**APPENDIX D**

**SAMPLE**

**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.**

**UNITED STATES COURTS OF APPEALS**

**FOR THE \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ CIRCUIT**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[NAME] )**

**)**

**)**

***Petitioner* )**

**)**

**v. ) Immigration File No.:**

**) A\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**JEFF SESSIONS, Attorney )**

**General of the United States; )**

**JOHN KELLY, U.S. Department )**

**Homeland Security, Secretary of )**

**Homeland Security[[1]](#footnote-1) )**

**)**

***Respondents* )**

**PETITION FOR REVIEW OF DECISION ISSUED BY THE DEPARTMENT OF HOMELAND SECURITY**

The above-named Petitioner hereby petitions for review by this Court of the final administrative order of removal entered by the U.S. Immigration and Customs Enforcement (“ICE”) pursuant to 8 U.S.C. § 1228(b). A copy of the order on Form I-851A is attached. To date, no court has upheld the validity of the order.

Jurisdiction is asserted pursuant to 8 U.S.C. § 1252(a)(1). This petition raises “constitutional claims” [and/or] “questions of law.” 8 U.S.C. § 1252(a)(2)(D). Venue is asserted pursuant to 8 U.S.C. § 1252(b)(2) because ICE completed proceedings in \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [CITY, STATE], within the jurisdiction of this judicial circuit.

This petition is timely filed pursuant to 8 U.S.C. § 1252(b)(1) as it is filed within 30 days of the issuance of the administrative removal order.

[Insert this request for counsel if applicable] Petitioner seeks the appointment of counsel. Petitioner cannot afford to retain counsel, and appeals of administrative removal orders involve complex legal issues, including whether a conviction is for an aggravated felony and whether ICE has complied with its statutory, regulatory, and constitutional obligations in conducting administrative removal proceedings against the Petitioner. Unsurprisingly, courts have found that non-lawyer DHS officers have erred in issuing orders of removal under the administrative removal statute, including on the question of whether an offense of conviction is classifiable as an aggravated felony, and whether an individual is a U.S. citizen or lawful permanent resident. *See, e.g.*, *Rodriguez-Celaya v. Atty. Gen. of the U.S*., 597 F. App’x 79, 82 (3d Cir. 2015) (noncitizen’s “conviction … cannot be considered an aggravated felony”); *Walker v. Atty. Gen. of the U.S.*, 625 F. App’x 87, 88, 90 (3d Cir. 2015) (noncitizen “wrongly subjected to [administrative] removal proceedings” because he was not “convicted of an aggravated felony”); *United States v. Reyes*, 907 F. Supp. 2d 1068 (N.D. Cal. 2012) (finding in the context of an illegal reentry prosecution that the defendant was erroneously deported under § 1228(b) for a conviction that was not an aggravated and wrongly deprived of the opportunity to apply for voluntary departure from an Immigration Judge); *Morales v. Chadbourne*, 996 F. Supp. 2d 19 (D. R.I. 2014) (ICE erroneously concluded that a naturalized U.S. citizen—who had been arrested by local law enforcement—was not a U.S. citizen). Determining whether a particular conviction is an aggravated felony is sufficiently complex to have reached the Supreme Court six times in ten years. *Cf.* *Luna-Torres v. Lynch*, 136 S. Ct. 1619, 1636 (2015) (listing cases); *see also* *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1692 (2013) (“This is the third time in seven years that we have considered whether the Government has properly characterized a low-level drug offense as … an ‘aggravated felony.’”). Issues of the unlawfulness of government practices in establishing alienage or of citizenship are no less complicated. *See, e.g.*, *INS v. Lopez-Mendoza*, 468 U.S. 1032 (1984). Because of the complex questions involved in this appeal, Petitioner requests appointment of counsel.

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

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[NAME]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_[ADDRESS]

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**CERTIFICATE OF SERVICE**

I, \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NAME], the undersigned, say:

I am over the age of eighteen years. On \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [DATE], I served the within:

* Petition for Review and Emergency Stay Request; and
* Form I-851A, Final Administrative Removal Order

by depositing **one** true copy, enclosed in a sealed envelope with postage fully pre-paid, in a mailbox regularly maintained by United States Postal Service to each person listed below addressed as follows:

Thomas W. Hussey, Director

Office of Immigration Litigation

U.S. Department of Justice Civil Division

P.O. Box 878, Ben Franklin Station

Washington, D.C. 20044

Jeff Sessions, Attorney General

U.S. Department of Justice

950 Pennsylvania Avenue, NW

Washington, D.C. 20530-0001

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NAME], Field Officer Director

U.S. Department of Homeland Security

U.S. Immigration and Customs Enforcement

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [STREET ADDRESS]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [CITY, STATE ZIP CODE]

Executed on this \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [DATE]. I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [NAME]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ [SIGNATURE]

1. Pursuant to 8 U.S.C. § 1252(b)(3)(A), Petitioner lists the Attorney General as a respondent. However, as the Department of Homeland Security (“DHS”) issued the agency decision for which Petitioner seeks review, Petitioner also has listed the Secretary of Homeland Security. [↑](#footnote-ref-1)