APPENDIX

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

No. 12-2353

ALBERTO VELASCO-GIRON,

Petitioner,

v.

ERIC H. HOLDER, JR., Attorney General of the United States,

Respondent.

Petition for Review of an Order of the Board of Immigration Appeals.

ARGUED NOVEMBER 29, 2012 —
DECIDED SEPTEMBER 26, 2014

Before POSNER, EASTERBROOK, and MANION, *Circuit Judges*.

EASTERBROOK, *Circuit Judge*. A removable alien who has lived in the United States for seven years (including five as a permanent resident) is entitled to seek cancellation of removal unless he has committed an "aggravated felony." 8 U.S.C. § 1229b(a)(3). Alberto Velasco-Giron, a citizen of Mexico who was

admitted to the United States for permanent residence, became removable after multiple criminal convictions. An immigration judge, seconded by the Board of Immigration Appeals, concluded that one of these convictions is for "sexual abuse of a minor", which 8 U.S.C. § 1101(a)(43)(A) classifies as an aggravated felony, and that Velasco-Giron therefore is ineligible even to be considered for cancellation of removal. In reaching that conclusion, the agency used as a guide the definition of "sexual abuse" in 18 U.S.C. § 3509(a)(8) rather than the one in 18 U.S.C. § 2243(a). See *Matter of Rodriguez–Rodriguez*, 22 I&N Dec. 991 (BIA 1999) (en banc); *Matter of V-F-D*, 23 I&N Dec. 859 (BIA 2006).

The conviction in question is for violating Cal. Penal Code § 261.5(c), which makes it a crime to engage in sexual intercourse with a person under the age of 18, if the defendant is at least three years older. The Board has held that this offense constitutes "sexual abuse of a minor". Velasco-Giron was 18 at the time; the girl was 15; but the Board makes nothing of these ages, and it asks (so we too must ask) whether the crime is categorically "sexual abuse of a minor." The Board's affirmative answer stems from § 3509(a)(8), which defines "sexual abuse" as "the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children". Elsewhere the Criminal Code defines a "minor" as a person under 18. See 18 U.S.C. §§ 2256(1), 2423(a).

The Board equates "child" with "minor"; Velasco-Giron does not argue otherwise. Instead he contends that the Board should use § 2243(a), which defines "sexual abuse of a minor" as engaging in a "sexual act" (a phrase that includes fondling as well as intercourse) with a person between the ages of 12 and 15, if the offender is at least four years older. The offense under Cal. Penal Code § 261.5(c) does not satisfy that definition categorically—and Velasco-Giron's acts don't satisfy it specifically (the age gap of 18 to 15 is three years).

If the Immigration and Nationality Act supplied its own definition of "sexual abuse of a minor," ours would be an easy case. But it does not. That's why the Board had to choose, and the possibilities include § 3509(a)(8), § 2243(a), a few other sections in the Criminal Code, and a definition of the Board's invention. Section 1101(a)(43)(A) specifies that the category "aggravated felony" includes "murder, rape, or sexual abuse of a minor". The Board noted in *Rodriguez-Rodriguez* that Congress could have written something like "murder, rape, or sexual abuse of a minor (as defined in section 2243 of title 18)" but did not do so—though other sections do designate specific federal statutes. See, e.g., 8 U.S.C.§ 1101(a)(43)(B): "illicit trafficking in a controlled substance (as defined in section 802 of title 21), including a drug trafficking crime (as defined in section 924(c) of title 18)". The Board stated that, because Congress chose to use a standard rather than a cross-reference, it would be inappropriate for the Board to adopt § 2243(a) as the sole definition; § 3509(a)(8) is more open–ended, which the Board saw as a better match given the legislative decision not to limit the definition by cross-reference.

A case such as Velasco-Giron's shows one reason why. The offense under Cal. Penal Code § 261.5(c) is a member of a set that used to be called "statutory rape"; it fits comfortably next to "rape" in § 1101(a)(43)(A); but adopting § 2243(a) as an exclusive definition would make that impossible. What's more, to adopt § 2243(a) as the only definition would be to eliminate the possibility that crimes against persons aged 11 and under, or 16 or 17, could be "sexual abuse of a minor." (Recall that § 2243(a) deals only with victims aged 12 to 15.)

When resolving ambiguities in the Immigration and Nationality Act—and "sexual abuse of a minor" deserves the label "ambiguous"—the Board has the benefit of *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), under which the judiciary must respect an agency's reasonable resolution. See, e.g., *Scialabba v. Cuellar de Osorio*, 134 S. Ct. 2191, 2203 (2014); *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424–25 (1999). We have considered the Board's approach to "sexual abuse of a minor" five times, and each time we have held that *Rodriguez-Rodriguez* takes a reasonable approach to the issue. See *Lara-Ruiz v. INS*, 241 F.3d 934, 939–42 (7th Cir. 2001); *Guerrero-Perez v. INS*, 242 F.3d 727, 735 n.3 (7th Cir. 2001) (also accepting the Board's conclusion that a crime that a state classifies as a misdemeanor may be an "aggravated felony" for federal purposes); *Espinoza-Franco v. Ashcroft*, 394 F.3d 461 (7th Cir. 2004); *Gattem v. Gonzales*, 412 F.3d 758, 762-66 (7th Cir. 2005); *Gaiskov v. Holder*, 567 F.3d 832, 838 (7th Cir. 2009).

Velasco-Giron maintains that sexual intercourse with a person under 18, by someone else at least three years older, is not "sexual abuse of a minor." We could reach that conclusion, however, only if the Board exceeded its authority in *Rodriguez-Rodriguez* by looking to 18 U.S.C. § 3509(a)(8) as the starting point for understanding "sexual abuse" and to 18 U.S.C. §§ 2256(1), 2423(a) for the definition of a "minor" as a person under 18. Our five decisions holding that the approach of *Rodriguez-Rodriguez* is within the Board's discretion foreclose Velasco-Giron's arguments, unless we are prepared to overrule them all—which he asks us to do.

He relies principally on *Estrada-Espinoza v. Mukasey*, 546 F.3d 1147 (9th Cir. 2008) (en banc), which held that the Board erred in treating a violation of Cal. Penal Code § 261.5(c) as "sexual abuse of a minor." *Estrada-Espinoza* reached this conclusion because § 261.5(c) does not satisfy the definition in 18 U.S.C. § 2243(a), which requires a victim under the age of 16 and a four−year age difference. To justify adopting the definition in § 2243(a), the Ninth Circuit rejected the Board's approach in *Rodriguez−Rodriguez*, holding, 546 F.3d at 1157 n.7, that it flunks Step One of *Chevron*—that is to say, an agency lacks discretion if Congress has made the decision and left no ambiguity for the agency to resolve. That's circular, however. If the court has already decided that the only proper definition comes from § 2243(a), then of course there's no discretion for the Board to exercise. But the phrase "sexual abuse of a minor" that the Board must administer appears in 8 U.S.C. § 1101(a)(43)(A), not 18 U.S.C. § 2243(a), and § 1101(a)(43)(A) is open−

ended. Precision is vital in a criminal statute; it is less important in a civil statute such as § 1101(a)(43)(A), and the Board was entitled to find that Congress omitted a statutory reference from § 1101(a)(43)(A) precisely in order to leave discretion for the agency.

The Ninth Circuit also concluded that *Chevron* is inapplicable to *Rodriguez-Rodriguez* because the Board adopted a standard rather than a rule. We'll come back to this, but for now two points stand out. First, the Ninth Circuit did not identify any authority for its view that *Chevron* is limited to rules. It did cite *Christensen v. Harris County*, 529 U.S. 576 (2000), which holds that an opinion letter from an agency does not come within *Chevron*, but that's a different point. *Christensen* is a precursor of *United States v. Mead Corp.*, 533 U.S. 218 (2001), which concluded that only regulations and administrative adjudications come within *Chevron*. *Rodriguez-Rodriguez* is an administrative adjudication with precedential effect; it is part of *Chevron*'s domain. Second, the Ninth Circuit's view that *Rodriguez-Rodriguez* did not adopt a "rule" misunderstands what the Board did. It decided to take the definition in § 3509(a)(8) as its guide. The agency could have issued a regulation pointing to § 3509(a)(8) or repeating its language verbatim, and it is hard to imagine that a court then would have said "not precise enough." True, § 3509(a)(8) itself is open-ended; the Board needs to classify one state statute at a time, and the statutory language leaves room for debate about whether a particular state crime is in or out. Yet many statutes and regulations adopt criteria that leave lots of cases uncertain. If § 3509(a)(8) is good enough to be part of the United

States Code, why would an agency be forbidden to adopt its approach?

At all events, it would not be possible for us to follow *Estrada-Espinoza* without overruling *Lara-Ruiz* and its four successors, for they hold that *Rodriguez-Rodriguez* is indeed entitled to respect under *Chevron* and is a permissible exercise of the Board's discretion. Nor are we the only circuit to reach that conclusion. *Oouch v. Department of Homeland Security*, 633 F.3d 119, 122 (2d Cir. 2011); *Mugalli v. Ashcroft*, 258 F.3d 52, 60 (2d Cir. 2001); and *Restrepo v. Attorney General*, 617 F.3d 787, 796 (3d Cir. 2010), all hold that *Rodriguez-Rodriguez* is entitled to *Chevron* deference. *Bahar v. Ashcroft*, 264 F.3d 1309, 1312 (11th Cir. 2001), also accepts *Rodriguez–Rodriguez*, though without explicit reliance on *Chevron*. Meanwhile the Fifth Circuit has held that, as a matter of federal law under the Sentencing Guidelines, a "minor" in the phrase "sexual abuse of a minor" is a person under the age of 18. *United States v. Rodriguez*, 711 F.3d 541 (5th Cir. 2013) (en banc). If that's so, then it would be hard to see a problem in using the same age line to identify "sexual abuse of a minor" for immigration purposes.

