

FOIA Documents

NATIONAL IMMIGRATION PROJECT OF THE NATIONAL LAWYERS GUILD, et al, v.
UNITED STATES DEPARTMENT OF HOMELAND SECURITY, et al, 11 Civ.
3235(JSR)(S.D.N.Y.)

SAMPLE POST CARACHURI DOCUMENTS FROM OFFICE OF IMMIGRAITON LITIGATION
(produced 9/14/2012)

Evans, Manning (CIV)

From: Evans, Manning (CIV)
Sent: Friday, June 25, 2010 4:32 PM
To: Leist, Jeff (CIV)
Subject: RE: Carachuri-related Cert Petitions

Well, alas, I don't expect the guidance will address the issue of returns. I'll get back to you shortly.

From: Leist, Jeff (CIV)
Sent: Friday, June 25, 2010 4:23 PM
To: Evans, Manning (CIV)
Subject: RE: Carachuri-related Cert Petitions

We haven't sought anything yet; we didn't want to do anything until we had guidance.

From: Evans, Manning (CIV)
Sent: Friday, June 25, 2010 4:21 PM
To: Leist, Jeff (CIV)
Subject: RE: Carachuri-related Cert Petitions

Okay; have you sought out samples of responding to such requests, or otherwise considered a response?

From: Leist, Jeff (CIV)
Sent: Friday, June 25, 2010 4:20 PM
To: Evans, Manning (CIV)
Subject: RE: Carachuri-related Cert Petitions

We haven't responded yet, nor have we been in contact with DHS about the alien's return. Whether opp counsel has contacted DHS I can't say.

From: Evans, Manning (CIV)
Sent: Friday, June 25, 2010 4:18 PM
To: Leist, Jeff (CIV)
Subject: RE: Carachuri-related Cert Petitions

Have you filed any response? I think we want to avoid having the court say anything on the issue of return. Have you or the alien's attorney been in contact with DHS about the alien returning?

From: Leist, Jeff (CIV)
Sent: Friday, June 25, 2010 4:15 PM
To: Evans, Manning (CIV)
Subject: RE: Carachuri-related Cert Petitions

Hi Manning. In my case, Cortinovis v. Holder, No. 09-60737, the Petitioner filed a 28j letter informing the 5th Circuit of the S.Ct's decision and indicated that since the issuance of the BIA's decision, the Petitioner had been removed. Petitioner states "therefore, upon issuance of a remand order, this Court should issue a directive to DHS to return Petitioner forthwith to the U.S. so that he may return and assume his prior status."

From: Evans, Manning (CIV)
Sent: Friday, June 25, 2010 4:04 PM
To: Wong, Siu (CIV); Workman, Claire (CIV); Durant, Edward (CIV); Murcia, Liza (CIV); Fatouros, Thomas B. (CIV);

Zanfardino, Richard (CIV)

From: [b-6, b-7C]@dhs.gov>
Sent: Monday, August 16, 2010 3:14 PM
To: Zanfardino, Richard (CIV)
Subject: RE: Remand: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# [b-6-A]

I am not aware of any guidance on the *Carachuri* remands to facilitate the alien's return. As this issue has nationwide implications, CHI-OCC is waiting for guidance from HQ.

From: Zanfardino, Richard (CIV) [mailto:[b-6, b-7C]@usdoj.gov]
Sent: Monday, August 16, 2010 2:07 PM
To: [b-6, b-7C]
Cc: [b-6, b-7C]
Subject: RE: Remand: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# [b-6-A]

Greetings,

I believe the alien in this case will seek to re-enter the United States – I e-mailed [b-6, b-7C] to alert the DHS of this, but do you know what we're doing to facilitate the return?

Thanks,
RZ

From: [b-6, b-7C]@dhs.gov]
Sent: Monday, August 16, 2010 3:00 PM
To: Zanfardino, Richard (CIV)
Cc: [b-6, b-7C]
Subject: RE: Remand: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# [b-6-A]

Hi Richard,

Based on the *Carachuri* decision, CHI-OCC is not opposed to a remand in this decision. The respondent is not detained but had been removed from the United States prior to the USSC decision.

