (reinstates period of voluntary departure following belated submission of evidence that bond was paid to the DHS within required period) (Guendelsberger)

[Antonio Ivarra](#), A205 506 209 (BIA June 20, 2016) (no bond required for detained respondents granted voluntary departure under safeguards) (*Grant*, Mann, O'Connor)

[Alfredo Pimentel-Aragon](#), A201 142 906 (BIA March 17, 2015) (lowers voluntary departure bond from \$20,000 to \$1,000) (*Grant*, Adkins-Blanch, Guendelsberger)

[Jose Enrique Perez-Veneros](#), A095 790 916 (BIA Jan. 7, 2011) (record remanded where IJ failed to provide advisals requiring submission of proof of posting voluntary departure bond) (Miller)

### **Discretionary Determinations**

[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 voluntary departure where IJ denied request because respondent stated that he did not know whether he would re-enter illegally) (Holmes)

[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)

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[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))

[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)

### **Extension of Time to Depart**

[Darwin Leonardo Cabrera-Guartasaca](#), 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

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status for ten years under INA 240B(d)(1)(B)) (Pauley)

### **IJ Failure to Consider**

[Adonay Migueles Alfaro](#), A205 291 592 (BIA Dec. 13, 2012) (remands record because IJ failed to inform respondent of potential eligibility for voluntary departure or ask whether respondent wanted to seek voluntary departure) (Guendelsberger)

[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/Mean 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)

[Necitas Mallari Dangan](#), A205 285 545 (BIA June 16, 2014) (remands record where respondent did not realize she was conceding ineligibility for voluntary departure by saying she lacked sufficient funds to depart) (Guendelsberger)

[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)

### **Nunc Pro Tunc**

[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)

### **Prior to Conclusion of Proceedings**

[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)

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[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*)

#### **Waiver of Appeal**

[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*)

#### **Withdrawal of**

[Pedro Dominguez-Trillo](#), A200 760 650 (BIA Feb. 18, 2016) (grant of voluntary departure automatically terminated upon the filing of motion to reopen) (*Pauley*, *Greer*, *Wendtland*)

[Rene Macario-Rodriguez](#), A205 273 172 (BIA July 15, 2015) (denies motion to withdraw grant of voluntary departure as moot because the alternate order of removal immediately took effect upon the filing of the motion) (*Holmes*)

[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)

[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)

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**INA 212(h)**

[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**

[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)

[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)

[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)

[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)

[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)

[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**

[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)

[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)



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**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)**

[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 exist) (Grant)

**INA 216(c)(4)(B)**

[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)**

[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)



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[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**

### **Withdrawal of Application for Admission**

[Aleyda Ruiz Bahena](#), A208 123 196 (BIA Dec. 15, 2015) (DHS withdraws appeal of IJ decision allowing respondent to withdraw application for admission in the interest of justice) (*Holmes*)

[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

##### As Form of Prosecutorial Discretion

[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 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)

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[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)

### **For DACA Applicants and Grantees**

[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 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**

[Christian Gerardo Garcia-Velazquez](#), A205 132 924 (BIA Nov. 18, 2014) (administratively closes proceedings following grant of DACA application) (Manuel)

[Yeraldi Magdalena Rivas-Romero](#), A200 039 291 (BIA Aug. 12, 2014) (administratively closes proceedings following grant of DACA application) (Grant)

[Maurilio Perez-Cante](#), A087 459 483 (BIA Aug. 11, 2014) (administratively closes proceedings following grant of DACA application) (Grant)

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[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)

### **For Detained Respondents**

[Ricardo Cisneros](#), A075 789 006 (BIA Aug. 30, 2013) (grants interlocutory DHS appeal challenging administrative closure for detained respondent where 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 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)

### **Pending Action By USCIS**

[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)

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[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)

[M-D-D-C](#), AXXX XXX 677 (BIA Sept. 14, 2015) (administratively closes proceedings in light of filing of application for T nonimmigrant status) (Guendelsberger)

[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**

[J. Jose Ceciliano Rodriguez](#), A076 508 042 (BIA Oct. 24, 2014) (remands to consider request for administrative closure for priority date for third-preference employment-based visa to become current) (Grant)