Our dissenting colleague observes (see page 16) that most states treat persons 16 and older as adults for the purpose of defining sex offenses. Yet 18 U.S.C. § 2256(1) and § 2423(a) define 18 as adulthood. A federal court may set aside administrative decisions that are contrary to law, but nothing permits us to reject agency decisions that follow the United States Code, no matter how many states use a different age demarcation. Our colleague's view that "[t]he question the Board should be addressing is the

gravity of particular sexual offenses involving minors" (page 16) amounts to a conclusion that the Board's approach in *Rodriguez-Rodriguez* is a substantively bad policy. As we have observed, however, *Chevron* permits the Board to establish its own doctrines when implementing ambiguous statutes.

The dissent also maintains that the Board has departed from its own precedent by supposing that *Rodriguez-Rodriguez* adopted § 3509(a)(8) as an exclusive test, rather than (as the Board put it in *Rodriguez–Rodriguez*) as a "guide." Yet the Board's decision in this case states that § 3509(a)(8) is being used "*as a guide* in identifying the types of crimes that we would consider to constitute sexual abuse of a minor" (emphasis added). If the Board in some other case had classified Cal. Penal Code § 261.5(c) (or another materially similar law) as *not* constituting "sexual abuse of a minor," then there would be a genuine concern about administrative inconsistency, but our dissenting colleague does not identify any such divergence.

Nor does Velasco-Giron, who (unlike the dissent) does not contend that the Board has been self–contradictory or that it erred by choosing 18 as the age of majority. Quite the contrary, Velasco-Giron writes that the Board's disposition here "flowed … from" *Rodriguez–Rodriguez*. He acknowledges that the Board has followed its own precedent, which it established years before (in a decision enforced by *Afridi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2006)), that a violation of Cal. Penal Code § 261.5(c) entails "sexual abuse of a minor." That's why Velasco-Giron asks us to reject *Rodriguez–Rodriguez* and all of its

sequels, as the Ninth Circuit did in *Estrada-Espinoza* (which overruled *Afridi*).

We promised to return to the question whether, as the Ninth Circuit believes, *Chevron* is inapplicable to standards. We cannot locate any such doctrine in the Supreme Court's decisions. Just this year, for example, the Court held that the EPA's implementation of a statute requiring each state to take account of how its emissions affect other states is covered by *Chevron*, even though the EPA's approach calls for the balancing of multiple factors, including cost. *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014). Many similar examples could be given, including the National Labor Relation Board's vague (and shifting) specification of "unfair labor practices," which the Board has tried vainly since its creation in 1935 to reduce to a rule. The Board's definition of an "unfair labor practice" remains a standard, and ambulatory even by the standard of standards, but for all that one to which the Supreme Court consistently defers.

If more support were needed, *Aguirre–Aguirre* provides it. That decision reversed the Ninth Circuit for failing to accord *Chevron* deference to one of the Board's interpretive standards. An alien who committed a "serious nonpolitical crime" before entering the United States is ineligible for asylum. 8 U.S.C. § 1231(b)(3)(B)(iii) (formerly § 1253(h)(2)(C)). The Board has approached "serious nonpolitical crime" in common–law fashion, ruling one crime at a time that an offense does, or doesn't, meet this standard. It has not attempted to formulate a rule that would dictate the classification of all crimes. The Ninth Circuit was dissatisfied with the Board's

approach, but the Supreme Court held it entitled to respect under *Chevron*. If the Board can define "serious nonpolitical crime" one case at a time, why can't it define "sexual abuse of a minor" one case at a time? Actually *Rodriguez-Rodriguez* does better than that, by drawing a precise age line at 18 and using § 3509(a)(8) as a guide.

If what the Board did in *Aguirre–Aguirre* was enough, what it did in *Rodriguez-Rodriguez* was enough. When an agency chooses to address topics through adjudication, it may proceed incrementally; it need not resolve every variant (or even several variants) in order to resolve one variant. See, e.g., *SEC v. Chenery Corp.*, 332 U.S. 194, 203 (1947); *Heckler v. Ringer*, 466 U.S. 602, 617 (1984). This is "one of the earliest principles developed in American administrative law". *Almy v. Sebelius*, 679 F.3d 297, 303 (4th Cir. 2012).

