

Please note: This successful motion was prepared by the Asylum Seeker Advocacy Project (ASAP) and Catholic Legal Immigration Network, Inc. (CLINIC) in March 2017 for Orlando Immigration Court. Please be sure to check the relevant and up-to-date caselaw in your jurisdiction. Exhibits have been omitted.

[Redacted]

NON-DETAINED

*Pro Bono Counsel*

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

\_\_\_\_\_)  
In the Matter of: )  
 )  
[Redacted] )  
 )  
[Redacted], )  
 )  
Respondents. )  
\_\_\_\_\_)

File No. A [Redacted]

File No. A [Redacted]

**Post-Decision Motion**

**MOTION TO RESCIND *IN ABSENTIA* REMOVAL ORDER  
AND REOPEN PROCEEDINGS**

**NO FEE REQUIRED PER 1003.24(b)(2) AS MOTION BASED ON ASYLUM**

**AUTOMATIC STAY OF REMOVAL PER INA § 240(b)(5)(C)**

**March 28, 2017**

UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
IMMIGRATION COURT  
ORLANDO, FLORIDA

In the Matter of: )  
) )  
) )  
) )  
) )  
) )  
) )  
) )  
) )  
) )

[Redacted]

File No. A [Redacted]

[Redacted]

File No. A [Redacted]

Respondents. )  
) )  
) )

**MOTION TO RESCIND *IN ABSENTIA* REMOVAL ORDER  
AND REOPEN PROCEEDINGS**

Respondents, [Redacted] and [Redacted], respectfully request through this timely motion that this Court rescind its *in absentia* order of removal dated [Redacted] and reopen their proceedings pursuant to INA § 240(b)(5)(C)(ii), 8 C.F.R. § 1003.23(b)(4)(ii). Ms. [Redacted] and her minor daughter were unable to attend their [Redacted] [Redacted] hearing due to the interference and ineffective assistance of a “notario”<sup>1</sup> posing as an attorney. Exh. A, Declaration of [Redacted] (“[Redacted] Decl.”) at ¶¶ 27-29.

Ineffective assistance of counsel – in this case by a non-attorney fraudulently representing himself as counsel – is an “exceptional circumstance” that explains Ms. [Redacted] and her daughter’s absence at their master calendar hearing and merits reopening their case. *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988); *Montano Cisneros v. U.S. Atty. Gen.*, 514 F.3d 1224 (11th Cir. 2008). Ms. [Redacted] and her daughter seek asylum in the United States and hired [Redacted] to represent them in their underlying case. Exh. B, Payment

<sup>1</sup> Unauthorized practitioners of immigration law are often referred to as “notarios,” which is notary public in Spanish.

Contract. [REDACTED], a notario who told Ms. [REDACTED] he was an attorney and minister, deliberately misled Ms. [REDACTED] by telling her that her [REDACTED] [REDACTED] hearing had been rescheduled and that she should not attend. Exh. A, [REDACTED] Decl. ¶¶ 27-29. The fraudulent nature of Mr. [REDACTED]'s representation and his incorrect advice should be considered an exceptional circumstance and their case should be reopened. *See Montano Cisneros v. U.S. Atty. Gen.*, 514 F.3d 1224 (11th Cir. 2008); *see also* Exh. N, *In re Juarez Gonzalez*, 2011 WL 1373694, \*2 (BIA 2011) (holding that the ineffective assistance of a non-attorney can be sufficient for reopening where the consultant held himself out as an attorney).

Because Ms. [REDACTED] seeks to reopen an *in absentia* removal order based on exceptional circumstances within 180 days of receiving the order, her removal from the United States and that of her minor daughter is automatically stayed until such a time as the Court renders a decision. INA § 240(b)(5)(C).

### **Statement of Facts and Procedural History**

As described in her attached declaration, Ms. [REDACTED] came to the United States with her minor daughter [REDACTED] after Ms. [REDACTED]'s brothers were murdered and her family was threatened by members of a group of hitmen with connections to drug trafficking. Exh. A, [REDACTED] at ¶¶ 9-15. Ms. [REDACTED] and her daughter fled with her nieces, who witnessed the murder of Ms. [REDACTED]'s brother. *Id.* ¶ 15; Exh. E, I-589 Application for Asylum and Withholding of Removal. Ms. [REDACTED]'s nieces and mother provided testimony in the ongoing criminal prosecution of a subset of the group of men who murdered Ms. [REDACTED] brothers. Exh. A, [REDACTED] Decl. at ¶¶ 12. Customs and Border Protection officers apprehended Ms. [REDACTED] and her family members upon arrival in the United States. *Id.* ¶ 17. Ms. [REDACTED] and her daughter were then transferred to an Immigration

and Customs Enforcement (ICE) family detention facility in Dilley, Texas for eight days where an asylum officer found they had a credible fear of persecution. *Id.* Following their credible fear finding in early April 2016, Ms. [REDACTED] and her child were released. *Id.*

