**SAMPLE - APPENDIX C**

**This response is not a substitute for independent legal advice supplied by a lawyer familiar with a client’s case.  It is not intended as, nor does it constitute, legal advice. DO NOT TREAT THIS SAMPLE RESPONSE AS LEGAL ADVICE.**

**Response to Department of Homeland Security to Notice of Intent to Issue a Final Administrative Order under 8 U.S.C. § 1228(b); INA § 238(b)**

In the Matter of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Respondent.

A Number **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

1. Respondent asks to inspect the Department of Homeland Security’s (DHS) evidence of removability related to both alienage and the charged criminal offense, including documents establishing the existence of the conviction as permitted under 8 U.S.C. § 1228(b)(4)(C); INA § 238(b)(4)(C); 8 C.F.R. § 238.1(c)(2)(ii). This request extends the deadline for rebuttal to ten days following the service of DHS’ evidence. 8 U.S.C. § 1228(b)(4)(C); INA § 238(b)(4)(C); 8 C.F.R. § 238.1(c)(2)(ii). Respondent, thus, reserves the right to make additional arguments after inspecting DHS’ evidence.
2. (**If applicable**) Respondent seeks an extension of time to secure counsel and prepare an additional response. 8 C.F.R. § 238.1(c)(2)(ii). The ten-day window to respond to the Notice of Intent is inadequate to meaningfully pursue Respondent’s right to counsel under 8 U.S.C. § 1228(b)(4)(B); INA § 238(b)(4)(B); 8 C.F.R. § 238.1(b)(2)(iv).
3. DHS must establish deportability by clear, convincing, and unequivocal evidence. 8 C.F.R. § 238.1(d)(1)&(2)(i). In determining whether a conviction qualifies as an aggravated felony, generally the categorical approach applies. *See* *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1184 (2013). Under the categorical approach, the least of the acts criminalized under the statute of conviction must come within the elements of the generic aggravated felony provision. *Id*. Because DHS has not proven that every violation of the statute of conviction falls within the generic aggravated felony ground, it cannot establish deportability by clear, convincing, and unequivocal evidence. *See Matter of Chairez*, 26 I&N Dec. 819 (BIA 2016) (concluding that the evidence does not establish respondent’s removability for a conviction of an aggravated felony where it was unclear whether statute of conviction, which included reckless discharge of a firearm, was divisible).
4. **(If applicable)** Respondent requests that DHS terminate the administrative removal proceedings and place the Respondent in removal proceedings before an immigration judge so that Respondent may apply for relief from removal, for which Respondent is eligible.

Dated: **\_\_\_\_\_\_\_\_\_\_\_\_** Respectfully submitted,

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