

**NOT DETAINED**

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT**

<b>IN THE MATTER OF</b>	<b>IN REMOVAL PROCEEDINGS</b>
<b>XXX</b>	<b>A# XXX</b>
<b>(RESPONDENT)</b>	

Immigration Judge [REDACTED]

Next Hearing: [REDACTED] 2010, [REDACTED]

**MEMORADUM OF LAW AND NOTICE OF SUBMISSION OF  
SECOND SET OF EXHIBITS AS EVIDENCE IN SUPPORT OF RESPONDENT'S  
APPLICATION FOR CANCELLATION OF REMOVAL AND ADJUSTMENT  
OF STATUS FOR CERTAIN NONPERMANENT RESIDENTS**

## TABLE OF CONTENTS

**INTRODUCTION**.....

**STATEMENT OF FACTS**.....

**ARGUMENT**.....

**I. XXX Has Been Physically Present in the U.S. for a Continuous Period of Over 10 Years**

**II. XXX Has Been a Person of Good Moral Character for 10 Years Preceding His Application**

**III. XXX's U.S. Citizen Wife and U.S. Citizen Children Will Suffer Exceptional and Extremely Unusual Hardship if He is Denied Relief**

- a. XXX's wife will suffer because she depends on him for basic day to day functions and her mental health will significantly deteriorate.*
- b. XXX's U.S. citizen children will suffer psychological and emotional trauma and further developmental delays if their father is denied relief.*
- c. XXX's U.S. citizen children will suffer due to the high risk of losing their mother and entering the foster care system if he is denied relief.*
- d. Relocating to Mexico with XXX is not an option for his family because their mental health care and developmental delays require specialized treatment and continued monitoring unavailable in Mexico.*
- e. XXX lacks adequate family support in Mexico.*
- f. XXX's education and financial status also support a grant of cancellation of removal.*
- g. XXX and his family would be forced to live in extreme poverty and danger in Mexico.*
- h. XXX has lengthy residence in the United States.*
- i. XXX cannot pursue consular processing as an alternative means of obtaining legal residence in the United States.*

**CONCLUSION** .....

## INTRODUCTION

COMES NOW INTO COURT, Respondent, XXX (“XXX”), herein through undersigned counsel, and respectfully submits this memorandum of law and two sets of exhibits in support of his application for cancellation of removal under section 240A(b) of the Immigration and Nationality Act (INA).

## STATEMENT OF FACTS

XXX is a 37-year old citizen of Mexico who entered the United States without inspection on or about [REDACTED] 1997 and has since continuously resided in the country. *See* Form EOIR-42B, questions 19 & 25; Exh. F, Respondent’s Birth Certificate; Exh. P-AA, Proof of Continuous Presence since 1998. XXX came to the United States to work and establish a better life for himself than that which he had in Mexico. *See* Exh. O, XXX’s Declaration at ¶¶ 2 & 3; Exh. LL, XXX’s Declaration at ¶5. This is exactly what XXX did; he worked at farms in South Carolina and Maryland and even assisted with the post-Katrina rebuilding efforts in Louisiana. *See* Form EOIR-42B, question 38 addendum. The majority of his time in the United States, XXX lived and worked in [REDACTED] Maryland. *See* Exh. O, XXX’s Declaration at ¶4; Exh. P-AA, Proof of Continuous Presence since 1997. There, in [REDACTED] he met his wife, XXX. *See* Exh. O, XXX’s Declaration at ¶5; Exh. LL, XXX’s Declaration at ¶6.

XXX, a non-Spanish speaking U.S. citizen, and XXX have three non-Spanish speaking U.S. citizen children who are six, four, and two years of age. *See* Exh. J, Children’s Birth Certificates; Exh. O, XXX’s Declaration at ¶5.

XXX and all the three children have documented health issues and developmental problems, respectively, requiring the presence and support of XXX. *See* Exhs. QQ to TT,

Official Documents Describing XXX's Mental Illness; Exhs. YY to DDD, Documents related to the children's special needs.

XXX has suffered from severe mental health issues all of her life, including depression and post-traumatic stress disorder. *See* Exh. LL, XXX's Declaration at ¶1; Exh. MM, XXX's Declaration at ¶3; Exhs. QQ to TT, Official Documents Describing XXX's Mental Illness. XXX's mother suffered from severe mental health deficiencies and drug abuse and this led to XXX's placement in the foster care system when XXX was approximately seven years old. *See* Exh. LL, XXX's Declaration at ¶2; Exh. MM, XXX's Declaration at ¶1; Exh. TT, XXX's [REDACTED] file documents from 2000 to 2010.

XXX was tossed around among multiple foster families and was physically and psychologically abused by at least one of these families. *See* Exh. LL, XXX's Declaration at ¶1. Though XXX did not have much contact with her mother, XXX considered her a best friend and when her mother died suddenly in 1999 XXX's depression worsened. *See* Exh. LL, XXX's Declaration at ¶2; Exh. TT, XXX's [REDACTED]. file documents from 2000 to 2010. XXX has received high quality counseling and psychotherapy from a team of counselors and of psychologists at [REDACTED] for approximately ten years beginning in 2000. *See* Exhs. QQ to TT, Documents from [REDACTED] and former [REDACTED] employees. Her first psychiatric assessment and diagnosis at [REDACTED] shows a diagnosis for major depression and a score of 48 under the Global Assessment of Functioning (GAF) Scale, which measures a person's overall level of psychological, social, and occupational functioning. *See* Exh. TT, XXX's [REDACTED] file documents from 2000 to 2010; Exh. UU, PSYweb.com

explanation of Axis V Global Assessment of Functioning Scale. A score of 41-50 reveals a person with “severe symptoms or any serious impairment in social, occupational or school functioning.” *See* Exh. UU, PSYweb.com explanation of Axis V Global Assessment of Functioning Scale. Recent assessments note a consistently low and worsening GAF score of 45 and a diagnosis of Panic Disorder and Depressive Order. *See* Exh. SS, Diagnosis of XXX’s mental disorders by XXX, M.D., former [REDACTED] Medical Director; Exh. TT, XXX’s [REDACTED] file documents from 2000 to 2010. XXX’s psychotherapist of seven years at [REDACTED], notes that XXX suffers from Post-Traumatic Stress Disorder arising from her history of trauma and abandonment, and a learning disability. *See* Exh. QQ, Letter from [REDACTED].

XXX’s current mental health problems require medication in the form of Abilify for her mood swings and psychosis, Cogentin for extrapyramidal disorders (EPS) that are caused by antipsychotic medications, and Effexor for her depression and anxiety. *See* Exh. SS, Diagnosis of XXX’s mental disorders by [REDACTED], M.D., former [REDACTED] Medical Director; Exh. TT, XXX’s [REDACTED] Inc. file documents from 2000 to 2010. Previously, XXX was prescribed Paxil and Welbutrin for her depression and anxiety. *See* Exh. TT, XXX’s [REDACTED]. file documents from 2000 to 2010. XXX’s mental health problems are considered chronic and, as such, will require long term treatment, if not for the rest of her life. *See* Exh. RR, Letter from [REDACTED], XXX’s Psychotherapist.

