

NOT DETAINED

**UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
[CITY, STATE]**

IN THE MATTER OF	IN REMOVAL PROCEEDINGS
[REDACTED]	A# [REDACTED]
(RESPONDENT)	

Before the Honorable [REDACTED]

Individual 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**

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INTRODUCTION

COMES NOW INTO COURT, Respondent, [REDACTED] (“Mr. [REDACTED]”), herein through undersigned counsel, and respectfully submits this memorandum of law and set 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

Introduction

Mr. [REDACTED] is a 33-year old citizen and national of Honduras who entered the United States without inspection in [REDACTED] 1997 and has since continuously resided in the United States, primarily in [REDACTED] Illinois and then in [REDACTED] Maryland. *See* Form EOIR-42B, questions 19 & 25; Exh. F, Respondent’s Birth Certificate; Exh. P-AA, Proof of Continuous Presence since 1998. Mr. [REDACTED] is married to U.S. citizen [REDACTED] who is a Specialist in Active Duty/Deployable Status in the U.S. Army on assignment to [REDACTED] [REDACTED] Maryland. Exh. W, Letter from Petty Officer 2nd Class [REDACTED]. At [REDACTED], Mrs. [REDACTED] serves as Supervisor of the Clinic and as the Non-Commissioned Officer in Charge. *Id.* The couple married on [REDACTED] 2008, but have been in a committed relationship for over twelve years. Exh. E, Couple’s Marriage Certificate; Exh. M, Respondent’s Declaration at §9. Together, they have two U.S citizen children, [REDACTED] and [REDACTED], aged seven and ten, respectively, who are English dominant. Exh. I, Respondent’s Children’s Birth Certificates.

Mr. [REDACTED]’s mother is a U.S. citizen, his sister is a U.S. citizen, his brother is a Legal Permanent Resident, and his grandmother is a U.S. citizen. Exhs. J-L, Family’s Immigration Documentation. Mr. [REDACTED]’s mother lives in [REDACTED] and has medical problems with her pancreas. Exh. Respondent’s Declaration at §34. His sister, [REDACTED], is also in the U.S. Army and is currently deployed in [REDACTED] with her husband, [REDACTED], who serves as a Captain in the U.S. Army. Exh. Respondent’s Declaration at §1; Exh. P Letter of Support from Captain [REDACTED]. His father was never involved in Mr. [REDACTED]’s life and was killed in Honduras when Mr. [REDACTED] was a teenager. Exh. Respondent’s Declaration at §2. Mrs. [REDACTED]’s mother passed away from kidney failure in [REDACTED] 2009 and her father lives in [REDACTED] Illinois with his new wife and her children. *Id.* at §3. Her siblings also live in [REDACTED] and have families of their own. *Id.*

Mr. ██████ Leaves Honduras for the United States

Mr. ██████ left Honduras when he was seventeen years old, just before his eighteenth birthday. Exh. M, Respondent's Declaration at §§5-6. Mr. ██████'s family—his mother and siblings—had previously traveled to the United States and left him in the care of an aunt and uncle when he was approximately fourteen years old. *Id.* at §4. While his aunt and uncle provided the basics, they did not provide him with love and Mr. ██████ missed his mother and siblings. *Id.*

Honduras was a poor and violent country when Mr. ██████ came to the United States in search for a better life and to join the rest of his family. Exh. MM, INS Resource Information Center Report. At the time, Honduras faced social strife believed to be a remnant of a long and violent history of *coups d'etat* and military governments. *Id.* Mr. ██████'s own father was a victim of this social unrest; he was shot to death during a robbery attempt. Exh. Respondent's Declaration at §2. In 1998, more than 10,000 Honduran youths belonged to gangs that increasingly became the targets of the social cleansing death squads, which were left over from the military dictatorship years. Exh. MM, INS Resource Information Center Report at 19. In 1998, the homicide rate reached six (6) to twelve (12) murders per day in Tegucigalpa, the capital city, alone. *Id.* at 6. Then, in 1998 and when Mr. ██████ was already in the United States, Hurricane Mitch struck Honduras and compounded the poverty and crime levels, and prompted the United States to designate Honduras for Temporary Protected Status (TPS). *Id.* When Mr. ██████ arrived in the United States, he attempted to enroll in high school, but was turned away for lacking documentation that he was unable to get from Honduras. Exh. Respondent's Declaration at §7.

Mrs. ██████'s Military Service

Mrs. ██████ joined the U.S. Army in ██████ 2008. Exh. V, Declaration from ██████. She completed her military training in ██████ 2009 and her medical training in ██████ 2009. *Id.* at §20. Mrs. ██████ is trained as a urology technician and as a combat medic. Exh. W, Letter from Petty Officer 2nd Class ██████. Upon the completion of her medical training, Mrs. ██████ was assigned to ██████. Exh. V, Declaration from ██████ at §20. The ██████ family moved from ██████ Illinois, the city where Mrs. ██████ was born and where all of their family and friends were located, to the ██████ Maryland area, which was completely new to them and where they knew no one. *Id.* at §21, §36. Once at ██████, Mrs. ██████ discovered that a foot injury sustained during medical training was actually a bone fracture. *Id.* at §21. That fracture has led to two surgeries—the first in ██████ 2001 and the second in

██████████ 2012—that required Mrs. ██████████ to use a boot cast and crutches for a prolonged period of time and an imminent third surgery. *Id.* at §§32-33.

In ██████████ 2012, Mrs. ██████████ received orders to report to ██████████ in ██████████ on ██████████ 2012. Exh. X, Assignment Orders to ██████████. While Mrs. ██████████ was excited about these orders, especially since her sister-in-law was also stationed at ██████████, she was very concerned about Mr. ██████████’s pending removal proceedings, especially in her absence, and knew that she would be separated from her family. Exh. V, Declaration from ██████████ at §41. Mrs. ██████████ and her superiors worked very hard to get the deployment orders deleted. Exh. W, Letter from Petty Officer 2nd Class ██████████.

Mrs. ██████████ enjoys the support and admiration of her colleagues who commend her strong work ethic and dedication to the patients at ██████████. Exhs. Y-Z, Letters of Recommendation for ██████████. On ██████████ 2012, she was appointed as the non-commissioned officer in charge of the clinic and given new responsibilities. *Id.* Mrs. ██████████ wakes at 4 a.m. to arrive at work by 5 a.m. and is at ██████████ until at least 6 p.m. and as late as 10 p.m. when she is on-call. Exh. V, Declaration from ██████████ at §29. Mrs. ██████████ is one of three female medics and only female medics are allowed to see female patients. *Id.* at §31. Mrs. ██████████ loves her serving her country and plans to re-enlist during the re-enlistment period. *Id.* at §40. Once she re-enlists, it is “very likely that she may receive orders to be stationed overseas or she may be given orders to report to a duty station that is highly deployable. [...] If orders were to be received for deployment or re-station, the possibility of her orders being deleted again for this reason are not in her favor. However, even if the orders were able to be deleted, it would not benefit her career. A soldier being assigned only in one duty station during their Army career can restrict their opportunity of being promoted and make it more difficult to advance in the future” writes Petty Officer 2nd Class ██████████ who currently supervises Mrs. ██████████ at ██████████. Exh. W, Letter from Petty Officer 2nd Class ██████████. Mrs. ██████████ wishes to be stationed overseas and comply with whatever orders she is given so that she can fully serve her country. Exh. V, Declaration from ██████████ at §41.

Mrs. ██████████’s Mental Health

Mrs. ██████████ recently began seeing the therapist at the ██████████. Exh. V, Declaration from ██████████ at §35. She had heard from colleagues that therapy had helped them and she decided to try it. *Id.* Once in therapy, Mrs. ██████████ found herself crying “like a baby” and realizing how much stress she had been carrying. *Id.* Mr. ██████████ had noted that

Mrs. [REDACTED] has been disengaged the past few months. Exh. M, Respondent's Declaration at §21. He recalls her getting home from work and immediately going to lie down and sleep the remainder of the evening while Mr. [REDACTED] tends to the children and dinner. *Id.* Mrs. [REDACTED] was recently diagnosed with major depressive disorder, for which she was prescribed Prozac, anti-depression medication, and posttraumatic stress disorder. Exh. DD, Mrs. [REDACTED]'s Mental Health Records.

Mr. [REDACTED]'s Contributions to the [REDACTED] Family

Mrs. [REDACTED] heavily relies on Mr. [REDACTED] to care for their children given her regular 15 hour work days and numerous responsibilities at [REDACTED]. Exh. V, Declaration from [REDACTED] at §30. Mr. [REDACTED] prepares the children for school, walks them to the bus stop, cleans the house, walks the dog, prepares their meals, helps them with their homework, plays with them, goes to soccer practice with them, and prepares them for bed. Exh. M, Respondent's Declaration at §§24, 28. Mr. [REDACTED] knows [REDACTED] struggles with reading so he and her teacher from the last school year devised a program for [REDACTED] through which she reads for 20 minutes at home every day in addition to her homework; Mr. [REDACTED] monitors [REDACTED] to ensure she accomplishes this task. Exh. M, Respondent's Declaration at §27. Mrs. [REDACTED] and her colleagues who have met Mr. [REDACTED] recognize that Mr. [REDACTED] is essential to their family's well-being and Mrs. [REDACTED]'s demanding career in the U.S. Army. Exhs. Q-R, Letters of Support from Mrs. [REDACTED]'s Colleagues. Mrs. [REDACTED] calls Mr. [REDACTED] an "amazing father." Exh. M, Respondent's Declaration at §19. [REDACTED] and [REDACTED] are very attached to Mr. [REDACTED]. *Id.* at §37. [REDACTED] cried every day for the nine days that Mr. [REDACTED] was in jail following Mr. [REDACTED]'s late reporting to his parole officer (pursuant to the theft conviction discussed below) on account of a visit to [REDACTED] to see his ailing mother. *Id.* at §37; Exh. M, Respondent's Declaration at §19. Anytime Mr. [REDACTED] leaves the house, [REDACTED] constantly asks questions hinting to her concern that he may not come back. *Id.* at §43.