[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)

[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)

[G-M-H](#), AXXX XXX 060 (BIA May 29, 2014) (administratively closes proceedings pending receipt of record from USCIS in appeal of denial of Form I-130) (Adkins-Blanch)—**KEY DECISION**

[Martin Gerardo Velasco-Garcia](#), A089 850 114 (BIA Nov. 14, 2013) (remands to consider administrative closure for respondent to seek provisional unlawful presence waiver (Form I-601A) despite prior convictions for theft and driving under the influence) (Grant)—**KEY DECISION**

[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

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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)

### **Pending Resolution of Criminal Proceedings**

[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*)

[Tony Alphonsus A. Clarke](#), A086 931 015 (BIA Oct. 21, 2015) (remands to consider administrative closure pending adjudication of direct appeal under *Matter of Montiel*, 26 I&N Dec. 555 (BIA 2015)) (*Adkins-Blanch*, *Guendelsberger*, *O'Leary*)

[Francisco Peralta](#), A075 911 963 (BIA June 29, 2015) (administratively closes proceedings pending outcome of direct appeal of criminal conviction forming sole basis for removability) (Holmes)

### **To Pursue Relief Before USCIS**

[Blanca Esmerelda Cortez-Hernandez](#), A206 806 626 (BIA Jan. 20, 2016) (administratively closes proceedings to let respondent pursue asylum before USCIS) (Holmes)

### **Other**

[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)

[Gustavo Barba Arreaga](#), A077 772 631 (BIA June 2, 2014) (administratively closes proceedings in light of approval of U visa application and grant of deferred action until visa becomes available) (Grant)

[Terrance Daniel Bailey](#), A089 010 106 (BIA June 13, 2012) (administratively closes proceedings where DHS improperly removed respondent prior to issuance of Board decision) (Holmes)

[John Neewaly Tarpeh](#), A078 780 390 (BIA May 21, 2012) (respondents must receive opportunity to respond to DHS requests for administrative closure) (Miller)



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[Myleen Cuyson Pascual](#), A086 963 266 (BIA Apr. 30, 2012) (IJ erred in administratively closing proceedings to await pending litigation challenging *Matter of Wang*, 25 I&N Dec. 28 (BIA 2009)) (*Malphrus*, Creppy, Grant)

**Deferred Action for Childhood Arrivals (DACA)**

[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 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**

[Raymundo Ramirez-Sanchez](#), A099 621 267 (BIA Sept. 14, 2015) (remands for further proceedings in light of dismissal of conviction that resulted in denial of prior DACA application) (O’Leary, Grant, Guendelsberger)—**KEY DECISION**

[Ivan Torres-Resendiz](#), A200 626 963 (BIA July 14, 2015) (remands for further consideration of continuance or administrative closure pending adjudication of renewed DACA application in light of vacatur of DUI conviction during pendency of appeal) (Grant)

[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 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



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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)

[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

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[Paula de Jesus Obando de Miranda](#), A095 724 673 (BIA March 9, 2016) (grants motion to recalendar 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*)

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[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 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

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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

[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 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)

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[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 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)



## Changed Country Conditions

[Yakov Grigorievich Drabovskiy](#), A028 158 230 (BIA Dec. 12, 2013) (remands for consideration of motions to reopen that IJ failed to adjudicate based on changed country conditions in Russia) (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)

## Equitable Tolling

[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**

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[M-C-C-](#), AXXX XXX 436 (BIA Sept. 29, 2017) (rescinded 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)

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[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)

[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)

[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)

[Michael Hiraldo Arias](#), A057 150 954 (BIA Aug. 31, 2016) (rescinds in absentia order because NTA was mailed to address lacking internal apartment number) (*O'Leary*, Adkins-Blanch, O'Connor)

[Rodolfo Huerta-Martinez](#), A205 294 294 (BIA Aug. 30, 2016) (remands record for IJ to initially consider attorney affidavit submitted on appeal claiming not to have received hearing notice) (*O'Leary*, Mann, Grant)

[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 remand from Board) (*Holiona*, Guendelsberger, Kendall-Clark)

[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)

[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)

[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*)