XXX and her half sister, XXX, believe XXX has been instrumental in helping XXX cope with her mental health illness by mitigating and alleviating stress factors in their lives, especially those related to their children, and providing her with a stable

environment she never knew growing up. *See* Exh. LL, XXX's Declaration at ¶18 & 22; Exh. MM, XXX ¶10 & 13. [REDACTED], her former psychotherapist, also credits XXX with XXX's ability to maintain a manageable daily existence. *See* Exh. GG, Letter from [REDACTED]. Financially, XXX fully provided for his family prior to his placement in removal proceedings. *See* Exh. XX, Letter from [REDACTED]; Exh OO, XXX's Declaration at ¶8; Exh. LL, XXX's Declaration at ¶. Together, they own a mobile home and pay ground rent for the lot. *See* Exh. VV, Proof XXX and XXX purchased their mobile home; Exh. WW, Proof XXX and XXX pay lot rent. However, since the initiation of XXX's removal proceedings, XXX has been forced to tap into public assistance sources and they risk losing their mobile home. *See* Exh. VV, Proof XXX and XXX are behind on their payments as of [REDACTED] 2010; Exh. XX, Letter from [REDACTED], the family's former Social Services case worker. The last and only time XXX has held a job was back in 2003-2004, and she was fired from that job. *See* Exh. LL, XXX's Declaration at ¶6; Exh. TT, XXX's [REDACTED]. file documents from 2000 to 2010.

XXX, her sister, the former Dept. of Social Services case worker, [REDACTED] and [REDACTED] who recently conducted a psychiatric evaluation of XXX, XXX, and two of their three children all agree that XXX is unable of caring for the children without XXX. *See* Exh. LL, XXX's Declaration at ¶¶12, 26, & 36; Exh. MM, XXX's Declaration ¶¶10, 12, & 17; Exh. XX, Letter from [REDACTED]; Exh. NN, [REDACTED]'s Psychiatric Evaluation. The children require more care and attention than average children because all three exhibit developmental delays primarily in their speech and social skills. *See* Exh. XX to DDD, Official Documents describing children's delays.

In [REDACTED] 2006, [REDACTED] the oldest of their children, was screened at [REDACTED], which provides early intervention services for children with disabilities. *See* Exh. ZZ, Copy of [REDACTED]'s File from the [REDACTED]. She has since remained there and continues attending because she requires special language instruction. *Id.* In [REDACTED] 2007, she was diagnosed with a moderate-severe language problem, and speech therapy was recommended for her. *Id.* XXX states that [REDACTED] has not improved and that she refuses to do her homework unless XXX does it with her. *See* Exh. LL, XXX's Declaration at ¶22.

[REDACTED] the middle child who suffers from a heart murmur, attends pre-kindergarten special education two days per week for cognitive, speech and language, and social developmental delays. *See* Exh. LL, XXX's Declaration at ¶19; Exh. CCC, Copy of [REDACTED]'s File from [REDACTED]. Because of these delays, [REDACTED] is classified as a disabled student. Exh. CCC, Copy of [REDACTED]'s File from [REDACTED]. XXX states that [REDACTED] has no interest in school and that XXX helps her with her work because she lacks the patience and [REDACTED] prefers his help. *See* Exh. LL, XXX's Declaration at ¶¶21-22.

[REDACTED] the youngest, was first screened for speech problems in [REDACTED] 2009. *See* Exh. AAA, Copy of [REDACTED]'s File from the [REDACTED]. It was determined that his language skills were behind at that point, and that he should be re-evaluated in [REDACTED] 2010, but [REDACTED] has yet to be re-evaluated. *Id.* XXX and XXX, her sister, are concerned that [REDACTED] rarely, if ever, speaks. *See* Exh. LL, XXX's Declaration at ¶20; Exh. MM, XXX's Declaration at ¶16.

If XXX does not receive cancellation of removal, XXX will face the terrible choice of leaving his family in the United States where the family risks disintegrating without him or taking his family with him to Mexico where they will lack the economic support, mental health and special education resources available to them here in Maryland. *See* Exh. OO, XXX's Declaration ¶¶11-17; Exh. NN, [REDACTED]'s Psychiatric Evaluation; Exh. DDD, *Treatment and Mental Disorders Among Respondents to the Mexico National Comorbidity Survey* article; Exh. FFF, *Special Education in Mexico* article. Due to XXX's mental health illness and his children's development delays, if XXX is required to return to [REDACTED] there is a strong possibility the State of Maryland will take custody of and separate the children into foster homes; XXX, XXX, XXX, the former Dept. of Social Services case worker, [REDACTED] XXX, and [REDACTED] all believe the children will face this devastating fate because of XXX's inability to care for the children on her own. *See* Exh. O, XXX's Declaration ¶9 & 17; Exh. LL, XXX's Declaration at ¶36-37; Exh. MM, XXX's Declaration at ¶21, 22 & 23; Exh. XX, Letter from [REDACTED]; Exh. NN, [REDACTED]'s Psychiatric Evaluation.

Alternatively, if the children are taken to Mexico, their special education needs would not be met because the Mexican education system's special education program does not include "learning disability" or "reading disability" within the special education categories. *See* Exh. EEE, *Special Education in Mexico* article. The 2009 U.S. State Department Country Report on Human Rights in Mexico estimated that, as of 2004, only 20% of students in need of special education were receiving them, and only 42% of municipalities offered them at all. *See* Exh GGG, 2009 U.S. State Department Mexico Human Rights Report. XXX's mental and physical medical needs would not be met



either should she move to Mexico with the children because the Mexican health care system lacks adequate treatment of mental disorders. *See* Exh. EEE, *Treatment and Mental Disorders Among Respondents to the Mexico National Comorbidity Survey* article.

Though XXX has family in Mexico, he is not in contact with any of them except his mother and one of his sisters and has not seen his family since 1997. *See* Exh. O, XXX's Declaration at ¶14. Neither his mother nor his sister would be able to support XXX and his family should he be forced to return because they are poor and lack both the space and the means to take them in. *Id.* Because of his age, education, and financial status, XXX is likely to live in extreme poverty in Mexico, a poverty rendering him unable to financially support his family should they stay in the United States or go with him to Mexico. *See* Exh. HHH, CIA World Fact Book Report on Mexico.

In his almost fourteen (14) years of residing in the United States, XXX has had one brush with the criminal system resulting in a misdemeanor charge of disorderly conduct for which he received unsupervised probation before judgment and a few traffic citations none of which precluded him from getting a driver's license. *See* Exh. BB, XXX's Traffic Violations; Exh. CC, Copy of XXX's valid DL; Exh. DD, XXX's Criminal Conviction & Statutory Language of Crime. Over the years, XXX has earned the love and admiration of his community because of his caring nature, hard work ethic, and desire to place his family first. *See generally*, Exhs. EE to KK, Letters of Support, and Exh. MM, XXX's Declaration at ¶¶6-9.

## **ARGUMENT**

A person qualifies for cancellation of removal under section 240A(b)(1) of the

INA if s/he is in removal proceedings because she is inadmissible or deportable and:

- 1) s/he has been physically present in the U.S. continuously for at least ten years immediately preceding the date of the application;
- 2) s/he has had good moral character for that time;
- 3) s/he has not been convicted of certain offenses [crimes listed in INA §§ 212(a)(2), 237(a)(2), or 237(a)(3)]; and
- 4) to deport the person would cause exceptional and extremely unusual hardship to her lawful permanent resident (LPR) or U.S. citizen spouse, child, or parent.

XXX meets every prong of section 240A(b)(1) of the INA and therefore merits

cancellation of removal allowing him to remain in the United States.

**I. XXX Has Been Physically Present in the U.S. for a Continuous Period of Over 10 Years.**

To meet the first requirement for cancellation, the applicant must show that he has ten years of continuous physical presence in the U.S. INA § 240A(b)(1)(A). XXX has lived in the United States for nearly fourteen years. He entered the country without inspection on or about [REDACTED] 1997. *See* Form EOIR-42B, question 19 & 21; Exh. O, XXX's Declaration at ¶3. He has remained continuously in the United States since then, with no departures. *See* EOIR-42B, question 23; Exh. O, XXX's Declaration at ¶4. Except for a total of approximately six months, XXX has lived and worked in [REDACTED] Maryland the entire duration of his residence in the United States. *See* Form EOIR-42B, question 16 and addendum. For approximately three months after his arrival in the United States, XXX lived in [REDACTED] South Carolina where he worked at [REDACTED] pruning trees and harvesting pumpkin, tobacco, and corn. Exh. O, XXX's Declaration at ¶4. XXX spent the other three months in [REDACTED] Louisiana working on the post-Katrina rebuilding efforts during 2008. Exh. O, XXX's Declaration at ¶4; EOIR-42B, question 38 addendum.

When XXX arrived in Maryland after his time in South Carolina, XXX worked at

a farm in [REDACTED] Maryland for a few months and then began working for [REDACTED] [REDACTED] as a machine operator. *Id.* XXX worked full time at [REDACTED] from [REDACTED] 1997 to [REDACTED] 2006 when the company went out of business. Exh. O, XXX's Declaration at ¶4; Exhs. P to X, Proof of Continuous Presence for Years 1998 to 2006. Thereafter, XXX worked construction, maintenance and landscaping jobs. *See* EOIR-42B, question 38 addendum.

XXX submits extensive documentation establishing his residence in the U.S. during this period, including numerous documents, detailed declarations from former co-workers, from the first few years of his residence. *See Vera-Villegas v. INS*, 330 F.3d 1222 (9th Cir. 2003) (holding oral and written testimony may suffice to prove continuous physical presence). Though XXX has filed income taxes from 1998 to the present, he was unable to get proof of filing from 1998 to 2004, but he does submit Maryland Form 1099G Tax Refund as proof of filing for 1998 and 2001 and W-2s and paystubs to prove taxes were deducted from his wages for the years 1999, 2002, 2003, and 2004. Exh. P to V, Proof of Continuous Presence for Years 1998-2004. However, for 2005 to 2009, XXX submits IRS Federal Income Tax Account Transcripts as proof of filing. Exh. W to AA, Proof of Continuous Presence for Years 2005-2009.

The Notice to Appear (NTA) was served on [REDACTED] 2009. Therefore, he was physically present in the U.S. for a continuous period of 10 years before service of the NTA. Accordingly, he has met the time requirement for cancellation of removal. *See* INA § 240A(b)(1), (d)(1).

## **II. XXX Has Been a Person of Good Moral Character for 10 Years Preceding His Application.**

An applicant for cancellation of removal under section 240A(b)(1) must

demonstrate good moral character during the ten-year period immediately prior to the final administrative decision in the case. *Matter of Ortega-Cabrera*, 23 I&N Dec. 793 (BIA 2005). Any negative factors should be balanced against any positive factors indicating good moral character. *Matter of Sanchez-Linn*, 20 I&N 362 (BIA 1991); *see also Matter of B-*, 1 I&N 611, 612 (BIA 1943). XXX's criminal record and the letters submitted by his friends and community members in support of his application confirm his good moral character during the past ten years.

In his almost fourteen years in the United States, XXX has only one criminal conviction. This conviction was for a charge of disorderly conduct for which he received unsupervised probation before judgment for an incident that occurred on [REDACTED] 2006. Exh. DD, XXX's Criminal Conviction & Statutory Language of Crime. XXX was not sentenced to any jail time for this conviction. *Id.* Disorderly conduct is defined as "disturbing the public peace and disorderly conduct" in violation of Section 10.201(c)(2) of the Md. Crim. Code. Exh. DD, XXX's Criminal Conviction & Statutory Language of Crime. That section states "[a] person may not willfully act in a disorderly manner that disturbs the public peace." *Id.* A person who violates this section is guilty of a misdemeanor and subject to imprisonment not exceeding 60 days or a fine not exceeding \$500 or both. Sec. 10.201(d). The Maryland Court of Appeals has defined the statute to mean:

'the doing or saying, or both, of that which offends, disturbs, incites, tends to incite, a number of people gathered in the same area. 3 Underhill, Criminal Evidence, Sec. 850 (5th Ed.), adopts as one definition of the crime the statement that it is conduct 'of such a nature as to affect the peace and quiet of persons who may witness the same and who may be disturbed or provoked to resentment thereby.'

*Drews v. State*, 224 Md. 186, 167 A.2d 341, 344 (Md. 1961).

Nothing in the language of the statute remotely suggests that the offensive conduct could be “inherently base, vile, or depraved, and contrary to the accepted rules of morality and the duties owed between persons or to society in general.” *Matter of Olquin*, 23 I&N Dec. 896, 896 (BIA 2006) (citing *Matter of Torres-Varela*, 23 I&N Dec. 78 (BIA 2001)). Similarly, the Maryland Court of Appeals definition of the offense as “tends to incite” without more places the statute outside the ambit of CIMT. Even if this Court was to determine the respondent’s conviction was a CIMT, it would not bar the applicant for relief because this crime fits the definition of a “petty offense” under section 212(a)(2)(A)(ii)(II) of the INA. The maximum term of imprisonment possible for this offense was not exceeding 60 days and the respondent received no time of imprisonment as he received an unsupervised PBJ. XXX is therefore not inadmissible under the petty offense exception. *Matter of Gonzalez-Zoquiapan*, 24 I. & N. Dec. 549 (BIA 2008).

Disorderly conduct is not an enumerated crime under section 101(f) of the INA, let alone a crime listed in INA §§ 212(a)(2), 237(a)(2), or 237(a)(3). XXX recognizes that INA §101(f) includes the codicil that “[t]he fact that any person is not within any of the foregoing classes shall not preclude a finding that for other reasons such person is or was not of good moral character.” But that caveat may not be used as a steamroller to run over arbitrarily any applicant who breached at one time a social rule. *See Matter of B-*, 1 I&N Dec. 611 (BIA 1943) (holding good moral character does not require moral excellence and is not destroyed by a single lapse). The Board recognizes that good moral character is not moral excellence. It is a “concept of a person's natural worth derived from the sum total of all his activities in the community.” *Matter of B--*, 2 I. & N. Dec. 617 (BIA 1946). In determining good moral character as a matter of discretion, “all of the

circumstances involved must be considered.” *Matter of V--I--*, 3 I. & N. Dec. 571 (BIA 1949). Furthermore, XXX pled guilty to the charge because his assistant public defender recommended he plea as such and assured XXX doing so would not prejudice him given his immigration status. Therefore, this conviction does not demonstrate a lack of good moral character.

Aside from this one criminal conviction, XXX has received traffic citations, but these do not demonstrate a lack of good moral character. XXX pled guilty to driving his vehicle in excess of reasonable and prudent speed on a highway for which he was fined \$90.00 and for following another vehicle closer than reasonable and prudent for which he was fined \$110.00 both of which stemmed from the same incident on [REDACTED] 2009. Exh. BB, XXX’s Traffic Violations. XXX pled guilty and received probation before judgment for 30 days for driving with a suspended license on [REDACTED] 2009, but did not have to pay a fine. *Id.* It was this traffic violation that led a [REDACTED] [REDACTED] to arrest XXX and highlight him to Immigration & Customs Enforcement. Prior to this, on [REDACTED] 2008, XXX was found to be driving without a license. *Id.* XXX pled guilty and received probation before judgment for 30 days as well as a \$250.50 fine. *Id.* None of these statutes require any particular mental state.<sup>1</sup> Tellingly, the Maryland

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<sup>1</sup> The driver of a motor vehicle may not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of the other vehicle and of the traffic on and the condition of the highway” Md. Code Ann. Transp. § 21-310(a); “A person may not drive a vehicle on a highway at a speed that, with regard to the actual and potential dangers existing, is more than that which is reasonable and prudent under the conditions” Md. Code Ann. Transp. § 21-801(a); “A person may not drive a motor vehicle on any highway or on any property specified in § 21-101.1 of this article while the person’s license or privilege to drive is suspended under § 17-106, § 26-204, § 26-206, or § 27-103 of this article.” Md. Code Ann. Transp. § 16-303(h); and “An individual may not drive or attempt to drive a motor vehicle on any highway in this State unless:

(1) The individual holds a driver’s license issued under this title;  
(2) The individual is expressly exempt from the licensing requirements of this title; or  
(3) The individual otherwise is specifically authorized by this title to drive vehicles of the class that the individual is driving or attempting to drive.” Md. Code Ann. Transp. § 16-101(a).

Motor Vehicle Administration was not deterred from re-issuing XXX a driver's license on [REDACTED] 2010 in light of these incidents thereby suggesting they are minor in nature. Exh. Copy of XXX's valid DL. Therefore, XXX's minor traffic offenses do not rise to the level of defeating good moral character.

Regardless, XXX's good conduct and character far outweigh his minor transgressions. XXX supports his family in every imaginable way and places them first, especially his children. Due to his wife's severe mental illness, XXX is also the children's primary caregiver who feeds, prepares them for school, helps them with their homework, and teaches them right from wrong among other care. In fact, XXX is involved in his children's education and developmental support by attending meetings with teachers and counselors. *See* Exhs. AAA to BBB, [REDACTED] and [REDACTED]'s files, respectively, from [REDACTED]. Both the family's case worker, [REDACTED], and XXX's psychotherapist of seven years, [REDACTED], assert that XXX has been instrumental to his wife's well-being and daily survival. *See* Exh. XX, Letter from [REDACTED]; Exh. QQ, Letter from [REDACTED].

[REDACTED], his long-time friend who has known XXX for approximately eleven years, describes XXX as a brother and states the following about his standing in the community:

XXX is a really good guy. He isn't involved with alcohol or drugs or anything like that. In fact, when the police stopped him in his car, which was when immigration picked him up, he was on his way to file his taxes! XXX is a man of his word. The only time he hasn't or doesn't is because of his kids who come first. Everywhere we go in the community people come up to him to say hello and shake his hand. You can tell XXX is loved and admired in the community. I know a few people who have important jobs like in the CIA and the Department of Homeland Security who think the world of XXX. *See* Exh EE, Letter from [REDACTED].

Father XXX, the former priest at [REDACTED] where XXX and his family attend church, states that XXX is a “kind and a sincere person” and “participates in the parish services and helps with different activities and is known and liked by the members of our parish.” *See* Exh. FF, Letter from Father XXX.

XXX’s former co-worker at [REDACTED], XXX, who has known XXX since 1997, states that XXX’s family depends on him and it seems as he does everything for them. She also note that the “United States would benefit from having a person like [XXX] because he is a hard worker and a good person” and that “[XXX] is someone who enjoys working hard and helping others.” *See* Exh. KK, Letter from XXX.

One of XXX’s former employers, XXX, states XXX is “an asset.” [REDACTED] further states that XXX has “shown an honorable work ethic and always strives to do his work in the most professional manor [sic]” and “never misses work and is always willing to put in overtime and help others.” *See* Exh. GG, Letter from XXX.

[REDACTED], a friend, neighbor and former co-worker, has known XXX for approximately eleven years and asserts the following about his good character:

I think he is a very noble person who is always looking to help others. He has helped me and my family a lot over the last ten years, especially in helping us secure our trailer home. XXX also helped me get a job at [REDACTED]. Actually, the whole neighborhood knows XXX and is fond of him because of his caring nature. Everyone says what a good guy XXX is. He does not drink or do drugs, to the best of my knowledge. He does not have problems with the police and is a good person. *See* Exh. II, Letter from [REDACTED].

Balancing the few negative factors with the abundant positive factors proves XXX is a person of good moral character.

### **III. XXX’s U.S. Citizen Wife and U.S. Citizen Children Will Suffer Exceptional and Extremely Unusual Hardship if He is Denied Relief**

In *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), the BIA held that to establish



exceptional and extremely unusual hardship, an alien must demonstrate that a spouse, parent, or child would suffer harm “substantially beyond that which ordinarily would be expected to result from the alien’s deportation.” *Id.* at 59. However, while exceptional and extremely unusual hardship is a significantly higher than the extreme hardship standard, the BIA has specifically held that the hardship need not be “unconscionable” in its effect on a qualifying relative. *Id.* at 60. The BIA has also held that it is appropriate and useful to continue to look to the factors for assessing extreme hardship given the recent introduction of cancellation of removal into immigration law. *Id.* at 63. Courts must consider all of the hardship factors that an applicant’s qualifying relatives will suffer collectively. *Id.* at 64-65; *see also, Matter of Recinas*, 23 I&N Dec. 467 (BIA 2002).

To this end, the BIA relied on *Matter of Anderson*, 16 I&N Dec. 596 (BIA 1978) and listed the following factors as relevant to the question of extreme hardship:

- The age of the applicant;
- Family ties in the United States and abroad;
- The applicant’s length of residence in the United States;
- The health of the applicant;
- Conditions in the country to which the alien would be deported;
- The education and financial status of the applicant;
- The availability of other methods of obtaining legal residence in the United States;
- Whether the alien provides any benefits to the community;
- A prior history of immigration violations; and
- The alien’s position in the community.

Applying these factors, the BIA denied cancellation of removal in the first precedent case of *Matter of Monreal*, 23 I&N Dec. 56 (BIA 2001), also denied cancellation of removal in the following precedential case of *Matter of Andazola*, 23 I&N Dec. 319 (BIA 2002) and finally granted relief to respondent in seminal case of *Matter of Recinas*, 23

I&N Dec. 467 (BIA 2002). For the following reasons, XXX's case most resembles, though it surpasses, the hardship faced by respondent in *Matter of Recinas*. And in fact, XXX meets the required exceptional and extremely unusual hardship standard because his wife and children would suffer unconscionable hardship—on their own and collectively—if XXX were removed.