Upon her release, Ms. [REDACTED] provided the Department of Homeland Security (“DHS”) with the address for her brother, [REDACTED]’ home, where she and her child intended to reside: [REDACTED]. *Id.* ¶ 1. Ms. [REDACTED] and her daughter resided at this address for eleven months, and continue to live at this same address. *Id.* Over the course of those months, Ms. [REDACTED] had several check-ins with ICE officials (approximately one check-in every two months). *Id.* ¶ 20. Ms. [REDACTED] attended every check-in. *Id.*

In addition to the ICE check-ins, Ms. [REDACTED] attended her first master calendar hearing on [REDACTED]. *Id.* ¶ 21. At that time, the Court granted Ms. [REDACTED] a continuance to allow her to secure legal counsel. *Id.* Knowing how important it was to find a lawyer, Ms. [REDACTED] searched for representation upon her arrival in Florida. *Id.* ¶¶ 22-23. A friend of Ms. [REDACTED] named [REDACTED] gave Ms. [REDACTED] the contact information for a man named [REDACTED], who claimed to be an attorney and work with a church. *Id.* ¶ 23. However, [REDACTED] is not an attorney. Exh. C, Declaration of [REDACTED] in Support of [REDACTED] [REDACTED] (“[REDACTED] Decl.”); Exh. D, Declaration of [REDACTED] in Support of [REDACTED] [REDACTED] (“[REDACTED] Decl.”). There is no individual named [REDACTED] licensed to practice law in any of the fifty States or the Commonwealth of Puerto Rico, nor is there any individual named [REDACTED] recognized by the Department of Justice as an Accredited Representative. Exh. C, [REDACTED] Decl., ¶¶ 4, 11-14, 16; Exh. D, [REDACTED] Decl. ¶ 4.

When Ms. [REDACTED] met with [REDACTED], he informed her that he could represent her

as a lawyer in her immigration case for a fee of \$2,500. Exh. A, ██████ Decl. ¶ 25; Exh. B, Payment Contract. Wanting to secure counsel before her ██████ court hearing, Ms. ██████ hired Mr. ██████ and paid him \$1,100 to help her through the initial steps of her case. Exh. A, ██████ Decl. ¶ 25. Mr. ██████ took Ms. ██████ documents to fill out a Form I-589 in November 2016, which she believes he originally submitted in December 2016. *Id.* ¶ 26. Mr. ██████ defrauded and misled Ms. ██████ in her asylum case, submitting an I-589, Asylum Application on Ms. ██████ behalf to U.S. Citizenship and Immigration Services, not to the Orlando Immigration Court, which had jurisdiction over her case. *Id.*

Throughout late December 2016 and early January 2017, Mr. ██████ advised Ms. ██████ not to attend her ██████ master calendar hearing. *Id.* ¶ 27. Confused by this advice—which conflicted with the advice provided by volunteers with the CARA Pro Bono Project<sup>2</sup> that assisted her while she was in detention in Dilley, Texas—Ms. ██████ repeatedly asked Mr. ██████ if he was certain she should not appear for her hearing. *Id.* In response to her many inquiries, Mr. ██████ informed Ms. ██████ that she should not attend because her hearing had been rescheduled. *Id.* ¶ 29. Ms. ██████ was further confused by this claim, since she recalled being told at her last hearing that her next court date was on ██████. *Id.* Ms. ██████ asked her niece, who is in removal proceedings in the Atlanta Immigration Court, whether it was possible that her court date had been moved. *Id.* ¶ 30. Ms. ██████' niece confirmed that it was possible for Immigration Judges to move hearing dates, so Ms. ██████ believed that was what happened in her case based on Mr. ██████' statements. *Id.*

---

<sup>2</sup> The CARA Pro Bono Project is a collaboration among Catholic Legal Immigration Network, Inc. (CLINIC), American Immigration Lawyers Association (AILA), RAICES, and American Immigration Council providing pro bono counsel to mothers and children held at the South Texas Family Residential Center in Dilley, TX.

Due to Mr. [REDACTED] advice, Ms. [REDACTED] did not attend her [REDACTED] hearing, believing that it had been rescheduled. *Id.* ¶¶ 27-29. After missing her hearing, Ms. [REDACTED] did not realize that she had been deceived by Mr. [REDACTED] until she received her order of removal in the mail. *Id.* ¶ 32. At that point, she began suspecting that something was amiss. *Id.* ¶ 34. When she confronted Mr. [REDACTED] he told Ms. [REDACTED] that, because she had missed a call from ICE on [REDACTED], ICE had told the immigration judge that she had disappeared and the judge had ordered her removal from the United States. *Id.* Indeed, on [REDACTED], Ms. [REDACTED] was waiting for an automated check-in call from ICE when she accidentally fell asleep. *Id.* ¶ 31. However, Ms. [REDACTED]' half-brother, [REDACTED] answered their call and told the agent that Ms. [REDACTED] was at home asleep. *Id.* Ms. [REDACTED] had informed Mr. [REDACTED] that she missed this call so that he could help her contact ICE. *Id.* Mr. [REDACTED] further told Ms. [REDACTED] that the removal order was not his fault and that she did not know what she was talking about. *Id.* ¶ 35. When she explicitly asked if he was actually an attorney, he said he had not defrauded her, pointing out that he charged her much less than other attorneys would have. *Id.* ¶ 36.

Mr. [REDACTED] continued to mislead and lie to Ms. [REDACTED] after she received the removal order. When she received another letter in the mail from the Immigration Court, Mr. [REDACTED] told her that the letter said she had 30 days to appeal the removal order and that he would prepare the appeal for her. *Id.* ¶ 37. He then used the I-589 receipt from USCIS to attempt to convince Ms. [REDACTED] that nothing was wrong in her case. *Id.* ¶ 46. The first I-589 that Mr. [REDACTED] submitted to USCIS on Ms. [REDACTED] behalf was rejected, and he re-submitted her I-589 in February 2017. *Id.* ¶ 45. In early March 2017, Mr. [REDACTED] brought the I-589 receipt from USCIS to Ms. [REDACTED], telling her that the I-589 receipt placed a “stop” on the removal

order she received in immigration court. *Id.* ¶ 46; Exh. F, Receipt from USCIS. He further told Ms. [REDACTED] that she “should be thanking him” because he prevented her from going to a hearing that was only meant to implement a removal order against her. Exh. A, [REDACTED] Decl. ¶ 48.

Confused by Mr. [REDACTED] statements and concerned about the removal order, Ms. [REDACTED] [REDACTED] reached out to a network of non-profit organizations and pro bono lawyers to ask for assistance, fearing that she and her daughter would soon be deported. *Id.* ¶ 41-42. Ms. [REDACTED] [REDACTED] also made sure to answer the phone on [REDACTED], for her next computerized ICE check-in. *Id.* at ¶ 34. Ms. [REDACTED]’ current counsel investigated whether Mr. [REDACTED] was a licensed attorney or accredited representative. After current counsel informed Ms. [REDACTED] that Mr. [REDACTED] was not an attorney, Ms. [REDACTED] filed a complaint with the Unauthorized Practice of Law Department of the Florida Bar Association against Mr. [REDACTED] on March 24, 2017. Exh. G, Complaint against [REDACTED] to Florida Bar. Ms. [REDACTED]’ counsel notified Mr. [REDACTED] of the complaint filed against him and Ms. [REDACTED] intention to file a Motion to Reopen with the immigration court on March 24, 2017 by email and express mail. Exh. H, Letter and Email to [REDACTED]; Exh. I, FedEx Envelope and Tracking Information. Mr. [REDACTED] responded to the email advising him of the complaint the same day it was sent, in two separate emails. Exh. J, Email Response from [REDACTED] Ms. [REDACTED] now moves this Court to reopen her case due to the ineffective and fraudulent assistance of counsel, which caused her to receive an order of removal. Ms. [REDACTED] includes an updated asylum application, prepared by current counsel. Exh. E, I-589, Application for Asylum and Withholding of Removal.

## Legal Argument

### I. Ms. [REDACTED] presents exceptional circumstances that merit rescinding her *in absentia* removal order and reopening her case.