[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))

[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)

[Sergio Maldonado](#), A078 567 541 (BIA March 21, 2016) (rescinds in absentia order because NTA was

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sent to an outdated address obtained from documents filed with DHS several years earlier) (*Guendelsberger*, O'Leary, Grant)

[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**

[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)

[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)

[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)

[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**

[Alan Soares Renaut](#), A095 285 899 (BIA Oct. 15, 2015) (rescinds in absentia order following remand in *Renaut v. Lynch*, 791 F.3d 163 (1st Cir. 2015)) (Holmes)

[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*)

[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)

[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 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*)

[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*)

[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*)

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[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)

[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)

[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**

[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)

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[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)

[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**

[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)

[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)

[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)

[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)

[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)



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[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)

[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)

[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)

[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)

[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)

[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)

[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)

[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)

[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)

[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)

[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)

[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-



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[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)

[Odalis Cabreja-Arias](#), A087 771 705 (BIA Sept. 5, 2013) (hearing notice listed incorrect zip code) (Grant)

[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)

[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)

[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)

[Oyekunle Oyeniyi](#), A099 277 993 (BIA June 28, 2013) (NTA and hearing notice sent to an outdated address obtained from 2005 adjustment application) (Manuel)

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[Jose Adalid Mendoza-Dias](#), A077 794 526 (BIA June 21, 2013) (hearing notice sent to DHS but not respondent) (Hoffman)

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[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)

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[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)

[Assetou Doumbia](#), A089 952 722 (BIA Jun. 28, 2012) (envelope containing hearing notice misspelled word "Road" in respondent's address) (*Hoffman*, Adkins-Blanch, Manuel)

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[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)

[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)

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[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**

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[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)

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[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)

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[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)

[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

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[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)

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[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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[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)

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[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)

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[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)

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[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)

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[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 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**



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[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)

[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



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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)

[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)

[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

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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*)

[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*)

[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,*

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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 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)

[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**

[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)

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[Estrava 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)

[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 Villatuya](#), 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

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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)

[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)



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[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

[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)

[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)

### Miscellaneous

[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



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continuance at first and only master calendar hearing) (Grant)

### Post-Departure

[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 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

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### **For Acquisition of Lawful Status**

[Jin Wei Gao](#), A079 692 001 (BIA Jan. 31, 2007) (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 derivative asylee status) (Kendall-Clark)

[Lisbeth Del Carmen Montano-Montano](#), A200 119 434 (BIA Aug. 30, 2016) (reopens and terminates proceedings sua sponte in light of evidence that respondent acquired derivative 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 derivative asylee status) (Holmes)

### **For Post-Conviction Relief**

[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)

[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

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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)

[Aneury Jose Reyes Ozuna](#), A056 533 868 (BIA Mar. 13, 2012) (reopens proceedings sua sponte in light of letter from state prosecutor conceding respondent's criminal plea was constitutionally defective) (Holmes)

[Basilio Estevez](#), A044 921 877 (BIA Jan. 18, 2012) (reopens proceedings sua sponte in light of filing of motion to vacate criminal conviction on constitutional grounds) (Holmes)

[George Ndungu Kiragu](#), A094 217 234 (BIA Mar. 29, 2011) (reopens proceedings sua sponte over DHS opposition in light of vacatur of criminal conviction on due process grounds and respondent's wife's explanation for delay in filing visa petition on his behalf) (Holmes)

[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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[Betania Generosa Madera](#), A041 592 043 (BIA Jan. 5, 2011) (reopens proceedings sua sponte after vacatur of underlying criminal conviction due to deficiency in search warrant) (Kendall-Clark)

### **For Board Error**

[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)

### **For Change in Law**

[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. 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)

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[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 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



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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**

[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**

[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



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of, *inter alia*, respondent's sympathetic family circumstances) (Holmes)

### **For Ineffective Assistance of Counsel**

[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**

[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)

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[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**

[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*)

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[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)) (Miller)

[Mohamed Bouras](#), A089 601 787 (BIA Nov. 24, 2015) (reopens proceedings sua sponte to give the respondent an additional opportunity to demonstrate his eligibility for a waiver of the joint filing requirement under INA 216(c)(4)) (Miller)