Thanks,

[b-6, b-7C]

[b-6, b-7C]

Senior Attorney
Chicago Chief Counsel's Office
Immigration and Customs Enforcement
[b-6, b-7C]

From: Zanfardino, Richard (CIV) [mailto:[b-6, b-7C]@usdoj.gov]
Sent: Thursday, August 12, 2010 2:05 PM
To: [b-6, b-7C]
Subject: Remand: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# [b-6-A]

OIL plans to file the attached motion to remand. Thom Hussey has approved remand in this case (see below). Copies of the BIA decision as well as DHS' prior non-opposition are also attached.

If DHS concurs, please inform me of this by Friday, 20 August 2010, before noon EST. Should DHS object to this remand, reconsideration may be secured by a request made to Thom Hussey by the ICE Principal Legal Advisor by that same date. I will provide copies of the Court's ruling once the matter is remanded.

Richard Zanfardino

From: Hussey, Thom (CIV)
Sent: Monday, August 09, 2010 9:37 AM
To: Zanfardino, Richard (CIV)
Cc: Scadron, Terri J. (CIV)
Subject: RE: Remand request: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# b-6-A

Remand.

From: Zanfardino, Richard (CIV)
Sent: Friday, August 06, 2010 2:50 PM
To: Hussey, Thom (CIV)
Cc: Scadron, Terri J. (CIV)
Subject: Remand request: Ramirez-Solis; 7th Circuit 08-3497; DJ 39-23-4971; A# b-6-A

Remand based on Supreme Court's *Carachuri* decision

Detention status: Removed

Thom,

Terri & I would like permission to approach the client agencies about a remand in this case under criteria #3 (contrary to circuit law). This is a *Carachuri*-related case, on remand from the Supreme Court.

The alien in this case has 2 possession of a controlled substance offenses, and was only charged as an alien convicted of a drug trafficking aggravated felony. The Board relied on *Matter of Carachuri*, as well as the 7th Circuit's decision in *Fernandez v. Mukasey*, 544 F.3d 862. The Board's reasoning is no longer valid after the Supreme Court's recent decision in *Carachuri*. Under *Carachuri*, it is now clear that, at a minimum, the subsequent conviction must be "based on the fact of a prior [drug] conviction" or "enhanced based on the fact of a prior [drug] conviction," before an aggravated felony might exist. Here, the record does not show that the second possession conviction was charged as a recidivist offense. Accordingly, we recommend remand here to allow the Board & the litigants to further consider the record in light of the Supreme Court's decision.

As noted above, the alien has been removed. Per the advice of Manning Evans on the Appellate Team, I have e-mailed Rachel Silber to alert her about this case, and to ensure that the alien's return is facilitated.

Please let us know whether we may approach the client agencies about a remand in this case.

Richard Zanfardino

Evans, Manning (CIV)

From: Evans, Manning (CIV)
Sent: Tuesday, October 19, 2010 1:31 PM
To: Markle, Robert (CIV)
Cc: Drucker, Alison (CIV); Beier, Bryan (CIV)
Subject: RE: Mini ISO - Revival of Cancellation of Removal for Removed Alien

Presumably the AUSA is asking about a specific case? There's no policy to speak of, except for the statement in the gov't brief in *Nken* that the government will cooperate with opposing counsel to facilitate an alien's return if the alien's removed and then prevails in a case.

If the alien's case with which the AUSA is concerned is one where the case remains alive (most likely, where the alien was removed while a petition for review was pending, and then the circuit sent the case back to the BIA), then it's certainly possible (though not inevitable) that a cancellation claim would be revived. On the other hand, if the alien's petition for review was denied, and came to an end (i.e., there's been no remand to the Board), I don't believe there's any policy for granting any relief at that point.

The Oiler who handled the case in the court of appeals should consult with b-6, b-7C about the case, if it was one where the case was remanded to the Board. Ideally, ICE and the opposing immigration attorney will be able to work out something regarding the alien's return.

From: Markle, Robert (CIV)
Sent: Tuesday, October 19, 2010 1:14 PM
To: Drucker, Alison (CIV); Evans, Manning (CIV)
Subject: Mini ISO - Revival of Cancellation of Removal for Removed Alien

An AUSA would like to know what relief, if any, the BIA can give to a removed alien whose denial of cancellation of removal is vacated by the Supreme Court's decision in *Carachuri-Rosendo*. The 5th Cir. has been remanding cases to the BIA to reconsider hypothetically-recidivist aliens' eligibility for cancellation of removal. He wants to know if such an application for cancellation is moot if the alien has already been removed. That is, what can or will the BIA do with an eligible, yet removed, alien's app. for cancellation.

Tracking: