

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

IN THE MATTER OF [REDACTED] (RESPONDENT)	IN REMOVAL PROCEEDINGS A# [REDACTED]
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RESPONDENT’S RESPONSE TO OPPOSITION TO MOTION TO REOPEN

COMES NOW INTO COURT, [REDACTED] Respondent, who through undersigned counsel respectfully files this Response to the Department of Homeland Security’s Opposition to Respondent’s Motion to Reopen and represents as follows:

1. The motion is not time barred. The Honorable Immigration Judge [REDACTED] removed Mr. [REDACTED] *in absentia* on [REDACTED] 2009 after Mr. [REDACTED] failed to appear at this scheduled hearing due to exceptional circumstances. 8 C.F.R. § 1129a(e)(1). Mr. [REDACTED] filed a Motion to Reopen pursuant to 8 C.F.R. § 1003.23(b)(4)(ii) on [REDACTED] 2009. When filing a Motion to Reopen based on exceptional circumstances, Respondent must file the motion within 180 days after the date of the order of removal. INA § 240(b)(5)(C), 8 C.F.R. § 1003.23(b)(4)(ii). The 180 days did not expire until Sunday, [REDACTED] 2009. Mr. [REDACTED] filed his Motion to Reopen within the 180 days and is therefore not time barred.
2. The Department of Homeland Security applied the incorrect Motion to Reopen time limit standard to Mr. [REDACTED]’s Motion to Reopen. Mr. [REDACTED]’s Motion to Reopen is based on exceptional circumstances pursuant to Section 240(b)(5)(C) of the Immigration and Nationality Act. *See* also 8 C.F.R. § 1003.23(b)(4)(ii). However, the Department of Homeland Security opposes Mr. [REDACTED]’s Motion to Reopen based on 8 C.F.R. § 1003.23 (b)(1), which is the general Motion to Reopen rule requiring filing within 90 days of the Immigration Judge’s final order. The standard articulated under 8 C.F.R. § 1003.23 (b)(1) does not apply to Mr. [REDACTED]’s Motion to Reopen.
3. Mr. [REDACTED] provided this Honorable Court with an application for Suspension of Deportation/Special Rule Cancellation of Removal (USCIS Form I-881) under Section 203 of the Nicaraguan Adjustment and Central American Relief Act, Public Law 105-100 (NACARA). *See* Exhibit F of Repondent’s Motion to Reopen Removal Proceedings. Though Mr. [REDACTED] was arrested in the past, these arrests were for minor infractions, which do not

render him inadmissible. Furthermore, these arrests did not take place during the past seven years and therefore do not affect his good moral character. Mr. [REDACTED] is prepared to establish his good moral character before the Honorable Judge [REDACTED] should she grant the Motion to Reopen at which time he will prove his eligibility for relief under Section 203 of NACARA. Mr. [REDACTED] previously filed an application for relief under Section 203 of NACARA and Mr. [REDACTED] is *prima facie* eligible for this relief notwithstanding his criminal record.

WHEREFORE, Respondent respectfully submits this Response to the Department of Homeland Security's Opposition to respondent's Motion to Reopen Removal Proceedings.

Respectfully submitted

[REDACTED]