[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)

[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

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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 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**

[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 Salavarria](#), A043 910 846 (BIA Jan. 19, 2016) (reopens proceedings sua

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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)

[Ljulijja 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)

[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)

## V. MOTIONS TO RECONSIDER

### Additional Evidence

[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

[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



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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

[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

[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

[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”

[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))

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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))

[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**

[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)

[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**

[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)

### **Returning LPRs**

[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 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)

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[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)

[Feliipe 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 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

[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 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

[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**

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[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)

[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**

[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**



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[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

[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

[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**

[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

[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

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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**

[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

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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)

[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

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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 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-Barrenzuela v. Holder](#), No. 10-70803 (9th Cir. Jan. 8, 2014).)

### Reliability of Evidence

[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 redodge 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**

### Appeal Deadlines

[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)

[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)

### Biometrics

[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)

[Jose Eulalio Chacon](#), A094 474 544 (BIA Nov. 30, 2015) (reverses decision finding respondent abandoned TPS application where fingerprints expired only one day prior to individual hearing) (*Grant*, O'Leary, Guendelsberger)

[Rosa Lidia Alfaro](#), A088 966 288 (BIA Feb. 20, 2014) (remands record because IJ failed to provide warnings required under 8 CFR 1003.47(d) regarding failure to submit biometrics before deeming TPS application abandoned) (*Pauley*, Cole, Wendtland)—**KEY DECISION**

## Certification of Appeals

[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)

[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) (Guendelsbeger)

[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)

## Change of Venue

[C-D-L-G-](#), AXXX XXX 158 (BIA July 26, 2017) (IJ should have granted change of venue from Atlanta 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



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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)

[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 Velasquez-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

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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

[Bernartita Moses](#), A206 352 760 (BIA Dec. 9, 2014) (IJ should have granted continuance for attorney preparation where client retained at last minute) (Miller)

#### To Obtain Counsel

[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

[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

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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)

[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*

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*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 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)

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[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)

[Eduilio 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**

[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**

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[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 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)



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(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)

[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

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*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 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**

### **Equitable Tolling**

[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**

### **Filing Deadlines**

[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)

## Interlocutory Appeals

[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*)

[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)

[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))

[M-M-J-](#), AXXX XXX 522 (BIA March 15, 2017) (grants interlocutory appeal and reverses order granting DHS motion to change venue from Los Angeles to Tucson)—**KEY DECISION**

[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)

[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*)

[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**

[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*)

[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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[Aleesha Marshall Pinnock](#), A074 089 677 (BIA Oct. 14, 2015) (grants interlocutory appeal of decision denying joint motion to terminate because IJ did not meaningfully consider circumstances of the case or agreement of the parties) (*Holmes*, Miller, Holiona)

[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)

[J-E-H-](#), AXXX XXX 133 (BIA June 29, 2015) (grants interlocutory DHS appeal challenging denial of joint motion to terminate proceedings against 10-year-old respondent) (*Holmes*, Miller, Holiona)

[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)

[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*)

[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)

[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)

[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*)

[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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[William Enrique Alvarado Melendez](#), A094 405 564 (BIA May 10, 2013) (grants interlocutory appeal of denial of joint motion to terminate; 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)

[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)

[Estefania Torres-Bracamontes](#), A098 523 028 (BIA July 7, 2011) (grants interlocutory appeal and terminates proceedings where respondent submitted certificate of citizenship that had not been revoked by the government) (*Grant*, Creppy, Liebowitz)

[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**

## 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**

## Miscellaneous

[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)

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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

[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

[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

[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 Akinniyi](#), 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)

[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-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

[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)

## Service of NTA

[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)

[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

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sufficiently explain why the documents sought in subpoena were “essential” under 8 C.F.R. 1003.35(b)) (*Creppy*, Malphrus, Mullane)

### Standard of Review

#### Clear Error

[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)

[Anibal de Jesus Fuentes](#), A094 762 542 (BIA March 18, 2015) (finds adverse credibility finding clearly erroneous since it was based on typographical error in materials submitted by respondent) (*Guendelsberger*, Neal, Cole)

[Nishad Yogesh Pandya](#), A088 276 788 (BIA Aug. 22, 2013) (IJ committed clear error in finding respondent submitted no evidence establishing that his father was named as the beneficiary of a labor certification filed prior to April 30, 2001) (*Pauley*, Greer, Cole)

[Patrick Jonah Kagau](#), A099 258 131 (BIA Apr. 26, 2012) (IJ committed clear error in finding prior visa petition was denied based on marriage fraud because neither the Notice Of Intent to Deny nor the decision of the Field Office Director included a marriage fraud determination) (*Adkins-Blanch*, Hoffman, Manuel)

[Edinzon Fernando Yangua-Calva](#), A088 190 231 (BIA Nov. 28, 2011) (IJ committed clear error in making an adverse credibility determination against respondent regarding circumstances surrounding entry of ICE agents into home) (*Pauley*, Greer, Wendtland)

[Jose Santos Luna-Canales](#), A094 142 206 (BIA Apr. 28, 2011) (clear error review is significantly deferential and does not warrant reversal merely because Board would have decided case differently as finder of fact) (*Pauley*)

[Tatiana Vasquez](#), A098 079 947 (BIA Mar. 31, 2011) (IJ committed clear error in finding respondent did not retain attorney who subsequently provided ineffective assistance of counsel) (*Liebowitz*, Grant, Malphrus)

[A-H-](#), AXX XXX 769 (BIA Aug. 8, 2006) (upholds grant of deferral of removal where IJ’s findings were not clearly erroneous) (*Pauley*)

### 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 Domecillo](#), 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

[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

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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 Guerpo](#), 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 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)

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[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)

[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 Appeal

[Armando Aparicio-Sanchez](#), A206 132 700 (BIA March 2, 2017) (appeal of denial of motion to rescind in absentia order based upon lack of notice not deemed withdrawn by respondent's removal from the country) (Guendelsberger)—**KEY DECISION**

[Walter Crimi](#), A095 434 965 (BIA June 27, 2014) (appeal deemed withdrawn in light of motion stating respondent desired to be removed from the country but wished the Board to adjudicate his appeal) (Miller)

[Leslie Onyesoh](#), A205 462 342 (BIA June 4, 2014) (removal of respondent did not constitute withdrawal of appeal challenging denial of timely motion to reconsider) (*Pauley*, Wendtland, Donovan)

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[Emmanuel Amparo Abreu](#), A087 287 722 (BIA Dec. 24, 2013) (considers on merits case of respondent who was lawfully removed while appeal of denial of motion to reopen was pending; declines to consider whether removal constitutes “departure” under 8 CFR 1003.4) (*Kendall-Clark*, Holmes, Liebowitz)

### **Withdrawal of Attorney Concession**

[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

### Bond Proceedings Distinct From Removal Proceedings

[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)

### Breach of Conditions

[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))

### 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)

### 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)

#### General

[M-R-R-A](#), AXXX XXX 050 (BIA Oct. 11, 2017) (reduces amount of bond from \$50,000 to \$25,000) (*Adkins-Blanch*, Greer, Grant)

[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)

[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)

[E-S](#), AXXX XXX 170 (BIA Aug. 17, 2017) (three arrests for driving without a license did not make



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respondent a danger to the community) (*Greer*, Neal, Adkins-Blanch)—**KEY DECISION**

[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**

[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)

[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-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*)

[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**

[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**

[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**

[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**

[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)

[Helia de La Cruz-Palencia](#), A074 374 352 (BIA May 13, 2011) (reduces bond from \$10,000 to \$3,500 where respondent was married to LPR, had three U.S. citizen children, and submitted letter from pastor of her church attesting to her character) (*Guendelsberger*, Adkins-Blanch, Holmes)

[Marcelino Simbron-Sanchez](#), A201 029 423 (BIA Apr. 21, 2011) (reduces bond from \$20,000 to \$5,000

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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)

[Ricardo Jose Rodriguez](#), A200 886 952 (BIA Apr. 14, 2011) (remands for further clarification of \$15,000 bond order where IJ failed to make findings of fact regarding respondent's dangerousness, and conclusions regarding respondent's potential eligibility for relief were clearly erroneous) (*Pauley*, Cole, Wendtland)

[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).