Many judges dislike administrative adjudication because they think standards generated in common–law fashion are poorly theorized and too uncertain to give adequate notice to persons subject to regulation. Judge Friendly once held, for these reasons and others, that the NLRB must replace adjudication with rulemaking when it wants to announce rules of general application. *Bell Aerospace Co. v. NLRB*, 475 F.2d 485 (2d Cir. 1973). But the Supreme Court was not persuaded and unanimously concluded that an agency can choose freely between rules and standards, between rulemaking and adjudication. *NLRB v. Bell Aerospace Co.*, 416 U.S. 267 (1974). Since *Bell Aerospace* "[t]he Court has not even suggested that a court can constrain an agency's choice between rulemaking and adjudication".

Richard J. Pierce, Jr., I *Administrative Law Treatise* § 6.9 at 510 (5th ed. 2010).

Velasco-Giron proposes a more ambitious doctrine than the one Judge Friendly favored. He wants the Board not only to replace standards with rules but also to adopt rules that are complete and self–contained. In Velasco-Giron's view, until the Board has solved *every* interpretive problem in the phrase "sexual abuse of a minor," and shown how *every* possible state crime must be classified, it cannot decide how *any* state conviction can be classified. That requirement would be inconsistent with *Aguirre–Aguirre* and would send the Board on an impossible quest.

Immigration statutes are full of vague words, such as "persecution," and vague phrases such as "crime of moral turpitude." The Board has not found a way to solve every interpretive problem in these phrases and has chosen the common–law approach. Judges have failed to turn tort law into a set of rules; Holmes declared in *The Common Law* that they were bound to do so eventually, but more than 130 years have passed without the goal being nearer. Perhaps "sexual abuse of a minor" will prove equally intractable. Judges are not entitled to require the impossible, or even the answer they think best. Like the NLRB, the FTC, the SEC, and many another agency, the BIA is a policy–making institution as well as a judicial one. It may choose standards as the best achievable policies. Just as judges do every day, the Board is entitled to muddle through.

The petition for review is denied.

POSNER, *Circuit Judge*, dissenting. The ground on which the petitioner was denied cancellation of removal (he does not deny that he was removable, because of a conviction for harassment and for violating an order of protection, see 8 U.S.C. §§ 1227(a)(2)(E)(i), (ii)) was that he had been convicted in California in 2005 of engaging in sexual intercourse with a girl who was not yet 18 and was more than three years younger than he. Cal. Penal Code § 261.5(c). She was in fact 15 and he 18, but the Board of Immigration Appeals did not consider the ages of either party to the sexual relationship. It relied entirely on the fact that the girl was under 18 and he more than three years older. She could have been one day short of her eighteenth birthday on the day when the relationship began and that day could have been his twenty-first birthday. The crime was punished as a misdemeanor under California law and according to his uncontradicted affidavit his only punishment was unsupervised probation. The crime was reported by the girl's father and the defendant pleaded guilty on his nineteenth birthday; the sexual relationship had been brief and consensual; that is another fact the Board ignored.

Now 28 years old, the petitioner has lived in the United States since the age of 14 and is a lawful permanent resident. The immigration judge said that "there are some extremely strong equities in this case." But the immigration statute precludes cancellation of removal of an alien who has been convicted of an "aggravated felony," defined (for this purpose) as including "murder, rape, or sexual abuse of a minor," 8 U.S.C. § 1101(a)(43)(A), and the immigration judge ruled that the California misdemeanor was "sexual abuse of a minor" and

therefore a categorical bar to cancellation of removal. The Board of Immigration Appeals affirmed.

So what is "sexual abuse of a minor"? We are obliged to give some deference to the Board's definition of a term appearing in the immigration statutes. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 424-25 (1999); *Arobelidze v. Holder*, 653 F.3d 513, 519-20 (7th Cir. 2011). But the Board has not defined "sexual abuse of a minor." True, it said in this case, quoting *In re Rodriguez-Rodriguez*, 22 I&N Dec. 991, 995 (BIA 1999) (en banc), that it *has* defined the term—defined it "as encompassing any offense that involves 'the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children.'"

Rejecting a very narrow definition (advocated by *Rodriguez-Rodriguez*) of "sexual abuse of a minor" elsewhere in the federal criminal code, see 18 U.S.C. § 2243, the Board in his case had taken the definition verbatim from a provision of the federal criminal code that defines the rights of child victims as witnesses. 18 U.S.C. § 3509(a)(8); see also 18 U.S.C. § 3509(a)(9), defining "sexually explicit conduct" very broadly. Read literally, the definition would encompass the petitioner's misdemeanor, because obviously he induced the girl to have sex with him. So if *Rodriguez-Rodriguez* had adopted the definition in section 3509(a)(8), as the Board in the present case said it had done (while also saying, as we'll see, that it hadn't), as the definition of "sexual abuse of a minor" in the immigration statute, that would be the

end of this case. But *Rodriguez-Rodriguez* had gone on to say that "in defining the term 'sexual abuse of a minor,' we are not obliged to adopt a federal or state statutory provision" and "we are not adopting this statute as a definitive standard or definition but invoke it as a guide in identifying the types of crimes we would consider to be sexual abuse of a minor." 22 I&N Dec. at 994, 996. In other words, the Board found the definition useful given the facts of the *Rodriguez-Rodriguez* case (which are very different from the facts of the present case), but did not adopt it as the canonical definition of "sexual abuse of a minor."