A respondent ordered removed *in absentia* may seek to rescind the order “upon a motion to reopen filed within 180 days after the date of the order of removal or deportation if the alien demonstrates that the failure to appear was because of exceptional circumstances. INA § 240(b)(5)(C). The applicable standard for determining exceptional circumstances is consideration of the totality of the circumstances. *See Matter of W-F-*, 21 I. & N. Dec. 503, 509 (BIA 1996).

#### A. Ineffective Assistance of Fraudulent Counsel

Ms. [REDACTED] failed to appear at the [REDACTED], master calendar hearing as a direct result of the ineffective assistance of fraudulent counsel, which qualifies as an exceptional circumstance. *See Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988) (setting forth standards to reopen a case based on ineffective assistance of counsel); *see also Montano Cisneros v. U.S. Atty. Gen.*, 514 F.3d 1224 (11th Cir. 2008); *Vukaj v. U.S. Att’y Gen.*, 321 Fed. App’x 885 (11th Cir. 2009) (applying *Lozada* to a claim involving an individual fraudulently posing as an attorney). As such, Ms. [REDACTED] moves this Court to rescind the *in absentia* order issued on [REDACTED] and to reopen these removal proceedings.

#### 1. Ms. [REDACTED] claim of ineffective assistance of counsel qualifies as such despite Mr. [REDACTED] not being an attorney

Ms. [REDACTED] case falls within settled precedent of this U.S. Court of Appeals regarding ineffective assistance of counsel claims against fraudulent attorneys. As the Eleventh Circuit has explained, “[t]he Board has found claims of ineffective assistance of counsel – in particular, when an applicant's failure to appear is due to his attorney's errant instruction –



qualify as exceptional circumstances under [8 U.S.C. § 1229a(e)(1)].” *Montano Cisneros v. U.S. Att’y Gen.*, 514 F.3d 1224, 1226 (11th Cir. 2008) (citing *In re Grijalva-Barrera*, 21 I. & N. Dec. 472, 474 (BIA 1996)). The holding in *Montano Cisneros* applied the ineffective assistance of counsel analysis equally to a non-attorney con artist who misled Petitioners about their hearing date. *Montano Cisneros*, 514 F.3d at 1225-27; see also *Vukaj*, 321 Fed.App’x at 889 (“[In *Montano Cisneros*], we drew no distinction between claims of ineffective assistance rendered by lawyers and claims of ineffective assistance rendered fraudulently by persons engaged in the unauthorized practice of law.”). The facts in this case are substantially similar to the facts in *Montano Cisneros*. In that case, the fraudulent attorney took Petitioners’ money and told them that they did not need to appear in immigration court because he had transferred their case to another court. *Montano Cisneros*, 514 F.3d at 1225. Based on the non-attorney’s advice, the Petitioners failed to appear at their hearing and received an *in absentia* removal order. *Id.* Similarly, in this case, Mr. [REDACTED] a non-attorney who took Ms. [REDACTED] money and engaged in the unauthorized practice of law, told Ms. [REDACTED] that she did not need to attend her hearing because it had been rescheduled. Exh. A, [REDACTED] Decl. ¶ 29. She relied on his advice and received an *in absentia* removal order as a result. *Id.* ¶¶ 30-31, 34.

Furthermore, Ms. [REDACTED]’ claim of ineffective assistance of counsel against Mr. [REDACTED] is valid because she reasonably believed that he was a licensed attorney. The Board previously held that an individual’s belief that they are dealing with an attorney or licensed representative is necessary in order to file a claim of ineffective assistance of counsel. See *In re Juarez Gonzalez*, 2011 WL 1373694, \*2 (BIA 2011) (finding that ineffective assistance of a non-attorney can be sufficient for reopening if the non-attorney held himself out to be an attorney). Unlike cases such as *Hernandez v. Mukasey* and *In re Vasquez-Gonzalez*, the non-attorney

unequivocally stated to Ms. [REDACTED] that he was an attorney. *See Hernandez v. Mukasey*, 524 F.3d 1014, 1020 (9th Cir. 2008) (concluding that an immigrant waived their right to counsel and their right to due process if they knowingly relied on a non-attorney immigration consultant for advice); *see also* Exh. K, *In re Vasquez-Gonzalez*, 2011 WL 2261214 (BIA 2011) (affirming the IJ decision not to reopen a case based on error of an unlicensed consultant because the immigrant hired the consultant knowing they were not an attorney.) Mr. [REDACTED] told Ms. [REDACTED] that he was an attorney and a minister, and she hired him because she believed he was both. Exh. A, [REDACTED] Decl. at ¶¶ 24-25, 30. Ms. [REDACTED] also relied on the statements of her friend, [REDACTED] who introduced Mr. [REDACTED] as an attorney and a minister. *Id.* ¶ 23. Thus, Ms. [REDACTED]' claim to ineffective of assistance of counsel is viable before the Board and this circuit as an "exceptional circumstance" that merits reopening her case.