Mr. [REDACTED]'s Removal Proceedings Commence

In his over fifteen years of residing in the United States, Mr. [REDACTED] has had two brushes with the criminal system, one which resulted in a misdemeanor conviction for theft for a value of under \$100.00. Exhs. S-T, Respondent's Criminal Conviction Record & Crime Statute. This conviction led to his placement in removal proceedings, on an ankle bracelet (which he no longer has), and under the ISAP program to which he continues to report every other Thursday with Mrs. [REDACTED]. Exh. M, Respondent's Declaration at §19. Mrs. [REDACTED] filed an I-130 and I-485 for Mr. [REDACTED] in July of 2011 and the I-130 remains pending. Exh. NN, Receipt Notice for I-130 and proof

of pending status. Though Mr. [REDACTED] was eligible for and wanted to apply for Honduran TPS when it was announced in 1998, he did not out of fear and on the bad advice that TPS would only last one year and then subject the applicants to removal from the United States. Exh. M, Respondent's Declaration at §8.

Conditions in Honduras Today

Today, Honduras is considered the world's most violent country by the United Nations. Exh. II, NPR Article. The country experienced 82.1 homicides per 100,000 people last year. Exh. JJ, Christian Science Monitor Article. Drug trafficking, political instability, history, and corrupt police contribute to this reality. Exh. II, NPR Article. The violence and instability led the U.S. Department of State to withdraw the Peace Corps from Honduras. *Id.* Further, San Pedro Sula, Honduras recently replaced Ciudad Juarez, Mexico as the most violent city in the hemisphere; San Pedro Sula saw 159 homicides per 100,000 residents in 2011. Exh. JJ, Christian Science Monitor Article. Additionally, Honduras is the second poorest country in Central America and suffers from both extraordinarily unequal distribution of income and high unemployment. Exh. LL, CIA World Fact Book Report on Honduras. Agriculture, industry, and services comprise the majority of the work force. *Id.*

Mr. [REDACTED] is not in contact with any of his remaining extended family in Honduras and has not seen them since [REDACTED] 1997. Exh. M, Respondent's Declaration at ¶32. His mother and siblings reside in the United States or are serving in the U.S. Armed Forces abroad. *Id.* at ¶1. Mr. [REDACTED] has nowhere to go in Honduras, nor any known job opportunities. *Id.* at ¶32. Mrs. [REDACTED] does not want or plan to relocate to Honduras, if needed, because of her career in the U.S. Army and the children's safety and future opportunities. Exh. V, Declaration from [REDACTED] at §39.

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.

Mr. [REDACTED] 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. Mr. [REDACTED] 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 United States. INA § 240A(b)(1)(A). Mr. [REDACTED] has lived in the United States for over fifteen years. He entered the country without inspection on or about [REDACTED] 1997. *See* Form EOIR-42B, question 19 & 21; Exh. M, Respondent's Declaration at ¶3. He has remained continuously in the United States since then, with no departures. *See* EOIR-42B, question 23-24; Exh. M, Respondent's Declaration at ¶4. Since his arrival in the United States, Mr. [REDACTED] has lived in [REDACTED] where his mother and siblings were living. Approximately a year after his arrival, Mr. [REDACTED] met Mrs. [REDACTED]. Eventually, they began dating, had children together, married, and moved to Maryland pursuant to her military assignment to [REDACTED]. Therefore, Mr. [REDACTED] has known Mrs. [REDACTED] the vast majority of his fifteen years in the United States. Mr. [REDACTED] submits detailed declarations from Mrs. [REDACTED] and from his brother-in-law, Captain [REDACTED] to establish his residence in the U.S. during this period. *See Vera-Villegas v. INS*, 330 F.3d 1222 (9th Cir. 2003) (holding oral and written testimony may suffice to prove continuous physical presence). Indeed the Notice to Appear (NTA) alleges Mr. [REDACTED] entered the United States on [REDACTED] 1997.

The NTA was served on [REDACTED] 2011. If he entered the United States on [REDACTED] 1997, he has been physically present in the U.S. for a continuous period of over 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. Mr. [REDACTED] 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). Mr. [REDACTED]'s criminal record and the letters submitted by his family and friends in support of his application confirm his good moral character during the past ten years.