The Board in this case added that to derive the meaning of the words "sexual," "minor," and "abuse" in the aggravated-felony provision of the immigration statute it would look to the "ordinary, contemporary, and common meaning of the words" (and for this it cited our decision in *Espinoza-Franco v. Ashcroft*, 394 F.3d 461, 464-65 (7th Cir. 2005), quoting *United States v. Martinez-Carillo*, 250 F.3d 1101, 1104 (7th Cir. 2001)). So neither in this case nor in *Rodriguez-Rodriguez* did the Board adopt either the definition in the federal criminal code or an alternative definition.

In *Rodriguez-Rodriguez* the specific offense of which the petitioner had been convicted was "indecency with a child by exposure" in violation of Texas law, and the Board pointed to "the severity of the penalty" that the petitioner had received—10 years' imprisonment, the statutory maximum—as "demonstrat[ing] that Texas considers the crime to be serious. … In consideration of these factors, [the Board found] that indecent exposure in the presence

of a child by one intent on sexual arousal is clearly sexual abuse of a minor within the meaning of" the immigration statute. 22 I&N Dec. at 996.

So *Rodriguez-Rodriguez* did not define "sexual abuse of a minor" in the immigration statute to encompass *every* criminal sexual activity involving a minor, as section 3509(a)(8) of the federal criminal code seems to do. Instead it gave reasons pertinent to the case before it, in particular the severity of the punishment meted out by the state court, for concluding that the petitioner's particular criminal offense had been serious enough to merit designation as sexual abuse of a minor for purposes of immigration law. In the present case the Board gave no reason for its similar, but less plausible, conclusion. Given the language it quoted in this case from the earlier decision, it couldn't have thought that *Rodriguez-Rodriguez* had adopted the text of section 3509(a)(8) as the definition of "sexual abuse of a minor" in the immigration statute. But if it did think *Rodriguez-Rodriguez* had done that, it was wrong, was therefore misapplying Board precedent, and for that reason (among others) its decision could not stand. *Huang v. Mukasey*, 534 F.3d 618, 620 (7th Cir. 2008); *Ssali v. Gonzales*, 424 F.3d 556, 564-66 (7th Cir. 2005); *Hernandez v. Ashcroft*, 345 F.3d 824, 846-47 (9th Cir. 2003). Treating the federal statute as merely a guide obliged the Board in this case to go beyond the definition of sexual abuse in the federal criminal code, and it failed to do that, the critical omission being a failure to consider the gravity of the petitioner's crime and punishment in relation to the crime and punishment in *Rodriguez-Rodriguez*.

Characteristically (*see, e.g.*, *Benitez Ramos v. Holder*, 589 F.3d 426, 430 (7th Cir. 2009); *Miljkovic v. Ashcroft*, 376 F.3d 754, 756–57 (7th Cir. 2004)), the Justice Department tries to remedy the deficiencies of the Board's analysis by supplying reasons (including references to social science data) for why the petitioner's offense should be regarded as grave; in doing so the Department flouts *SEC v. Chenery Corp.*, 318 U.S. 80 (1943).

The inadequacy of the Board's analysis would not be fatal if the correctness of the conclusion could not be questioned (for then the Board's error would be harmless). It could not be questioned if, for example, the petitioner had been convicted of a violent rape. But voluntary sexual intercourse between a just-turned 21 year old and an about-to-turn 18 year old (the premise of the Board's opinion, for it declined to consider the actual facts of the petitioner's misdemeanor) is illegal in only eight states. The petitioner's sentence to unsupervised probation should tell us what California, though one of the eight, thinks of the gravity of his offense. The age of consent is 16 in a majority (34) of the states (including the District of Columbia) as well as in the Model Penal Code, § 213.3(1)(a). (The source of my statistics is Legal Age of Consent for Marriage and Sex for the 50 United States," http://globaljusticeinitiative.files.wordpress.com/2011/12/united-states-age-of-consent-table11.pdf (visited Sept. 24, 2014), as were the other websites cited in this opinion.) By age 17, 40 percent of American girls have had sexual intercourse. Guttmacher Institute, Fact Sheet, "American Teens' Sexual and Reproductive Health" (May 2014), www.guttmacher.org/pubs/FB-ATSRH.html.

The question the Board should be addressing is the gravity of particular sexual offenses involving minors, rather than assuming that any of them, however trivial, makes the perpetrator unfit to be allowed to live in the United States. Some are serious, some are trivial. Apparently California didn't think the petitioner's offense serious, classifying it as a misdemeanor and giving him a nominal sentence of unsupervised probation. Although the girl was 15, the Board of Immigration Appeals, averse to making distinctions, treats the offense as if it involved a barely 21 year old man having sex with an almost 18 year old girl. It's difficult to imagine a more trivial sexual offense. California thinks it trivial. Why does the Board think it serious? How can the Board believe that for a 21-year-old man to have consensual sex with a girl one day shy of her 18th birthday renders the 21-year-old unfit to remain in the United States? Could we not at least ask the Board to explain why it thinks a minor misdemeanor sex offense is grounds for deportation? If a 10-year prison sentence informs the Board's judgment of whether a sexual offense involving a minor should be deemed an aggravated felony, as we learn from *Rodriguez-Rodriguez* that it does, then a sentence of unsupervised probation should inform the Board's judgment as well, yet it is not mentioned in the Board's opinion in this case.

Nor is this a case in which the immigration judge provided the analysis and the Board relied on it. The immigration judge provided no analysis but said merely that she was bound by *Rodriguez-Rodriguez* and that the petitioner's conviction "constitutes sexual abuse of a minor and although treated as a misdemeanor, under state law and in [Velasco-

Giron's] case by its terms constitutes an aggravated felony under" the immigration statute. The passage I've just quoted is garbled, but implies that the Board has laid down a rule that any unlawful sexual activity involving a minor, however trivial, is an aggravated felony. It has never laid down such a rule.

The majority opinion misreads *Rodriguez-Rodriguez* as having adopted a rule that governs this case. The same misreading invalidates the Board's decision in this case.

APPENDIX B

File: A078 012 548 - Chicago, Illinois — Date: May 16, 2012

In re: ALBERTO VELASCO-GIRON

IN REMOVAL PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Hena Mansori, Esquire

ON BEHALF OF DHS: Brendan Curran
Assistant Chief Counsel

CHARGE:

Notice: Sec. 237(a)(2)(E)(i), I&N Act [8 U.S.C. § 1227(a)(2)(E)(i)] - Convicted of crime of domestic violence, stalking, or child abuse, neglect, or abandonment

Sec. 237(a)(2)(E)(ii), I&N Act [8 U.S.C. § 1227(a)(2)(E)(ii)] - Violated court protective order

APPLICATION: Cancellation of removal under section 240A(a) of the Act

The respondent, a native and citizen of Mexico, and a lawful permanent resident of the United States since his admission as an immigrant on January 30, 2003, has filed a timely appeal from an Immigration Judge's February 27, 2012, decision. In that decision, the Immigration Judge found the respondent

removable, as charged, based on his admissions (Tr. at 8), and record of convictions (Exh. 2). In addition, the Immigration Judge pretermitted the respondent's application for cancellation of removal for lawful permanent residents pursuant to section 240A(a)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1229b(a)(3), on account of the respondent's 2005 California conviction for Unlawful Sexual Intercourse with a Minor in violation of CAL. PENAL CODE § 261.5 (c),which she found to qualify as a "sexual abuse of a minor" aggravated felony under section 101(a)(43)(A) of the Act, 8 U.S.C. § 1101(a)(43)(A). The appeal will be dismissed.

The Board reviews an Immigration Judge's findings of fact, including findings as to the credibility of testimony, under the "clearly erroneous" standard. *See* 8 C.F.R. § 1003.1(d)(3)(i); *Matter of R-S-H-*, 23 I&N Dec. 629 (BIA 2003); *Matter of S-H-*, 23 I&N Dec. 462 (BIA 2002). The Board reviews questions of law, discretion, and judgment and all other issues in an appeal of an Immigration Judge's decision de novo. *See* 8 C.F.R. § 1003.1(d)(3)(ii).

On appeal, the respondent does not contest the Immigration Judge's findings as to his removability, but he disputes the Immigration Judge's determination that he has been convicted of an aggravated felony, precluding him from establishing his eligibility for cancellation of removal under section 240A(a) of the Act.

However, on de novo review, we are not persuaded by the respondent's appellate arguments to disturb the Immigration Judge's determination that the respondent has not established his eligibility for any relief from removal, including cancellation of removal

under section 240A(a) of the Act, as he has not demonstrated that his 2005 California conviction for Unlawful Sexual Intercourse with a Minor in violation of CAL. PENAL CODE § 261.5(c) did not constitute a conviction for a "sexual abuse of a minor" aggravated felony, as defined in section 101(a)(43)(A) of the Act.

At the outset, as the respondent seeks discretionary relief from removal in the form of cancellation of removal under section 240A(a) of the Act, he bears the burden of proving that he is statutorily eligible for such relief. *See* 8 C.F.R. § 1240.8(d) (stating that the respondent has the burden of establishing eligibility for any requested relief and that, if the evidence indicates that one or more of the grounds for mandatory denial of the application for relief may apply, the alien has the burden of proving by a preponderance of the evidence that it does not). In order to establish his *statutory* eligibility for cancellation of removal under section 240A(a) of the Act, the respondent must show that he has not been convicted of an aggravated felony. *See Negrete-Rodriguez v. Mukasey*, 518 F.3d 497 (7th Cir. 2008). The burden is therefore on the respondent to show that his 2005 California conviction for Unlawful Sexual Intercourse with a Minor in violation of CAL. PENAL CODE § 261.5(c), did not constitute a conviction for a "sexual abuse of a minor" aggravated felony, as defined in section 101(a)(43)(A) of the Act.

In order to have convicted the respondent under CAL. PENAL CODE § 261.5(c), the prosecutor necessarily proved beyond a reasonable doubt that the respondent engaged in an act of sexual intercourse with a person who was under 18 years old

and more than 3 years younger than himself.[1] This Board has defined the term "sexual abuse of a minor" as encompassing any offense that involves "the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children." *See Matter of Rodriguez-Rodriguez*, 22 I&N Dec. 991 (BIA 1999). In *Matter of Rodriguez-Rodriguez*, "we recognized that the various States categorize sex crimes against children in many different ways and decided that we are not obliged to adopt any specific Federal or State provision in defining the term 'sexual abuse of a minor.'" *Matter of V-F-D*, 23 I&N Dec. 859, 861 (BIA 2006). "We determined that the definitions set forth in 18 U.S.C. §§ 2242, 2243, and 2246 were too restrictive to encompass the numerous State crimes that can be viewed as 'sexual abuse' and concluded that the definition delineated in 18 U.S.C. § 3509(a)[2] best captured the broad spectrum of sexually abusive behavior prohibited under the State laws," as we "found that the definition employed in 18 U.S.C. § 3509(a) was consistent with Congress's intent to provide a comprehensive scheme in the Act to cover

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[1] In California, "sexual intercourse" means sexual penetration of the female sexual organ by the male sexual organ, however slight. CAL. PENAL CODE § 263.

[2] "Sexual abuse" is defined under 18 U.S.C. § 3509(a)(8) as "the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children."

crimes against children, and that it was a 'more complete interpretation of the term 'sexual abuse of a minor' as it commonly is used.'" *Matter of V-F-D*, *supra* at 861 (citing *Matter of Rodriguez-Rodriguez*, *supra* at 996). Consequently, we invoked that definition as a guide in identifying the types of crimes that we would consider to constitute sexual abuse of a minor. *Id.*

We acknowledge the respondent's appellate argument that the United States Court of Appeals for the Ninth Circuit has found that CAL. PENAL CODE § 261.5(c), the statute at issue here, is not categorically a "sexual abuse of a minor" aggravated felony. *See Estrada-Espinoza v. Mukasey*, 546 F.3d 1147, 1160 n.15 (9th Cir. 2008) (en banc) (overruling *Afridi v. Gonzales*, 442 F.3d 1212 (9th Cir. 2006) (holding that CAL. PENAL CODE § 261.5(c) categorically constitutes "sexual abuse of a minor")); *see also Pelayo-Garcia v. Holder*, 589 F.3d 1010 (9th Cir. 2009). The *Estrada-Espinoza* court held that the term "sexual abuse of a minor" means "sexual abuse of a minor" as defined in the federal criminal code at 18 U.S.C. § 2243.

However, we consider that this case arises under the jurisdiction of the United States Court of Appeals for the Seventh Circuit, and not the Ninth Circuit. The Board is not bound to follow the published decisions of a United States Circuit Court of Appeals outside of that circuit. *See Matter of U. Singh*, 25 I&N Dec. 670, 672 (B1A 2012) (citing *Matter of Salazar*, 23 I&N Dec. 223, 235 (BIA 2002) (noting that we apply the law of the circuit in cases arising in that jurisdiction, but we are not bound by a decision of a court of appeals in a different circuit). *See*

Matter of K-S-, 20 I&N Dec. 715 (BIA 1993); *also Matter of Anselmo*, 20 I&N Dec. 25, 30-32 (BIA 1989). The Seventh Circuit has specifically rejected the notion that the Board was obliged to define sexual abuse for purposes of section 101(a)(43)(A) with reference to the more narrow standards found elsewhere in the Criminal Code, including in particular 18 U.S.C. § 2243(a), which establishes the federal offense of sexually abusing a minor. *See Lara-Ruiz v. INS*, 241 F.3d 934, 941-42 (7th Cir. 2001). Thus, the court found that the Board's resort to 18 U.S.C. § 3509(a)(8) and its broad definition of sexual abuse for guidance is reasonable. *See Gattem v. Gonzales*, 412 F.3d 758 (7th Cir. 2005) (reaffirming the importance of using the broad definition of sexual abuse delineated in 18 U.S.C. § 3509(a)(8) in accordance with congressional intent in determining whether a crime constitutes an offense under section 101(a)(43)(A) of the Act). Moreover, the court noted that in an earlier decision, in the case of *Espinoza-Franco v. Ashcroft*, 394 F.3d 461, 464-65 (7th Cir. 2005), the court had emphasized that "Congress intended the phrase 'sexual abuse of a minor' to broadly incorporate all acts that fall within the 'ordinary, contemporary, and common meaning of the words'" (quoting *United States v. Martinez-Carillo*, 250 F.3d 1101, 1104 (7th Cir. 2001)) and that the reach of the phrase need not be limited to the more narrow definitions found in other provisions of the Criminal Code. *See Gattem v. Gonzales*, *supra* at 764.