**2. Ms. [REDACTED]' failure to appear was due to fraudulent counsel's deficient performance**

Ms. [REDACTED] failure to appear at her hearing was the direct result of the blatantly incorrect advice of fraudulent counsel, which constitutes exceptional circumstances within the meaning of INA § 240(b)(5)(C). *See Montano Cisneros v. U.S. Atty. Gen.*, 514 F.3d 1224, 1226 (11th Cir. 2008) (citing *In re Grijalva-Barrera*, 21 I. & N. Dec. 472, 473-74 (BIA 1996)). In order "to establish the ineffective assistance of counsel in the context of a deportation hearing, an alien must establish that his or her counsel's performance was deficient to the point that it impinged the 'fundamental fairness' of the hearing." *Gbaya v. U.S. Atty. Gen.*, 342 F.3d 1219, 1221 (11th Cir. 2003). Thus, ineffective assistance of counsel can qualify as an "exceptional circumstance" in the context of an *in absentia* order where the respondent "(1) establishes that his failure to appear was the result of counsel's deficient performance and (2) satisfies the

procedural requirements set forth in *Lozada*.” *Vukaj v. U.S. Atty. Gen.*, 321 F. App’x 885, 888 (11th Cir. 2009).

Mr. ██████ actions, in lying to Ms. ██████ about her hearing, “impinged the fundamental fairness of the hearing” and denied Ms. ██████ basic due process by depriving her of her right to see the Immigration Judge and pursue her asylum claim. *Gbaya*, 342 F.3d at 1221. Mr. ██████ advice to Ms. ██████ to not attend her ██████ hearing was intentionally incorrect. After Ms. ██████ insisted that she would attend the ██████ hearing despite Mr. ██████ repeated claim that she should not do so, he informed her that the hearing had been rescheduled. Exh. A, ██████ Decl. ¶¶ 27-29. Because she trusted that he was an attorney advocating on her behalf, Ms. ██████ relied on the inaccurate information that Mr. ██████ provided, causing her to miss her hearing. *Id.* ¶¶ 30-31. Ms. ██████ thus received an *in absentia* removal order *solely* because she heeded her fraudulent counsel’s advice. Ms. ██████ would have attended her ██████ hearing but for Mr. ██████ advice. *See Wei Biao Zheng v. U.S. Atty. Gen.*, 454 F. App’x 780 (11th Cir. 2011) (finding that the Board did not abuse its discretion in denying Zheng’s motion to reopen because Zheng did not show that his own failure to appear at the hearing was the result of his attorney’s errant instructions); *see also Aris v. Mukasey*, 517 F.3d 595, 598 (2d Cir. 2008) (denying a motion to reopen because Aris’ counsel did not convey in the motion that Aris relied on the erroneous information relayed to him by a paralegal). Ms. ██████ conveyed in her declaration that had Mr. ██████ not given her incorrect advice to not go to court on the ██████, Ms. ██████ would have attended her hearing. Exh. A, ██████ Decl. ¶ 35. Ms. ██████ not only planned to attend court, but reasonably assumed that her counsel, Mr. ██████ would attend alongside her. *Id.* ¶ 27.

Ms. [REDACTED] strong underlying asylum claim, her due diligence in retaining counsel, and the prior procedural posture of her case indicate that there was no other motive for her to miss her [REDACTED] hearing before the Court. The Board considers whether respondents had other reasons to miss their hearings in analyzing ineffective assistance of counsel claims. Exh. L, *In Re Grijalva-Barrera*, 21 I&N Dec. 472, 474 (BIA 1996). There is extensive evidence submitted in this case that without Mr. [REDACTED] ineffective assistance, Ms. [REDACTED] would meet the prima face requirements for eligibility for asylum and would have had over two months before the one-year filing deadline for her I-589. Exh. A, [REDACTED] Decl ¶ 3; Exh. E, I-589 Asylum Application. Ms. [REDACTED] sought counsel upon release from detention because she intended to apply for asylum and seek legal status in the United States based on threats to her and her family after the murder of her brothers. Exh. A, [REDACTED] Decl. ¶ 8, 35. Furthermore, because this was Ms. [REDACTED]'s master calendar hearing and she believed she had completed her asylum application, Ms. [REDACTED] did not have any motivation to miss her [REDACTED] hearing, as she would only have received another hearing date.