[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)

[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**

[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**

### **Pending Petition for Review**

[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)

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[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)

[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**

[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 Ill)) (*Greer*, Malphrus, Adkins-Blanch)

[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)**

[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)

[J-G-T-](#), AXX XXX 698 (BIA Aug. 19, 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) (*Hoffman*)—**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**

[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

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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 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*)

[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*)

[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))

## 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

[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



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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)

[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***

[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)



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[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 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*)

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[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 Contest Removability**

[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 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**

[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))

[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)

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[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**

[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 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**

[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)

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[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**

[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**

[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 Ileri 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)

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### **Practicing While Suspended**

[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)

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[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

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Spanish expression “se me hizo facil” as “that it seemed easy,” rather than “I didn’t really think 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

[Y-N-F.](#), XXXX 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**

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[Lewis Nyaviemi Rogito](#), A087 484 820 (BIA April 30, 2015) (remands with instructions to assess respondent’s mental competency) (O’Herron)

[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)

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[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)

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[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)

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[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)

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[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**



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[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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[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)

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[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)

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[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**

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[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)

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[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 CIMT 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**

[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

[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**

## Submission of Evidence on Appeal

[David Sebastian Arce Marchant](#), A077 912 760 (BIA Feb. 23, 2017) (considers evidence relating to vacatur of conviction submitted on appeal in the interests of justice) (*Grant*, Adkins-Blanch, Mann)

[Maria Cecilia Peraza de Orellana](#), A206 841 467 (BIA May 26, 2016) (remands record following submission of visa petition by LPR spouse with scheduled naturalization interview, orders IJ to consider voluntary departure to allow respondent to seek consular processing) (O'Leary)

[Hardikkumar Dipakkumar Patel](#), A203 236 986 (BIA Feb. 23, 2015) (grants motion to remand in light of evidence that visa petition filed by second U.S. citizen wife was approved while appeal was pending) (Creppy)

[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)

[Athikar Mounq](#), A079 196 338 (BIA July 18, 2014) (remands for further consideration of adjustment application where respondent submitted affidavit of support (Form I-864) and medical exam (Form I-693) while appeal was pending) (*Mann*, Creppy, Mullane)

## 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)

## Waiver of Right to Appeal

[Juan Antonio Flores Urena](#), A204 126 639 (BIA Sept. 19, 2017) (waiver of appeal not knowing and



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intelligent because respondent mistakenly believed his criminal attorney had not filed direct appeal of convictions underlying the grounds of removability) (Pauley)

[Milton Modesto Jarama](#), A073 576 642 (BIA March 28, 2017) (waiver of right to appeal not knowing and voluntary where IJ did not discuss issue when prior attorney accepted pre-conclusion voluntary departure on his behalf) (*Pauley*, O'Connor, Wendtland)

[Julio Rosendo-Serrano](#), A206 482 000 (BIA Nov. 10, 2016) (waiver of appeal not knowing and intelligent due to his prior attorney's ineffective assistance) (Cole)

[A-M-G-B-](#), A206 773 739 (BIA June 28, 2016) (waiver of appeal not knowing and intelligent where DHS attorney said pro se respondent did not qualify for asylum and IJ made no further inquiry) (Guendelsberger)

[Esmerio Padilla Andrade](#), A208 443 549 (BIA May 9, 2016) (respondent did not validly waive right to appeal where he was not asked whether he wished to waive his appeal rights and prior attorney did not discuss right to apply for asylum or terms of grant of voluntary departure) (Kendall-Clark)

[Ricardo Germaine Elwin](#), A210 139 442 (BIA March 31, 2016) (pro se respondent did not effectively waive appeal because he stated "no, no" shortly after saying he would accept the immigration judge's decision as final) (*Geller*, Greer, Pauley (dissenting))

[Roberto Zitlatl-Perez](#), A200 143 102 (BIA Nov. 27, 2015) (IJ erred in finding respondent revoked waiver of the right to appeal) (*O'Leary*, Grant, Guendelsberger)