In his over fifteen years in the United States, Mr. [REDACTED] has had two arrests and one criminal conviction. The first arrest occurred over ten years ago on [REDACTED] 2002 in [REDACTED] Illinois and from that arrest stemmed five charges for which a *nolle prosequi* disposition was entered on [REDACTED] 2012. The second arrest led to a misdemeanor conviction for Theft for Less than \$100.00 and a 90-day sentence issued on [REDACTED] 2011. MD. CODE ANN. § 7-104 (g)(3) (2012). Theft is categorically a crime of moral turpitude and is an enumerated crime under section 101(f) of the INA. However, the BIA held in *Matter of Garcia-Hernandez*, 23 I&N Dec. 590 (BIA 2003), that convictions for crimes of moral turpitude that fit within the “petty offense exception” and have a potential maximum sentence of less than a year do not disqualify respondents from cancellation of removal under section 240A(b) of the INA. *Cf. Matter of Cortez*, 25 I&N Dec. 301 (BIA 2010) (holding that an alien convicted of a CIMT for which a sentence of *a year or longer* may be imposed is an offense under section 237(a)(2) of the INA) (emphasis added). A conviction is considered a petty offense “if the maximum penalty possible for the crime of which the alien was convicted...did not exceed imprisonment for one year and, if the alien was convicted of such crime, the alien was not sentenced to a term of imprisonment in excess of six months.” INA § 212(a)(2)(A)(ii)(II). Theft for Less than \$100.00 carries a penalty of imprisonment not exceeding 90 days or a fine not exceeding \$500 or both. MD. CODE ANN. § 7-104 (g)(3) (2012). Mr. [REDACTED] was sentenced to 90 days, the equivalent of three months, for a crime the maximum possible penalty of imprisonment for which is 90 days. Therefore, Mr. [REDACTED] is not inadmissible or ineligible for this benefit because his theft conviction—while a crime of moral turpitude—qualifies a petty offense pursuant to section 212(a)(2)(A)(ii)(II) of the INA, and therefore should be excepted.

The BIA recognizes that good moral character is not moral excellence. In *Matter of B-*, 2 I&N Dec. 611 (BIA 1943), the BIA held that good moral character is not destroyed by a single lapse and noted that the “concept of a person's natural worth derived from the sum total of all his activities in the community.” 2 I&N Dec. at 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).

Mr. [REDACTED]’s good conduct and character far outweigh his theft conviction. Mr. [REDACTED] supports his family in every imaginable way and places them first, especially his children. Due to his wife’s service in our Armed Forces and the demanding responsibilities that come with this service, Mr. [REDACTED] is also the children’s primary caregiver who feeds, prepares them for school, helps them with their homework, plays with them, and does practically everything else with and for them. In fact, Mr. [REDACTED] is also involved in his children’s education and developmental support by attending meetings with teachers and ensuring the teachers’ educational development recommendations are followed at home. Exh. M, Respondent’s Declaration. Mrs. [REDACTED]’s colleagues at [REDACTED] assert that Mr. [REDACTED] has been instrumental to his wife’s ability to pursue her career in the U.S. Army and do her job to the best of her ability. Exhs. Q-R, Letters of Support from [REDACTED] and [REDACTED].

[REDACTED], a member of the U.S. Navy and Mrs. [REDACTED]’s colleague at [REDACTED], states the following about Mr. [REDACTED]:

[Mr. [REDACTED]] has shown his love and support of his wife’s decision to join the military. It [...] I know it is difficult not to be able to financially support your family, but [REDACTED] does a great job of taking care of things at home, so that [REDACTED] can focus on work. [He] is constantly with the children and when I have been around their home, I see how much dedication he has toward them and [Mrs. [REDACTED]]. I have never heard anyone speak of him in any type of negative manner and I believe it reflects well his personality.

Exh. O, Letter of Support from [REDACTED].

[REDACTED], another of Mrs. [REDACTED]’s [REDACTED] colleagues, who has known the family for two years, states that

[REDACTED] “is a very caring person and would help anyone in need. [...] [REDACTED] is constantly taking the children to the nearby park and during the summer he takes them to the pool located at their residence. Every time I spend time with [REDACTED] and [REDACTED], I see how much love they have for each other and for their children.”

Exh. R, Letter of Support from [REDACTED].

U.S. Army Captain [REDACTED], Mr. [REDACTED]’s brother-in-law through his marriage to Mr. [REDACTED]’s sister who is also in the U.S. Army, has known Mr. [REDACTED] since approximately 1999 and asserts the following about his good character:

...I say without a doubt that you are dealing with a person of great character, a great family man. Mr. [REDACTED] operates with the integrity and never has a bad word to say about anyone. He is also a very dedicated father and beloved husband. [...] I have enjoyed the company of [Mr. [REDACTED]] and his wife during different functions as well as personal talks with him during trip together, and he never was out of line in any way and I have no doubts about his ability to succeed in the future in this country. Exh. P, Letter of Support from [REDACTED].

Therefore, this conviction does not demonstrate a lack of good moral character. Balancing his two arrests and one conviction—a conviction which qualifies as a petty offense under the INA, no less—with the abundant positive factors proves Mr. [REDACTED] is a person of good moral character.

III. Mr. [REDACTED]'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, Mr. [REDACTED]'s case most resembles, though it surpasses, the hardship faced by respondent in *Matter of Recinas*.

- a. *Relocating to Honduras with Mr. [REDACTED] is not an option for his family because Mrs. [REDACTED] is a Specialist in the U.S. Army and plans to pursue a career serving the United States.*

Mr. and Mrs. [REDACTED] married on [REDACTED] 2008, but have been in a committed relationship for over twelve years. Together, they have two U.S citizen children, [REDACTED] and [REDACTED], aged seven and ten, respectively, who are English dominant.