**3. Ms. [REDACTED] substantially complied with the *Lozada* requirements**

Ms. [REDACTED] substantially complied with the procedural requirements set forth in *Matter of Lozada*, 19 I&N Dec. 637, 639 (BIA 1988). Under *Lozada*, the Board and this Court may assess an ineffective assistance of counsel claim by examining several factors, including (1) the noncitizen's affidavit detailing the representation by the "lawyer," (2) whether the counsel's whose competence has been questioned has been given the opportunity to respond, and (3) whether noncitizen has filed a complaint with the appropriate authority. 19 I&N at 639.

Ms. [REDACTED] substantially complied with the *Lozada* procedural requirements. Ms.

██████████ has submitted a detailed affidavit explaining that she was fraudulently misled regarding her case by a minister, ██████████, who claimed to be an attorney. Exh. A, ██████████ Decl. ¶¶ 23-24. The declaration details how Mr. ██████████ blatantly lied to Ms. ██████████ and caused her to miss her ██████████ hearing. *Id.* ¶ 29. Ms. ██████████ filed a complaint on March 24, 2017 against Mr. ██████████ with the Unauthorized Practice of Law department of the Florida Bar Association and notified Mr. ██████████ of the complaint and his opportunity to contest this Motion to Reopen before the Court. Exh. G, Complaint against ██████████ to Florida Bar; Exh. H, Letter and Email to ██████████; Exh. I, FedEx Envelope and Tracking Information. That same day, on March 24, Mr. ██████████ responded to the email notification of the complaint filing claiming “You are aware that we are not attorney's [sic] or we do not represent ourselves to be and we do not at any time represent Ms ██████████. We are a Christian ministry helping migrants.” Exh. J, Email Response from ██████████. He then sent a second email at 12:27 AM on March 25, 2017 stating, “[a]lso read the following and dates” and attaching the I-589 receipt he received from USCIS for Ms. ██████████’ I-589. *Id.*

Ms. ██████████ declaration and investigation by counsel further satisfy the aims of the *Lozada* requirements and establish an ineffective assistance of counsel claim. Counsel has conducted a detailed review of bar membership, and Mr. ██████████ is not registered as an attorney anywhere in the United States. Exh. C, ██████████ Decl., ¶¶ 4, 11-14, 16; Exh. D, ██████████ Decl. ¶ 4. As noted above, this fraudulent attorney misled Ms. ██████████ about her hearing date and the consequences that would flow from failing to attend the hearing. Ms. ██████████ predicament – one experienced by many noncitizens exploited desperate to find an attorney – is well established as an exceptional circumstance both by the Board and in this circuit. *Montano Cisneros v. U.S. Att’y Gen.*, 514 F.3d 1224, 1226 (11th Cir. 2008) (citing *In re Grijalva-Barrera*, 21 I. & N. Dec.

472, 474 (BIA 1996)).

Ms. [REDACTED] has therefore satisfied all three of the requirements set forth in *Matter of Lozada, supra*. First, Ms. [REDACTED] declaration sets forth in detail the fraudulent representation carried out by Mr. [REDACTED] and how his fraudulent counsel led to Ms. [REDACTED] and her daughter missing court and receiving an *in absentia* removal order. Second, Mr. [REDACTED] was informed of the allegations made against him, was provided with an opportunity to respond, and in fact responded. Third, Ms. [REDACTED] includes a copy of the complaint she filed with Florida Bar Association on March 24, 2017. Finally, Ms. [REDACTED] provides additional corroborating evidence including the payment contract signed by her and Mr. [REDACTED] *see* Exh. B, Payment Contract, and declarations confirming that Mr. [REDACTED] is not barred in any state or Puerto Rico, *see* Exh. C, [REDACTED] Decl.; Exh. D, [REDACTED] Decl. Ms. [REDACTED] has therefore provided sufficient evidence to support her claim of ineffective assistance of fraudulent counsel.

**B. Ms. [REDACTED]' confusion over whether she had a hearing rises to the level of extraordinary circumstances.**

Ms. [REDACTED] can also establish exceptional circumstances independent of her ineffective assistance of counsel claim, based on her confusion concerning the date of her hearing. The Board has held that an individual's genuine confusion as to the date of an immigration court hearing is an exceptional situation that justifies rescinding an order of removal issued *in absentia*. Exh. M, *In re Jose Manuel Conejo-Caceres*, A205 867 937 (BIA July 19, 2016). In *Conejo-Caceres*, the respondent missed his hearing because he believed his true court date was the date of his next ICE check-in. *Id.* The Board determined that Mr. Conejo-Caceres' confusion was an exceptional circumstance that warranted reopening his removal proceedings. *Id.* In this case, like Mr. Conejo-Caceres's case, Ms. [REDACTED] mistakenly believed she must

attend court on a different day than the day the Court held its hearing due to Mr. [REDACTED] repeated insistence that her hearing had been rescheduled. Moreover, Ms. [REDACTED] confusion was not the result of mere misunderstanding, but intentional deception by a man pretending to be lawyer. When considered in the totality of her circumstances, Ms. [REDACTED]'s confusion due to Mr. [REDACTED] unlawful and misleading counsel provide an exceptional circumstance that warrants rescinding the *in absentia* order of removal issued against her.

Ms. [REDACTED]'s prior attendance at her ICE check-ins indicate that she would have attended the hearing had she not been confused about the date. Exh. A, [REDACTED] Decl. ¶¶ 27, 35. Ms. [REDACTED] continuously questioned Mr. [REDACTED] about her court date, reflecting her genuine confusion about the date and concern about continuing to be diligent in proceeding with her case. *Id.* ¶ 28. She remained diligent even after the removal order, consulting numerous individuals to aid in her defense once she realized Mr. [REDACTED] had deceived about her [REDACTED], Immigration Court hearing. *Id.* ¶ 20-42. Finally, Ms. [REDACTED] has now presented a timely Motion to Reopen, further underscoring her diligence. 8 C.F.R. § 1003.23(b)(1). Her diligent efforts to seek relief demonstrate that a finding of exceptional circumstance due to confusion about the court hearing date would be especially appropriate in this case.

## **II. In the alternative, the Court should reopen these proceedings *sua sponte*.**

Even if this Court is not persuaded that this matter should be reopened due to the lack of actual notice resulting from exceptional circumstances, the Court should reopen these proceedings *sua sponte*. In addition to reopening a case under the INA's motion to reopen provisions, an Immigration Judge may at any time reopen a proceeding in which the judge has made a decision. 8 C.F.R. § 1003.23(b)(1). The Board has held that this *sua sponte* authority is "not meant to be used as a general cure for filing defects or to otherwise circumvent the

regulations, when enforcing them might result in hardship,” *Matter of J- J-*, 21 I. & N. Dec. 976, 984 (BIA 1997), but rather is “an extraordinary remedy reserved for truly exceptional situations,” *Matter of G- D-*, 22 I. & N. Dec. 1132, 1134 (BIA 1999).

Ms. [REDACTED]’ case is precisely the type of “exceptional situation” that merits exercise of this Court’s *sua sponte* reopening authority. Ms. [REDACTED] has a strong claim to asylum and has diligently pursued this claim for eleven months. A fraudulent attorney posing as a minister misled her to believe that a) her hearing had been rescheduled, and b) she might be deported if she attended her court hearing. Before [REDACTED] had never failed to comply with a deadline or instruction by the Court. Reopening these proceedings will clearly further the interests of justice.

Further, Ms. [REDACTED] faces a substantial likelihood of severe bodily harm, torture, or murder if returned to her country of origin. As noted above, her family has been targeted by a dangerous group of hitmen with ties to drug trafficking in northern Honduras, *see* Exh. A, [REDACTED] Decl. ¶ 10, and her family members have served as state witnesses in the criminal prosecution against some of the murderers. *Id.* ¶ 12. Ample published evidence supports Ms. [REDACTED]’ fear, as many individuals deported to Northern Triangle countries have face death upon their return to Central America. Exh. O, *U.S. Government Deporting Central American Migrants to Their Deaths*, THE GUARDIAN, Oct. 12, 2015. Because of the great danger they face, Respondents respectfully ask this Court to consider the plight they would face if returned to Honduras and ask that this Court give them the chance to litigate their asylum claim on its merits.