- a. *XXX's wife will suffer exceptional and extremely unusual hardship because she depends on him for basic day to day functions and because her mental health will significantly deteriorate should he be removed.*

The BIA granted cancellation of removal in *Matter of Recinas* after the respondent presented hardship factors that in their totality met the required standard, but, unlike this case, none of those factors related to the serious medical conditions of her qualifying relatives. 23 I&N Dec. 467 (BIA 2002). Though no serious medical conditions were present in *Matter of Recinas*, the BIA nonetheless recognized the extreme situation created by serious medical conditions: “*the hardship standard is not so restrictive that only a handful of applicants, such as those who have a qualifying relative with a serious medical condition, will qualify for relief.*” *Recinas*, at 470 (emphasis added). Also highlighting the hardship presented by a qualifying relative with a serious medical condition, in *Matter of N-A-J*, the BIA affirmed the immigration judge's finding of extreme hardship where respondent's daughter received treatment for PTSD by both a case worker and counselor. 25 Immig. Rptr. B1-228 (BIA Nov. 2001). *See also Matter of Noguera Lopez*, A72 522 974 (2009) (granting cancellation of removal to respondent with son suffering from ADHD and receiving multi-faceted treatment, including daily medication and psychotherapy, including therapy to deal with psychological issues stemming from his father's abandonment).

Like the respondent's qualifying relative in *Matter of N-A-J*, XXX's wife suffers from mental illness—though XXX's is much more severe— including PTSD requiring a multi-faceted approach that also includes daily medication and psychotherapy and abandonment issues from abandonment issues stemming from her placement in the foster care system and her mother's sudden death. XXX receives counseling and psychotherapy from a team of counselors and psychologists at [REDACTED], and has received this treatment since 2000. *See* Exh. TT, XXX's [REDACTED] file documents from 2000 to 2010. XXX has required medication for her mental health illness since she was a teenager and her current mental health problems require medication in the form of Abilify for her mood swings and psychosis, Cogentin for extrapyramidal disorders (EPS) that are caused by antipsychotic medications, and Effexor XR for her depression and anxiety. *See* Exh. TT, XXX's [REDACTED] file documents from 2000 to 2010; Exh. SS, Diagnosis of XXX's mental disorders by [REDACTED], former [REDACTED] Medical Director. Previously, in 2004, XXX was prescribed Paxil and Welbutrin for her depression and anxiety. *See* Exh. TT, XXX's [REDACTED] file documents from 2000 to 2010.

XXX and her sister, [REDACTED], credit XXX with helping XXX cope with her mental illness by mitigating and alleviating stress factors in their lives, especially those related to their children, and providing her with a stable environment she never knew growing up. *See* Exh. LL, XXX's Declaration at ¶¶12, 17-18; Exh. MM, XXX's Declaration at ¶¶10-15. [REDACTED], XXX's former psychotherapist at [REDACTED] for seven years, also credits XXX with XXX's ability to maintain a manageable daily existence. *See* Exh. QQ, Letter from [REDACTED]. The effects of her mental health

illness are evident even to [REDACTED], a psychiatrist who performed a forensic evaluation of the family:

I believe that Ms. XXX's long history of inadequate foster care and early childhood trauma has left her vulnerable to disorganization and impaired functioning as an adult. She likely meets diagnostic criteria for a variety of psychiatric disorders. *See* Exh. NN, [REDACTED] **Psychiatric Evaluation.**

Due to her serious mental illness, XXX depends on XXX for just about everything, including basic day-to-day functions. XXX checks the mail, monitors and pays all of the bills, reminds XXX to eat, feeds the children, shops for the family, and fully financially supported the family prior to his placement in removal proceedings. *See* Exh. LL, XXX's Declaration at ¶¶10-11, 14, & 30; Exh. O XXX's Declaration at ¶¶ 8-13; Exh. MM, XXX Declaration at ¶12. More importantly, XXX provides XXX essential emotional support. Exh. LL, XXX's Declaration at ¶¶17-18. XXX states in her declaration that XXX is "like a dad to all of us, not just our children. He is the one who tells me to calm down, take it easy and breathe...He makes me feel better. I think XXX keeps me sane, really." Exh. LL, XXX's Declaration at ¶18.

XXX's sister believes XXX has been instrumental in helping XXX cope with her mental health illness by mitigating and alleviating stress factors in their lives, especially those related to their children, and providing her with a stable environment she never knew growing up. *See* Exh. MM, XXX's Declaration at ¶¶10-15. XXX's long time psychotherapist also credits XXX with XXX's ability to maintain a manageable daily existence and recognizes that XXX has done so well with the "daily support of her husband." *See* Exh. QQ, Letter from [REDACTED]. The family's Department of Social Services case worker following XXX's placement in removal proceedings and

their need to seek financial support elsewhere, states that “[u]ntil XXX was incarcerated by Immigration, we have substantiated that he provided for all the needs of XXX and the couple’s three young children.” *See* Exh. XX, Letter from [REDACTED]. Furthermore, she recognizes that XXX has no family to assist her and has few friends in the community that would be able to support [XXX] and the couple’s three children. *Id.* [REDACTED] also notes in her evaluation that “[XXX] relies on her husband to get her out of bed and the children ready for school, and when the older child has left for school she goes back to sleep until noon, with the younger children in the house.” *See* Exh. NN, [REDACTED]’s Psychiatric Evaluation.

Aside from lacking the basic day-to-day support XXX requires, XXX’s mental illness likely will exacerbate if she loses XXX. [REDACTED] writes that during her time as the family’s case worker XXX repeatedly discussed the stress caused by XXX’s placement in removal proceedings. *See* Exh. XX, Letter from [REDACTED]. The former [REDACTED] Medical Director notes XXX has talked to her about feeling depressed and anxious if XXX is deported and that deporting XXX may contribute to the worsening of her mental state. *See* Exh. SS, Diagnosis of XXX’s mental disorders by [REDACTED]. Her long-time psychotherapist believes that “to have XXX yanked from [XXX’s] life would be catastrophic as regards her history of early trauma.” *See* Exh. QQ, Letter from [REDACTED]. XXX’s current psychotherapist states that “if XXX is deported there is a distinct possibility that XXX’s symptoms will worsen. This would make it very difficult for XXX and her children to survive as a family.” *See* Exh. RR, Letter from [REDACTED].

Therefore, XXX would suffer exceptional and extremely unusual hardship if

XXX is removed because her mental health illness requires his daily presence.

- b. XXX's U.S. citizen children will suffer psychological and emotional trauma and further developmental delays if their father is denied relief.*

In *Matter of Gamero-Perez*, the BIA found that because the respondent's three U.S. citizen children were all in good health and bilingual, the respondent failed to meet the exceptional and extreme unusual hardship standard. 25 I&N Dec. 164 (BIA 2010). Here, all of XXX's three children suffer from varying degrees of learning disabilities and developmental delays, which are being treated by the Maryland State Department of Education, and none of them speak Spanish. The presence of XXX in the home is vital for the continued development, educational progress, and overall stability of his U.S. citizen children. *See generally* Exh. LL, XXX's Declaration; Exh. O, XXX's Declaration. [REDACTED] writes in her evaluation that "because of [XXX's] limitations, [XXX]'s ability to pay attention to them and organize family life are indispensable to the children's well being and future development." *See* Exh. NN, [REDACTED]'s Psychiatric Evaluation.

XXX's oldest child, [REDACTED] is six years old and was first evaluated by the [REDACTED] in [REDACTED] 2006. *See* Exh. ZZ, Copy of [REDACTED]'s File from the [REDACTED] (Initial Language Evaluation). On [REDACTED] 2007, an [REDACTED] speech pathologist performed an Early Learning Accomplishment Profile (E-LAP), and identified [REDACTED] as having "greater than a 25% language delay characterized by inconsistent receptive and expressive skills." *Id.* In [REDACTED] 2007, [REDACTED]'s developmental delays were more specifically quantified in assessments conducted by [REDACTED].

*Id.* According to the Battelle Developmental Inventory (BDI), [REDACTED] was in the 32nd percentile for Adaptive development, the 27th percentile for personal-social development, and the 4th percentile for cognitive development. *Id.* Further, [REDACTED]'s performance on the Preschool Language Scale-Fourth Edition (PLS-4) indicated that she was in the first percentile for auditory comprehension, the third percentile for expressive communication, and the first percentile for total language. *Id.* These results indicate a significant developmental delay. The summary of the findings included the speech pathologist's professional opinion that [REDACTED] had a "moderate-severe language problem characterized by receptive and expressive language weaknesses." *Id.* The specialized treatment for these developmental delays as recommended by [REDACTED] has included designing an Individualized Education Plan (IEP) for [REDACTED] to include weekly speech instruction. *Id.* According to XXX, [REDACTED] has no interest in school and does not do her homework unless XXX does it with her. *See* Exh. LL, XXX's Declaration at ¶¶21-22. If XXX were denied relief, it would be detrimental to [REDACTED]'s educational progress and might exacerbate the effects of her developmental delays.

Learning disabilities and delays have been identified for [REDACTED]'s younger siblings, [REDACTED] and [REDACTED] [REDACTED] who is four years-old, has documented developmental delays in the areas of cognitive, personal-social, and receptive/expressive language. Exh. CCC, Copy of [REDACTED]'s File from The Judy Center. To help her with these delays, [REDACTED] is currently enrolled pre-kindergarten special education at the [REDACTED], according to XXX, and attends classes two days per week. *See* Exh. CCC, Copy of [REDACTED]'s File from [REDACTED]; Exh. LL, XXX's Declaration at ¶19. The latest progress report showed [REDACTED] is making significant progress, but has not yet achieved all

the developmental goals set by [REDACTED] staff. Exh. CCC, Copy of [REDACTED]'s File from [REDACTED]. [REDACTED] had a physical exam in [REDACTED] 2010 before entering the [REDACTED] system during which time the pediatrician noted her heart murmur. *Id.* XXX states that [REDACTED] like her older sister, is not interested in school and that XXX frequently helps her focus on her work. *Id.* Without XXX's guidance, her development would be seriously at risk. XXX admits that [REDACTED] is "daddy's little girl" and is especially attached to her father. LL, XXX's Declaration at ¶23.

The youngest child in the family, [REDACTED] will turn three years old in [REDACTED] and has shown delayed speech development as well. *See* Exh. AAA, Copy of [REDACTED]'s File from the [REDACTED]. Although an evaluation in [REDACTED] 2009 by the [REDACTED] did not show that [REDACTED] needed immediate therapy, a re-evaluation was scheduled for some months later, and the speech pathologist recommended "language stimulation" and appropriate toys to further his development and bring him to the level of his age group in the coming months. *Id.* XXX has voiced concern about [REDACTED]'s lack of speech. *See* Exh. LL, XXX's Declaration at ¶20. However, her relative lack of involvement with the education and therapy of her daughters suggests that, if XXX were denied relief, [REDACTED] would likely not receive the linguistic stimulation and practice necessary to develop language skills appropriate to his age.

Having a father removed from the country would certainly be psychologically and emotionally traumatic for any U.S. citizen children. In XXX's case, however, his removal would be especially detrimental to his learning-disabled and developmentally-delayed children, who would lack the skills to cope with the loss of their father and



would lose their main source of academic, developmental, and emotional support.

- c. XXX's U.S. citizen children will suffer due to the high risk of losing their mother and entering the foster care system if he is denied relief.*

Applying the *Matter of Anderson*, 16 I& N Dec. 596 (BIA 1978) hardship factors to this case, it is clear that XXX's children would suffer unconscionable hardship—not just exceptional and extremely unusual hardship— if he were denied relief. If XXX were denied relief, his U.S. citizen children would likely enter the foster care system due to their mother's inability to take care of them.

In *Matter of Recinas*, the BIA distinguished the case from *Monreal* and *Andazola* by noting that the respondent's four U.S. citizen children are entirely dependent on their single mother for support. By all accounts, personal and professional, XXX's mental illness renders XXX the main, and often, the sole parent in their children's lives. As such, the children almost entirely depend on XXX much like the children in *Matter of Recinas*.

XXX has been diagnosed with myriad and chronic mental health illness requiring both mental health counseling and psychiatric medication. *See* Exhs. QQ to TT, Documents from [REDACTED] and former [REDACTED] employees. XXX herself has reported many of her own deficiencies in taking care of the children, emphasizing the importance of XXX's continued presence to the well-being of the family. *See* Exh. LL, XXX's Declaration at ¶¶14, 22, 24, & 36.

As a result of her mental health illness, XXX has stated that she “get[s] stressed out very easily. *Id.* at ¶18. For example, if there is too much to do, too many appointments in a week, I get overwhelmed and get panic attacks.” *Id.* XXX's erratic behavior and tendency to miss appointments has been well-documented by social

workers and others who have attempted to help XXX and her family. For example, in [REDACTED] 2006 with the [REDACTED] case workers trying to evaluate and aid [REDACTED] XXX was reluctant to schedule appointments and often did not call back social workers and speech therapists. *See* Exh. ZZ, Copy of [REDACTED]'s File from the [REDACTED] [REDACTED]. XXX's inconsistent and unstable behavior with regard to her children's appointments indicates a high probability that she would have difficulty caring for them if XXX were not present.

Beyond her erratic behavior and tendency to miss appointments, XXX's mental state casts doubt on her ability to care for her children's basic needs. In [REDACTED] 2006, while taking down information about [REDACTED]'s medical history for the intake form, the [REDACTED] Case Manager noted that XXX seemed to have trouble remembering details about her pregnancy. *See* Exh. ZZ, Copy of [REDACTED]'s File from the [REDACTED] [REDACTED]. XXX admits to her own forgetfulness in her Declaration, when she explains, "I have a bad memory problem. I hate to admit it but he has also had to remind me to feed the children. I often forget to take them to their doctor's appointments." *See* Exh. LL, XXX's Declaration at ¶14. When her older children refuse to do their homework, rather than helping them, she gives up and tells them that they can just repeat the grade level. *Id.* at ¶21. She also admits that "XXX is the one who teaches the children between right and wrong." *Id.* at ¶24. By XXX's own admission, she often fails to attend to her children's fundamental physical, social, and developmental needs, and cannot remember to perform simple household tasks without XXX's reminders. *Id.* at ¶14.

Since XXX grew up as an abuse victim in the foster care system, she is acutely

afraid of her children ending up in a similar situation. She recognizes that losing her children to foster care might be a consequence of her inability to care for them and it scares her to the point of planning to seek solace in substance abuse. *Id.* at ¶37. On the other hand, XXX did not relay a sense of concern for her children entering the foster care system during the psychological evaluation with [REDACTED] again highlighting her erratic responses to stressful situations. *See* Exh. NN, [REDACTED]'s Psychiatric Evaluation.

XXX believes the children might end up in foster care if XXX is denied relief because she “can barely take care of myself so who would take care of three kids?” *See* Exh. LL, XXX's Declaration at ¶36. XXX has voiced many doubts about her ability to run the household if XXX were denied relief. *Id.* at ¶¶36-37. She has stated that XXX handles most logistical matters, including repairing their mobile home and paying the bills. *Id.* at ¶¶10-11. In fact, she does not even bother to open the mail and does not attempt to pay the bills; she “can't fill out the checks or payments because I can never remember where to put what information. *Id.* at ¶11. Further, she is unsure about the status of their housing arrangements: “I don't know if we owe any money on the mortgage or lot. XXX is the one who knows about that stuff.” *Id.* at ¶8. Financially, XXX would be unable to make ends meet, even with public assistance, unless she tried to work, but she is worried about the prospect of going back to work for the first time since Airiana was born because she does not have a driver's license and “I am not good with people and I don't like people.” *Id.* at ¶32. XXX's sister agrees stating XXX's mental health problems and learning disability make it unlikely that XXX could keep a job. *See* Exh. MM, XXX's Declaration at ¶14; *Cf. Matter of Arellano-Murillo*, 26 Immigr. Rep.

B1-42 (2002) (recognizing the respondent as the sole regular income earner and that the family would not be able to survive in the United States without him).

Unfortunately, XXX is not the only one who believes the children will end up in the foster care system should XXX be removed. Her sister, XXX, states:

Lord only knows what would happen if XXX is deported. I think the children would get taken away by the state, definitely. I think if XXX is here with the family, he will do everything in his power to keep the family together and will see to it that the children do not end up in foster care... Unfortunately there isn't anything I could do to prevent the children from going into foster care. Right now I am on unemployment and live with my paternal grandmother. It would be devastating. *See* Exh. MM, XXX's Declaration at ¶¶21 & 23.

██████████, XXX's long-time friend, states the following on this point:

I know his wife has issues and XXX has confided in me that he does not think his wife would be able to care for the kids without him. Actually, XXX told me that when he was arrested and taken by immigration, he cried all night worrying about his children; he didn't even care he was stopped or that all of that happened. He only worried about his children and their well-being. I agree and worry for the kids if XXX is deported, from what I have seen. Truthfully, I think the kids will be separated and fostered. *See* Exh EE, Letter from ██████████.

Because XXX would be unable to care for her children without XXX's help, there is a high probability that they would be placed in the foster care system, losing their mother and their other siblings in the process because few foster parents, if any, will take three special needs children. Thus, XXX's removal would likely result in the complete disintegration of the XXX family.

*d. Relocating to Mexico with XXX is not an option for his family because their health care and developmental delays require specialized treatment and continued monitoring unavailable in Mexico.*

In the suspension of deportation case of *Matter of Alberto J. Wong & Marisabel Quintero De Wong*, the BIA considered the significant disruption of the respondent's child's education combined with disruption to her social development at her age (12) as

extreme hardship. 26 Immig. Rptr. B1-16 (BIA Jul. 29 2002). Here, the children would experience significant *and* detrimental disruption in their special education programs if forced to relocate to Mexico because of their developmental delays and the lack of access to the same holistic and quality care in Mexico.

As described above, XXX's children are afflicted with learning disabilities and developmental delays, and have been receiving specialized care and education from [REDACTED] since they were toddlers. The [REDACTED] is part of a larger initiative within the Maryland State Department of Education. The [REDACTED] oversees both the [REDACTED] discussed at length above, and the [REDACTED] program in order to provide comprehensive, individualized education for special needs students from birth through age five. *See* Exh. ZZ, Description of Maryland's Early Childhood Intervention and Education System of Services for Children with Disabilities. This comprehensive system stands in stark contrast to that found in the Mexican education system, which does not even include "learning disability" or "reading disability" in the special education spectrum. *See* Exh. EEE, *Special Education in Mexico* article.

The Mexican education system does not provide sufficient special education services to those in need of them. According to the U.S. Department of State's most recent Country Report on Human Rights Practices, "The education system provided special education for approximately 400,000 of an estimated two million students with disabilities in 2004; only 42 percent of the country's municipalities provided special education." *See* Exh. GGG, 2009 U.S. State Department Mexico Human Rights Report. An article in *Global Health Governance* further clarified the gap in services, stating that

“[p]ublic special education policy is characterized by inadequate coverage, low levels of resources, and programming that is of questionable efficacy. Nearly all private-based services are restricted to a small number of states and are beyond the reach of many poor and lower-middle-class families.” *See* Exh. FFF, *Autism and Special Education Policy in Mexico* article. Thus, although some special needs children are afforded special education, those in a poor family like XXX’s would be extremely unlikely to receive such care.

Further, the Mexican education system does a poor job of determining which children need care, and the adequate amount of care for each child. According to a 2010 article on the state of special education in Mexico, “many students receive services, but have no special education or disability designation given or recorded AND very few total students are served...Therefore, the reach of the special education services is not far and not deep.” *See* Exh. EEE, *Special Education in Mexico*. If the children relocated to Mexico with XXX, they would not only lose the continuity of care that they have received in [REDACTED]; rather, they would also lose access to their necessary special education programs altogether. Their educational development and progress would almost certainly be seriously impeded, and they would suffer greatly if they were deprived of their necessary special education programs.

Likewise, XXX will also experience exceptional and extremely unusual hardship if she accompanies XXX to Mexico because she will lack access to the multi-faceted mental health care treatment she receives in the United States. A recent study on the treatment and adequacy of treatment of mental disorders in Mexico revealed large unmet needs for mental health services among those with psychiatric disorders and that about

one in every two people who used these services received minimally adequate care. *See* Exh. DDD, *Treatment and Mental Disorders Among Respondents to the Mexico National Comorbidity Survey* article. Overall, the number of psychiatrists per capita in Mexico ranks in the second lowest tier among the nations in the world and the number of other important mental health care workers, like psychiatric nurses and psychiatric social workers, is astoundingly low for the population. *Id.* As such, aside from all the other barriers XXX would face in accessing adequate mental health care in Mexico, XXX would find a dearth of mental health resources in Mexico. For someone who easily gets stressed and suffers from panic attacks and anxiety, facing this situation would likely overwhelm and dissuade her from continuing her much-needed treatment.

Therefore, relocating to Mexico is not an option for XXX's children and wife because their health care and developmental delays require specialized treatment and continued monitoring unavailable in Mexico.

*e. XXX lacks adequate family support in Mexico.*

In *Matter of Andazola*, the BIA denied cancellation of removal in large part because nothing prevented the extended and undocumented family of the respondent in the United States from sending her financial support in Mexico and that she had significant assets so that she and her children would not be penniless upon their return to Mexico. 23 I&N Dec. 319, 324 (BIA 2002). Here, XXX has neither relatives in the United States to help financially support him and his family in Mexico nor does he have significant assets to prevent him and his family from becoming destitute in Mexico. *See* Exh. O, XXX's Declaration at ¶14. Furthermore, XXX is only in touch with his mother and a sister in Mexico both of whom are very low income individuals, largely dependent

on XXX for financial support, and thus, they lack the ability to take XXX and his family into their homes, let alone support them financially. *Id.* XXX does not have substantial family ties in Mexico and the ties he does have cannot provide XXX and his family the support they would require. Therefore, XXX and his family would have great difficulty adjusting to life in Mexico.