[Yoselin Edith Vasquez-Godinez](#), A206 767 922 (BIA Sept. 10, 2015) (waiver of appeal was not knowing because it was conditionally based on receipt of a 120-day period of voluntary departure rather than the 45-day period granted by the IJ) (O'Leary)

[Nicholas Anthony Fairclough](#), A046 509 672 (BIA Dec. 4, 2014) (respondent did not voluntarily waive right to appeal where IJ repeatedly indicated that attorney would be subject to sanctions if he filed a frivolous appeal) (*Hoffman*, Guendelsberger, Manuel)

[Richard Alonzo Mullins-McBride](#), A043 563 331 (BIA May 8, 2014) (waiver of appeal was not knowing and intelligent because IJ did not explain that waiver was irrevocable) (Manuel)—**KEY DECISION**

[Dwayne Anthony Shane Patterson](#), A047 114 478 (BIA Jan. 30, 2014) (IJ failed to properly explain consequences of waiving right to appeal) (Pauley)

[Juan Pablo Soto-Gonzalez](#), A200 562 227 (BIA Sept. 24, 2013) (IJ granted pre-conclusion voluntary departure without first ascertaining whether respondent waived appeal of all issues) (Grant)

[Sebastian Lopez-Vasquez](#), A087 676 888 (BIA Sept. 6, 2013) (respondent was never asked to plead to the allegations in the NTA and it is unclear whether respondent's waiver of right to appeal was knowing and intelligent) (Pauley)

[Pablo Nunez Serrano](#), A041 402 248 (BIA June 20, 2013) (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)

[Winston Everton Samuels](#), A055 938 461 (BIA Mar. 29, 2012) (respondent did not validly waive appeal because IJ failed to provide Written Notice of Appeal Rights (Form 1-618) at onset of



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proceedings or make clear during hearing that waiver was irrevocable) (Manuel)

[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**

[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)

## XI. CONVICTIONS AND POST-CONVICTION RELIEF

### Admissions of Criminal Activity

[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

[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)

[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**

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[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 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-Madriral](#), 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

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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 Hebbat](#), 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" 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**

[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*)

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[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. 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**

[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)

[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)

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[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**

[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**

[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)



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[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)

[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

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underlying criminal conviction for attempted cocaine possession was vacated on due process grounds) (Manuel)

[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)

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[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)

### **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**

[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)

[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 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

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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

[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 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

[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

[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

[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)

[A-L-G-](#), AXXX XXX 831 (BIA May 24, 2017) (IJ failed to prepare separate decision denying respondent's request for a continuance) (*Adkins-Blanch*, Grant, Mann)

[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)



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[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)

[Adan Queriapa Tomas](#), A205 232 307 (BIA Feb. 3, 2017) (IJ failed to make findings of fact or meaningfully explain basis for denying voluntary departure) (Creppy)

[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)

[L-A-C-O-](#), AXXX XXX 598 (BIA Oct. 24, 2016) (remands record because IJ did not meaningfully address arguments raised in respondent's motion to reopen an in absentia removal order) (Greer)

[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)

[Luis Angel Monroy-Quijada](#), A206 770 841 (BIA Oct. 7, 2016) (IJ did not prepare separate oral or written decision setting out basis for denying continuance) (Kendall-Clark)

[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)

[Gildardo Daniel Miranda-Duarte](#), A206 466 550 (BIA Aug. 26, 2016) (IJ failed to meaningfully consider factors in *Matter of Avetisyan*, 25 I&N Dec. 688 (BIA 2012), in denying request for administrative closure) (*O'Leary*, O'Connor, Mann)

[Felipe Diaz Santana](#), A206 349 898 (BIA Aug. 18, 2016) (IJ did not meaningfully consider arguments

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in motion to reopen) (O'Connor)

[George Domena Boateng](#), A096 874 721 (BIA May 13, 2016) (IJ failed to prepare separate oral or written decision) (O'Leary)

[German Torres](#), A074 291 150 (BIA March 22, 2016) (form order consisting of checklist and several sentences did not enable meaningful review of denial of motion to reopen) (Grant)

[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)