**Conclusion and Prayer for Relief**

Ms. [REDACTED]' case should be reopened to allow her and her child to pursue their asylum claims. They had every reason to attend her immigration court hearings to gain asylum and legal immigration status in the United States. Further, as soon as Ms. [REDACTED] realized that she had been misled by Mr. [REDACTED] and that *in absentia* removal orders had been entered against her and her child, she began working to reopen her case. Exh. A, [REDACTED] Decl. ¶ 35.

Due process requires that a respondent be provided with adequate opportunity to be heard. *Matter of G-Y-R*, 23 I. & N. Dec. at 186 (BIA 2001) (citing *Landon v. Plasencia*, 459 U.S. 21, 32-33 (1982); *Bridges v. Wixon*, 326 U.S. 135, 154 (1945); *Yamataya v. Fisher*, 189 U.S. 86, 101 (1903)). Here, due process requires that the *in absentia* removal orders against her and her child be rescinded and their proceedings be reopened. For all of these reasons stated above, [REDACTED] and her child have demonstrated that their failure constituted an exceptional circumstance that warrants reopening.

Dated: March 28, 2017

Respectfully submitted,

[REDACTED]

*Pro Bono Counsel for Respondents*

## Table of Exhibits

| <u>Exhibit</u> | <u>Description</u>  | <u>Page</u> |
|----------------|---|-------------|
| A              | Declaration of [REDACTED]   | 1-13        |
| B              | Payment Contract  | 14-16       |
| C              | Declaration of [REDACTED] in Support of [REDACTED]  | 17-19       |
| D              | Declaration of [REDACTED] in Support of [REDACTED]  | 20          |
| E              | I-589, Application for Asylum and Withholding of Removal  | 21-32       |
| F              | Receipt from USCIS  | 33          |
| G              | Complaint against [REDACTED] to Florida Bar   | 34-42       |
| H              | Letter and Email to [REDACTED]  | 43-44       |
| I              | FedEx Envelope and Tracking Information   | 45-47       |
| J              | Email Response from [REDACTED]  | 48-49       |
| K              | <i>In re Vasquez-Gonzalez</i> , 2011 WL 2261214 (BIA 2011)  | 50-51       |
| L              | <i>In re Grijalva-Barrera</i> , 21 I&N Dec. 472, 474 (BIA 1996)   | 52-54       |
| M              | <i>In re Jose Manuel Conejo-Caceres</i> , A205 867 937 (BIA July 19, 2016)  | 55          |
| N              | <i>In re Juarez Gonzalez</i> , 2011 WL 1373694 (BIA 2011)   | 56-58       |
| O              | <i>U.S. Government Deporting Central American Migrants to Their Deaths</i> , The Guardian, Oct. 12, 2015, <a href="https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america">https://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america</a> | 59-62       |

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

\_\_\_\_\_) )  
In the Matter of: ) )  
\_\_\_\_\_) )  
\_\_\_\_\_) )  
Respondents. ) )  
\_\_\_\_\_)

**File No. A** \_\_\_\_\_

**File No. A** \_\_\_\_\_

**ORDER OF THE IMMIGRATION JUDGE**

Upon consideration of Respondent's Motion to Rescind *In Absentia* Removal Order and Reopen Proceedings, it is HEREBY ORDERED that the motion be \_\_\_\_\_ because:

- \_\_\_ DHS does not oppose the motion.
- \_\_\_ A response to the motion has not been filed with the court.
- \_\_\_ Good cause has been established for the motion.
- \_\_\_ The court agrees with the reasons stated in the opposition to the motion.
- \_\_\_ Other: \_\_\_\_\_

Deadlines:

- \_\_\_ The application(s) for relief must be filed by \_\_\_\_\_.
- \_\_\_ The respondent must comply with DHS biometrics instructions by \_\_\_\_\_.

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Hon. \_\_\_\_\_

**Certificate of Service**

This document was served by:             Mail     Personal Service

To:             Alien             Alien c/o Custodial Officer             Atty/Rep             DHS

Date: \_\_\_\_\_ By: Court Staff \_\_\_\_\_

**Respondents:** [REDACTED]

**CERTIFICATE OF SERVICE**

I, [REDACTED] hereby certify that I served the attached Motion to Rescind *In Absentia* Removal Order and Reopen Proceedings and supporting documents upon the Office of Chief Counsel, Department of Homeland Security, on March 28, 2017 by mail to:

Department of Homeland Security  
Office of Chief Counsel  
3535 Lawton Road Suit 100  
Orlando, FL 32803  
(407) 812-3600

[REDACTED]