*f. XXX's education, age and financial status also support a grant of cancellation of removal.*

Even if the proper health and education services were available in Mexico and XXX had adequate family support therein, XXX would face considerable difficulty obtaining employment because of his education, age and financial status. In *Matter of Recinas*, the BIA highlighted as a positive hardship factor respondent's difficulties in finding work, especially work that would allow her to provide a safe and supportive home for her children. XXX only has a sixth grade education, has no trade and is 37 years old. *See* Exh. O, XXX's Declaration ¶¶ 1 & 2. Consequently, he will likely face considerable difficulty obtaining employment. If forced to return to Mexico, he might find manual work, but that work would undoubtedly be inconsistent and yield low wages. At his age, XXX will face strong competition from younger men in an industry saturated with workers. However, here in the United States, XXX has great job prospects notes his long-time friend [REDACTED]: "I know of several places that would hire [XXX] in an instant if he got his papers." *See* Exh EE, Letter from [REDACTED]; *Cf. Matter of Ronaldo Tuna-Gallardo*, 23 Immig. Rptr. B-1-144 (BIA Feb. 2001) (citing the respondent's steady employment in the United States as machine operator and the uncertainty that he would be able to find work in his profession in Guatemala as positive hardship factor). In contrast, XXX's trait of being a reliable and hard worker has allowed



him to earn sufficient wages to fully support his family in the United States. His wages allowed him to purchase a mobile home for his family. *See Exh. VV*, Proof XXX and XXX purchased a mobile home. If XXX and his family were forced to move to Mexico, XXX will have to sell their mobile home, but in this economy and weak real estate market, XXX will likely lose rather than earn money on this transaction. Therefore, XXX's education, age and financial status also support a grant of cancellation of removal.

g. *XXX and his family would be forced to live in extreme poverty and danger in Mexico.*

In *Matter of Carlos A. Arango-Vanegas*, the BIA found that conditions in the country of deportation must be considered when assessing extreme hardship. 26 Immig. Rptr. B-1-56 (BIA Jul. 12, 2002). In that suspension of removal case, the BIA granted relief and cited the high level of crime and kidnappings in Colombia, at the time, posing a significant threat to respondent and his U.S. citizen children if he were deported, especially since State Department reports noted foreign citizens were specifically targeted. *Id.* In *Matter of Ronaldo Tuna-Gallardo*, both the immigration judge and the BIA found that both the economic and political conditions in Guatemala were unstable and therefore served as a positive hardship factor. 23 Immig. Rptr. B-1-144 (BIA Feb. 2001).

Although XXX plans to leave his children in the United States, if circumstances force him to take his family to Mexico, they will suffer extreme poverty and face great danger<sup>2</sup>, like both respondents in the above cases. And in contrast to their life in the

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<sup>2</sup> "According to published reports, 22,700 people have been killed in narcotics-related violence since 2006. The great majority of those killed have been members of [Drug Trafficking Organizations (DTOs)]. However, innocent bystanders have been killed in shootouts between DTOs and Mexican law enforcement

United States, XXX does not appear to be able to work in the foreseeable future in the United States, let alone in Mexico where she will not have the required mental health care, know the language, or have any familiarity with the way of life. Therefore, XXX is the only income-earner for the family. Given the economy and labor market issues in Mexico, providing for his family financially, locating special education for his children's developmental delays, and mental health care of his wife would be nearly impossible for XXX. *See* Exh. HHH, *CIA World Fact Book Report on Mexico*. As discussed above, XXX has almost no close relatives in Mexico who could provide support after his lengthy residence in the United States.

*h. XXX has lengthy residence in the United States.*

In *Matter of Recinas*, the BIA stressed, in granting cancellation of removal that “The respondent has raised her family in the United States since 1988, and her four United States citizen children know no other way of life.” 23 I&N Dec. at 471. Significantly, XXX has precisely the same length of residence as the respondent in *Matter of Recinas* had in 2002—14 years. XXX came to the United States in 1997 and has lived here continuously since that time. *See* Exh. I, XXX's Declaration at ¶¶ 3 & 4; Exh. P-AA, Proof of Continuous Presence since 1998. As such, he has lived most of his adult life in the United States; he was only 25 at the time he entered. *See* Exh. F, Respondent's Birth Certificate. Moreover, as in *Matter of Recinas*, XXX's three U.S. citizen children have never been to Mexico and know no other way of life. Therefore, XXX has spent a considerable amount of his life in the United States and this fact further supports a grant of cancellation of removal.

- i. XXX cannot pursue consular processing as an alternative means of obtaining legal residence in the United States.*

In *Matter of Recinas*, the BIA considered other means for the respondent to immigrate to the United States and found that respondent did not have realistic means because of the backlog of visa availability for Mexicans siblings and LPR parents. *Recinas*, at 471-472.

XXX has filed an I-130 petition for XXX that remains pending with [REDACTED] USCIS. See Exh. NNN, CIS Interview Notice and Case Status. However, because XXX entered without inspection on or about [REDACTED] 1997, XXX must return to Mexico and consular process to take advantage of the I-130, if approved, thereby triggering the unlawful presence ten year bar to reentering. Though XXX can certainly meet the extreme hardship standard for the I-601 waiver, XXX cannot be away from his family the 13-15 months it currently takes CIS at the U.S. Embassy in Ciudad Juarez, Mexico to process I-601 waivers. See Exh. OOO, Ciudad Juarez, Mexico U.S. Embassy CIS I-601 Waiver Information. Even one day away from his family will cause them exceptional and extremely unusual hardship because of their serious mental health, developmental, and emotional needs and financial support. If XXX were to consular process, there is no guarantee his family will be in tact by the time he returns to the United States. In fact, the likelihood of the family remaining together without its “rock” and “protectorate” is very slim. See Exh EE, Letter from [REDACTED]. Furthermore, the costs associated with consular processing, including the I-601 fee, will further strain the family’s limited income and create additional hardship. See Exh. OOO, Ciudad Juarez, Mexico U.S. Embassy CIS I-601 Waiver Information. Aside from cancellation of removal, XXX has no other means of adjusting his status. In 2001, XXX attempted to apply for 245(i) relief

through his employer, which would have avoided the consular processing problems presented by his family's situation. *See* Exh. PPP, Receipt from "R.E. Services, Inc." for 245(i) Packet Filing dated [REDACTED] 2001. Unfortunately, XXX applied through a *notario* who charged him a lot of money, but apparently and unsurprisingly did not file anything as the record proves. *Id.*

Therefore, like respondent in *Matter of Recinas*, XXX has no other realistic prospects to legally immigrate into the United States besides cancellation of removal.

### CONCLUSION

WHEREFORE, Respondent, XXX respectfully submits this memorandum of law and supporting documentation to prove he meets the requirements for cancellation of removal under section 240A(b) of the Immigration and Nationality Act (INA) because he is a person of good moral character who has continuously resided in the United States for over ten years and his removal would cause exceptional and extremely unusual hardship to this U.S. citizen wife and U.S. citizen children. In fact, his wife and children would suffer unconscionable hardship—on their own and collectively—not just exceptional and extremely unusual hardship. As [REDACTED] states in her psychiatric evaluation, "Mr. XXX is committed to the children and his wife. I believe that if he were deported that Ms. XXX and the three children would suffer overwhelming negative consequences." *See* Exh. NN, [REDACTED]'s Psychiatric Evaluation.

For the foregoing reasons, XXX merits a grant of non-LPR cancellation of removal.

Respectfully submitted this [REDACTED] 2010,

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