[Vitelia Marilu Gutierrez-Contreras](#), A078 326 812 (BIA Feb. 18, 2016) (IJ's hand-written decision did not address merits of request to reopen proceedings sua sponte or potential eligibility for asylum) (Grant)

[Adrian Alvarado-Avila](#), A201 072 243 (Feb. 10, 2016) (remands with instructions to issue type-written decision) (Grant)

[Guardado Osmín](#), 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)

[Moises William Moreno-Larios](#), A099 537 876 (BIA Oct. 8, 2015) (remands for further consideration of motion to reopen that IJ denied "for the reasons indicated in the Government opposition") (Grant)

[Perminus Oteyo Achoka](#), A096 131 218 (BIA Oct. 1, 2015) (remands for preparation of full decision setting forth reasons for denying request for continuance) (Pauley)

[Victor Hugo Ortega-Cruz](#), A200 727 032 (BIA Sept. 17, 2015) (remands records because IJ failed to issue written decision) (Cole)

[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)

[Samuel Rico-Tarin](#), A078 681 106 (BIA Aug. 28, 2015) (remands record where IJ did not sufficiently explain basis for denial of request for administrative closure) (O'Leary)

[Jorge Arturo Cazarín 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)

[Javin Albert Teekasingh](#), A041 064 293 (BIA May 28, 2015) (IJ decision did not contain meaningful decision of finding that respondent had been convicted of an aggravated felony) (Pauley)

[Jose Alberto Lopez-Ramirez](#), A087 417 602 (BIA May 4, 2015) (decision sustaining charges of removability "based upon the submission of the evidence from the government" did not enable meaningful appellate review) (Holmes)

[Ma Evelyn Valdemor](#), A094 216 703 (BIA April 24, 2015) (remands record because IJ denied motion to suppress for reasons given in separate case) (*Mann*, Creppy, Mullane)

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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 Mancía 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)

[Mauro Martinez-Reyes](#), A205 002 826 (BIA Sept. 25, 2014) (IJ wrote decision on cover page of respondent's motion and did not make any findings of fact or conclusions of law) (Hoffman)

[Daniel Teye Lowor](#), A093 460 067 (BIA Apr. 2, 2014) (remands record because IJ decision stated only that motion to reopen was denied "for the reasons stated in the DHS's opposition") (Mullane)

[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)

[Ismael Daggy Ibrhaim](#), A205 009 375 (BIA Dec. 26, 2013) (hand-written order saying the "court concurs with the position of DHS" does not provide meaningful basis for appellate review) (Hoffman)

[Carlos Quitanilla-Chicas](#), A200 234 259 (BIA Dec. 18, 2013) (remands for de novo proceedings in light of absence of oral or written decision and IJ's apparent failure to advise respondent of his rights on the record) (Holmes)

[V-V-](#), AXXX XX3 678 (BIA Oct. 4, 2013) (IJ failed to consider evidence relating to prison conditions in Thailand or applicability of *Ridore v. Holder*, 696 F.3d 907 (9th Cir. 2008)) (Adkins-Blanch)

[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

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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 to reopen did not contain sufficient findings of fact and conclusions of law to enable appellate review) (Guendelsberger)

[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)

[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)

[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)

[J-M-S-B-W-](#), AXX XXX 109 (BIA Apr. 4, 2003) (remands record where IJ failed to describe respondent's testimony in detail) (Grant)

## Intervening Laws/Regulations

[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)

## Missing Record of Proceedings

[Sayed Gad Omargharib](#), A093 002 513 (BIA Mar. 18, 2013) (remands case after multiple failed attempts to locate record of proceedings) (Neal)

## Motions to Remand

[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)

[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)

[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)

[Yun Ho Choi](#), A099 870 596 (BIA Feb. 18, 2014) (grants motion to remand in light of evidence that respondent is beneficiary of pending visa petition filed by his U.S. citizen daughter and DHS failure to respond) (Adkins-Blanch)

[Joseph Adams Mpambile](#), A097 962 673 (BIA Mar. 3, 2011) (motion to remand granted in light of approval of visa petition filed on the respondent's behalf by U.S. citizen spouse) (Guendelsberger)

[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)

## Scope of Remand

[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

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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)

### **To Clarify Country of Removal**

[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)