When Mrs. [REDACTED] joined the U.S. Army in 2008, the family moved from [REDACTED] Illinois, the city where Mrs. [REDACTED] was born and where all of their family and friends were located, to the [REDACTED] Maryland area, which was completely new to them and where they knew no one. Mrs. [REDACTED] is a Specialist in Active Duty/Deployable Status in the U.S. Army on assignment to [REDACTED] Maryland. At [REDACTED], Mrs. [REDACTED] serves as Supervisor of the Clinic and as the Non-Commissioned Officer in Charge; she was promoted to this position on [REDACTED] 2012. Mrs. [REDACTED] wakes at 4 a.m. to be at work by 5 a.m. and is at [REDACTED] until at least 6 p.m. and as late as 10 p.m. when she is on-call. Given this grueling schedule that often includes 15-hour days and important responsibilities, Mrs. [REDACTED] heavily relies on Mr. [REDACTED] to care for their children. Mr. [REDACTED] prepares the children for school, walks them to the bus stop, cleans the house, walks the dog, prepares their meals, helps them with their homework, plays with them, goes to soccer practice with them, and prepares them for bed.

Mrs. [REDACTED] loves her serving her country and plans to re-enlist during the re-enlistment period. She has one year left on her current contract, which is up in [REDACTED] 2013. Once she re-enlists, it is "very likely that she may receive orders to be stationed overseas or she may be given orders to report to a duty station that is highly deployable. [...] If orders were to be received for deployment or re-station, the possibility of her orders being deleted again for this reason are not in her favor. However, even if the orders were able to be deleted, it would not benefit her career. A soldier being assigned only in one duty station during their Army career can restrict their opportunity of being promoted and make it more difficult to advance in the future" writes Petty

Officer 2nd Class [REDACTED] who currently supervises Mrs. [REDACTED] at [REDACTED]. Mrs. [REDACTED] wishes to pursue a career in the U.S. Army, be stationed overseas, and comply with whatever orders she is given so that she can fully serve her country.

As the sole breadwinner in their family, Mrs. [REDACTED]'s career is very important to the family's well-being. Mrs. [REDACTED] would not be able to continue serving her country in the U.S. Army if she were to follow Mr. [REDACTED] to Honduras. She would have to give up her career and the family would likely be destitute in Honduras, as is explained below. Aside from her career in the U.S. Army, the deplorable and dangerous conditions in Honduras provide Mrs. [REDACTED] reason for not following Mr. [REDACTED] to Honduras with their children. Further, Mrs. [REDACTED] requires medical attention both for her mental health, which is described below in detail, and her physical health. Mrs. [REDACTED] sustained a bone fracture during her medical training in Texas. That fracture has led to two surgeries—the first in [REDACTED] 2001 and the second in [REDACTED] 2012—that required Mrs. [REDACTED] to use a boot cast and crutches for a prolonged period of time and an imminent third surgery that is scheduled for the next four months.

Therefore, relocating to Honduras is not an option for Mr. [REDACTED]'s children and wife. As such, the family would be separated thereby forcing Mrs. [REDACTED] to become a single mother, which will be extremely difficult because of her work schedule and responsibilities at [REDACTED]. In fact, Mrs. [REDACTED] states that she would have to give up her service in the military if Mr. [REDACTED] were removed because she would lack a required family-care plan: Mrs. [REDACTED]'s mother is deceased, her father has a new family in [REDACTED] and suffers from arthritis, and her siblings also live in [REDACTED] and have families of their own. Mrs. [REDACTED] would be unemployed and unable to support her children or Mr. [REDACTED] in Honduras. Such an outcome would cause the family exceptional and extremely unusual hardship.

- b. Mr. [REDACTED]'s wife will suffer exceptional and extremely unusual hardship because she suffers from depression and posttraumatic stress disorder, and her mental health will significantly deteriorate should Mr. [REDACTED] be removed and should she be deployed abroad.*

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 in a VAWA cancellation of removal case where the respondent’s daughter received treatment for PTSD. 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, to deal with psychological issues).

Like the respondent’s qualifying relative in *Matter of N-A-J*, Mrs. [REDACTED] suffers from mental illness—major depressive disorder and post-traumatic stress disorder (PTSD)—requiring a multi-faceted approach that also includes daily medication and psychotherapy. Exh. DD, Mrs. [REDACTED]’s mental health records. Mrs. [REDACTED] receives counseling at [REDACTED]. She began attending therapy this past summer and, once there, she found herself crying “like a baby” and realizing how much stress she had been carrying. Exh. V, Declaration from [REDACTED] at §35. Mrs. [REDACTED] was recently diagnosed with depression and PTSD and was prescribed Prozac, anti-depression medication that she has been instructed to take daily, as part of the treatment. Exh. DD, Mrs. [REDACTED]’s mental health records. In addition to medication, her psychiatrist, [REDACTED] also recommends continued outpatient therapy for six to twelve months. *Id.* Consistent with this diagnosis, Mr. [REDACTED] had noted that Mrs. [REDACTED] has been disengaged the past few months. He recalls her getting home from work and immediately going to lie down and sleep the remainder of the evening while Mr. [REDACTED] tends to the children and dinner. Exh. M, Respondent’s Declaration at §21.

Mrs. [REDACTED]’s mental illness likely will exacerbate if Mr. [REDACTED] is not granted relief. Captain [REDACTED] notes that he is “concerned for Mrs. [REDACTED]’s psychological and emotional well-being should [Mr. [REDACTED]] be deported, especially if she is deployed in the near future as she almost was last year.” Exh. P, Letter of Support from [REDACTED]. Mrs. [REDACTED]’s interim supervisor, Petty Officer 2nd Class [REDACTED], writes that Mrs. [REDACTED] “has communicated to me that she is very distressed thinking about her husband’s situation. She performs exceptionally at her job and does not allow her issues to affect her performance; however, knowing her personally, I

know that this problem is affecting her and the closer the court date gets, the higher the stress builds.” Exh. W, Letter from [REDACTED], Mrs. [REDACTED]’s Supervisor. Echoing these concerns, Dr. [REDACTED] lists Mr. [REDACTED]’s legal problems as a stressor that affects her depression and PTSD diagnoses. Exh. DD, Mrs. [REDACTED]’s mental health records.

A study on the role of intimate relationships, military service, and gender on the development of posttraumatic stress disorder following deployment to Iraq also suggests that Mrs. [REDACTED]’s mental health would deteriorate if, in addition to Mr. [REDACTED]’s removal, Mrs. [REDACTED] is deployed abroad. Exh. EE, Study on PTSD. Though the report specifically studied those soldiers returning from Iraq and it is unknown where Mrs. [REDACTED] would be assigned, the study’s findings are instructive in analyzing the effect of intimate relationships to female soldiers in the military. In general, the study found that intimate relationships may protect against the development of PTSD symptoms and that those individuals in intimate relationships report superior adjustment to stressors and lower levels of mental health symptoms as compared to individuals with weak support. *Id.* When analyzing gender as a factor, the same study found that female soldiers were nearly 2.5 times more vulnerable to postdeployment PTSD, that family separations have been associated with high levels of stress and may present a number of challenges, that the presence or absence of positively perceived intimate partners who can provide support during challenges is the crucial factor because of the buffering effects of intimate relationships, and that perceived loss of relationship intimacy may increase susceptibility to PTSD. *Id.*

Mrs. [REDACTED], a female soldier who already suffers from and receives treatment for depression and PTSD, is likely to continue to suffer from PTSD if she is re-assigned abroad. Furthermore, she will also continue to suffer from PTSD if Mr. [REDACTED]—her partner of over twelve years, the father of her children, and the person who she gives full credit for seeing her through the aftermath of her mother’s death, which Mrs. [REDACTED] cites as “the hardest thing I have had to face yet in life”—is not granted relief and therefore cannot accompany her on assignment. Add to this lack of intimate relationship the stress Mrs. [REDACTED] would face in having to decide where her children would go if she were deployed and Mr. [REDACTED] were removed to Honduras, and her concern for Mr. [REDACTED]’s well-being in Honduras, which is now believed to be the most violent country in the world, and this situation likely guarantees that Mrs. [REDACTED]’s mental health will severely deteriorate. Exhs. II-JJ, News Articles on Honduras. In such a state, it is unlikely that Mrs. [REDACTED] will be able to fulfill her duties in the U.S. Army. The possibility of deleting new orders for an

assignment abroad is unlikely and, in the off chance that this were again possible, it would not benefit her career in the military as it would “restrict her opportunity of being promoted and it make it more difficult to advance in the future.” Exh. W, Letter from [REDACTED], Mrs. [REDACTED]’s Supervisor; Exh. X, Orders for Assignment to [REDACTED]

Therefore, Mrs. [REDACTED] would suffer exceptional and extremely unusual hardship if Mr. [REDACTED] is removed and should Mrs. [REDACTED] be deployed abroad.

c. Mr. [REDACTED]’s U.S. citizen children will suffer psychological and emotional trauma if they are separated from their father, their primary caretaker.

Mrs. [REDACTED]’s service at [REDACTED] requires that she work long hours, especially as she is the newly designated Supervisor and Non-Commissioned Officer in Charge and is only one of three female medics in a situation where policy dictates only female medics are allowed to see female patients. *Id.* at §31; Exh. W, Letter from Petty Officer 2nd Class [REDACTED]. Mrs. [REDACTED] works until at least 6 p.m. daily and often puts in fifteen hour days. Exh. V, Declaration from [REDACTED] at §30. As such, Mr. [REDACTED] is the primary caretaker for the [REDACTED] family’s children, [REDACTED] and [REDACTED]. Mr. [REDACTED] prepares the children for school, walks them to the bus stop, cleans the house, walks the dog, prepares their meals, helps them with their homework, plays with them, goes to soccer practice with them, and prepares them for bed. Exh. M, Respondent’s Declaration at §§24, 28. Every past first day of school Mr. and Mrs. [REDACTED] have attended first-day of school and met with teachers, but this was the first year that Mrs. [REDACTED] could not attend and only Mr. [REDACTED] attended. Exh. M, Respondent’s Declaration at §23. Mr. [REDACTED] informed the teachers that [REDACTED] should be sat in the front of the class because of her bad eyesight and that [REDACTED] should not be sat around talkative students. *Id.* Therefore, as the primary caretaker, the children are accustomed to seeing and being with their father on a daily basis and have relied on him for their day-to-day needs while Mrs. [REDACTED] fulfills her military obligations; important obligations given the amount of wounded soldiers coming back from Afghanistan and Iraq and being cared for at [REDACTED].

Additionally, if Mr. [REDACTED] were denied relief, it would be detrimental to J [REDACTED]’s educational progress. [REDACTED] has been having problems with reading. Mr. [REDACTED] knows [REDACTED] struggles with reading so he and her teacher from the last school year devised a program for [REDACTED] through which she reads for 20 minutes at home every day in addition to her homework;

Mr. ██████ monitors ██████ to ensure she accomplishes this task every day after school. Exh. M, Respondent's Declaration at §27. ██████ began the 2011-2012 school year (4th grade) reading below grade level and finished the school year reading at grade level. Exh. HH, ██████'s 4th Grade Report Card and Teacher's Comments. Her test scores also saw a 17 point increase and the teacher commented: "Please encourage ██████ to continue to read during the summer." *Id.* This improvement is a testament to Mr. ██████'s efforts at home with ██████. Without Mr. ██████ at home to work with ██████, she could easily regress.

Having a father removed from the country would certainly be psychologically and emotionally traumatic for any U.S. citizen child. In Mr. ██████'s case, however, his removal would be especially detrimental to his children, as he is the primary caretaker and the children would lose their main source of day-to-day emotional, developmental, and academic support.

d. Mr. ██████ has significant family ties in the United States and lacks adequate family support in Honduras.

In *Matter of Gamero-Perez*, the BIA denied cancellation of removal in large part because the respondent had family ties in Mexico as well as in the United States thus implying that the respondent would not have great difficulty adjusting to life in Mexico. 25 I&N Dec. 164 (BIA 2010). Unlike the respondent in *Gamero-Perez*, here, Mr. ██████ has family ties in the United States, but not in Honduras. While Mr. ██████'s U.S. citizen mother, U.S. citizen sister, U.S. citizen grandmother and Legal Permanent Resident brother all live in the United States, none of them are in a position to financially assist Mr. ██████ should he be denied relief. Exhs. J-L, Family's Documents. Mr. ██████'s mother lives in ██████ and suffers from an inflamed pancreas. Exh. M, Respondent's Declaration at ¶1, 34. Mr. ██████'s sister is in the U.S. Army and is stationed at ██████ in ██████ with her husband, Captain ██████. Exh. M, Respondent's Declaration at ¶1. Furthermore, Mr. ██████ is not in touch with anyone in Honduras. *Id.* Mr. ██████ does not have substantial family ties in Honduras and he cannot rely on the distant and largely unknown ties he does have to provide him and his family the support they would require. Therefore, Mr. ██████ and his family would have great difficulty adjusting to life in Honduras.

e. Mr. ██████'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 Honduras and Mr. ██████

had adequate family support therein, he 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. Mr. [REDACTED] lacks a high school diploma, has no trade and is 33 years old. Exh. M, Respondent's Declaration ¶2, ¶7. Consequently, he will likely face considerable difficulty obtaining employment. Agriculture, industry, and services comprise the majority of the work force. Exh. LL, CIA World Fact Book Report on Honduras. If forced to return to Honduras, he might find manual work in any of the three fields comprising the majority of the work force, but that work would undoubtedly be inconsistent and yield low wages. At his age, Mr. [REDACTED] will face strong competition from younger men in an industry saturated with workers. Therefore, Mr. [REDACTED]'s education, age, and financial status also support a grant of cancellation of removal.

f. Mr. [REDACTED] and his family would be forced to live in extreme poverty and danger in Honduras.

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*, a suspension of deportation case, 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 Mr. [REDACTED] plans to leave his children in the United States, if circumstances force him to take his family to Honduras, they will suffer extreme poverty and face great danger, like both respondents in the above cases. Like Colombia during the pinnacle of its drug war, Honduras today is considered the world's most violent country by the United Nations given its average 82.1 homicides per 100,000 people recorded during 2011. Exh. JJ, Christian Science Monitor Article. Drug trafficking, political instability, history, and corrupt police contribute to this reality. Exh. II, NPR Article. The violence and instability led the U.S. Department of State to withdraw the Peace

Corps from Honduras in early 2012. *Id.* There is no doubt given the news reports and statistics out of Honduras that Mr. [REDACTED] would face great danger in Honduras.

Honduras is the second poorest country in Central America and suffers from both extraordinarily unequal distribution of income and high unemployment. Exh. LL, *CIA World Fact Book Report on Honduras*. In contrast to their economically stable life in the United States where Mrs. [REDACTED] has a steady income, job security, and job training as well as other development opportunities in exchange for her service, Mrs. [REDACTED] would face considerable difficulty finding employment in Honduras where she will not have the required mental health care or have any familiarity with the way of life. Exh. KK, U.S. Department 2011 Human Rights Report on Honduras. Given the economy and labor market issues in Honduras, providing for his family financially and locating mental health care of his wife would be nearly impossible for Mr. [REDACTED]. Exh. LL, *CIA World Fact Book Report on Honduras*. As discussed above, Mr. [REDACTED] has no close relatives in Honduras who could provide him and his family support.

g. Mr. [REDACTED] 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, Mr. [REDACTED] has lengthier residence in the United States than the respondent in *Matter of Recinas* had in 2002—14 years. Mr. [REDACTED] came to the United States in [REDACTED] 1997 before he turned eighteen years old and has lived here continuously since that time. Exh. M, Respondent’s Declaration at ¶¶5-6. As such, he has lived all of his adult life in the United States. Moreover, as in *Matter of Recinas*, Mr. [REDACTED]’s two U.S. citizen children have never been to Honduras and know no other way of life. Therefore, Mr. [REDACTED] has spent a considerable amount of his life in the United States and this fact further supports a grant of cancellation of removal.

h. Mr. [REDACTED] 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.

Mrs. [REDACTED] has filed an I-130 petition for Mr. [REDACTED] that remains pending with Baltimore USCIS. Exh. NN, Receipt Notice for I-130. However, because Mr. [REDACTED] entered without inspection [REDACTED] 1997, Mr. [REDACTED] must return to Honduras and consular process to take advantage of the I-130, if approved, thereby triggering the unlawful presence ten year bar to reentering. Though Mr. [REDACTED] can certainly meet the extreme hardship standard for the I-601 waiver, Mr. [REDACTED] cannot be away from his family for as long as it is currently taking CIS at the U.S. Embassy in Honduras to process I-601 waivers. Even just one day away from his family will cause them exceptional and extremely unusual hardship because of Mrs. [REDACTED]'s grueling work schedule and Mr. [REDACTED]'s contributions to their children and home. Furthermore, the costs associated with consular processing, including the I-601 fee, will further strain the family's limited and modest income and create additional hardship. Apart from cancellation of removal, Mr. [REDACTED] has no other means of adjusting his status. Mr. [REDACTED] recently requested Parole-in-Place (PIP) from the Baltimore CIS Director, which would have allowed Mr. [REDACTED] to adjust status as a parolee and by pass seeking cancellation of removal under the high hardship standard, but the Director denied the request citing the lack of support for PIP by the Baltimore ICE Office of Chief Counsel which has jurisdiction over Mr. [REDACTED]. In 2010, Mr. [REDACTED] attempted to apply for Honduran TPS based on misinformation by the Honduras Consulate. Even if Mr. [REDACTED] were eligible for TPS, such relief is only temporary and would not allow him to travel freely in and out of the country as Mrs. [REDACTED]'s orders will likely require. Applying for Advanced Parole each time he would have to travel to follow Mrs. [REDACTED] is not only cumbersome and expensive, but also risky in that the application may be denied and the DHS always has the discretion of not allowing Mr. [REDACTED] into the country. Given Mr. [REDACTED]'s single conviction and his over fifteen years of unlawful presence, relying on Advance Parole is too risky a chance to take to separate the family.

Therefore, like respondent in *Matter of Recinas*, Mr. [REDACTED] has no other realistic prospects to permanently and legally immigrate into the United States besides cancellation of removal.

- i. *Mr. [REDACTED] has one immigration violation that was prompted by sympathetic factors.*

Mr. [REDACTED] entered the United States without inspection on or about [REDACTED] 1997. Mr. [REDACTED] came to the United States in search of his family and a better, safer life. Mr. [REDACTED] left Honduras out of desperation when he was seventeen years old just prior to his eighteenth birthday.

Exh. M, Respondent's Declaration at §§5-6. Mr. [REDACTED]'s family—his mother and siblings—had previously traveled to the United States and left him in the care of an aunt and uncle when he was approximately fourteen years old. *Id.* at §4. While his aunt and uncle provided the basics, they did not provide him with love and Mr. [REDACTED] missed his mother and siblings. *Id.* When Mr. [REDACTED] left, Honduras was a poor and violent country that faced much social strife believed to be a remnant of a long and violent history of *coups d'etat* and military governments. Exh. MM, INS Resource Information Center Report. Mr. [REDACTED]'s own father was a victim of this strife; he was shot to death during a robbery attempt. Exh. M, Respondent's Declaration at ¶2. In 1998, more than 10,000 Honduran youths belonged to gangs that increasingly became the targets of the social cleansing death squads, which were left over from the military dictatorship years. Exh. MM, INS Resource Information Center Report at 19. In 1998, the homicide rate reached six (6) to twelve (12) murders per day in Tegucigalpa, the capital city, alone. Exh. MM, INS Resource Information Center Report at 6. Therefore, Mr. [REDACTED] has one immigration violation of entering the United States without inspection, but given his age and both the pull and push factors that prompted him to enter this manner, this violation should not count heavily against Mr. [REDACTED].

CONCLUSION

WHEREFORE, Respondent, Mr. [REDACTED] 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, not just exceptional and extremely unusual hardship, and our Armed Forces would lose a great soldier.

For the foregoing reasons, Mr. [REDACTED] merits a grant of non-LPR cancellation of removal. Respectfully submitted this [REDACTED] 2012,

[REDACTED]