Thus, we are not persuaded by the respondent's appellate arguments to apply the Ninth Circuit's more restrictive definition for the aggravated felony "sexual abuse of a minor" offense in this case. The

California offense of conviction here required that the respondent engage in an act of sexual intercourse with a person who was under 18 years old and more than 3 years younger than himself. *See* CAL. PENAL CODE § 261.5(c). Therefore, as the victim here must be under the age of 18, the respondent's conviction for a violation of CAL. PENAL CODE § 261.5(c) qualifies as "sexual abuse of a minor" for purposes of section 101(a)(43)(A) of the Act. *See Matter of Rodriguez-Rodriguez*, *supra*; *see also United States v. Martinez-Carillo*, 250 F.3d 1101 (7th Cir. 2001) (holding that a violation of a State statute qualified as sexual abuse of a minor where the victim was under the age of 18). Consequently, we agree with the Immigration Judge's conclusion that the respondent is ineligible for cancellation of removal because he has not satisfied his burden of demonstrating that his conviction under CAL. PENAL CODE § 261.5(c) was not for an aggravated felony as required by section 240A(a)(3) of the Act and 8 C.F.R. § 1240.8(d).

Thus, we agree with the Immigration Judge that the respondent is subject to removal from the United States based on the respondent's admissions (Tr. at 8) and record of convictions (Exh. 2). *See* section 240(c)(3)(A) of the Act, 8 U.S.C. § 1229a(c)(3)(A). Further, the respondent has failed to establish his eligibility for any relief from removal, including cancellation of removal pursuant to section 240A(a)(3) of the Act. *See also* section 240(c)(4)(A)(i) of the Act, 8 U.S.C. § 1229a(c)(4)(A)(i); 8 C.F.R. § 1240.8(d).

Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.

/s/
FOR THE BOARD

APPENDIX C

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
CHICAGO, ILLINOIS

File: A078-012-548 February 27, 2012

In the Matter of

ALBERTO VELASCO-GIRON	)	
	)	IN REMOVAL
RESPONDENT	)	PROCEEDINGS
	)	

CHARGES:	237(a)(2)(E)(i), conviction of a crime of domestic violence. 237(a)(2)(E)(ii), state court determination that respondent had violated a portion of a protection order relating to credible threats of violence, repeated harassment or bodily injury.
APPLICATIONS:	Cancellation of removal pursuant to Section 240A(a) of the Immigration and Nationality Act.

ON BEHALF OF RESPONDENT: HINA MONSARI

ON BEHALF OF DHS: DANIEL RAH

ORAL DECISION OF THE IMMIGRATION JUDGE

The respondent in these proceedings is a 25, almost 26-year-old, native and citizen of Mexico. Respondent was admitted to the United States on or about January 30, 2003, as a permanent resident. Respondent was placed in removal proceedings upon issuance of a Notice to Appear dated September 14, 2011. Through counsel, he has admitted the seven factual allegations and conceded removability as charged above. The Government submitted evidence in support of these charges at Exhibit 2, arising out of incidents in April of 2011.

Respondent filed an application for cancellation of removal, disclosing a criminal history. *See* Exhibit 3. His criminal history included a conviction from California on April 11, 2005, for unlawful sexual intercourse with a minor, misdemeanor, for which he received probation. *See* Exhibit 3. Respondent's counsel provided in support of his application a memorandum of law as well as the respondent's affidavit.

Respondent was convicted under California law, which under a statute, were this case to arise in the Ninth Circuit, would not be considered an aggravated felony. However, the Board of Immigration Appeals in *Matter of Rodriguez-Rodriguez*, has broadly interpreted sexual abuse of a minor and that decision has been upheld by the Seventh Circuit. This Court is accordingly bound by the Board's precedent decision.

In order to qualify for cancellation of removal under Section 240A(a) the respondent must establish that he has not been convicted of an aggravated

felony. He pled guilty to unlawful sexual intercourse under California Penal Code 261.5C, which although a misdemeanor punishes sexual intercourse with a minor under the age of 18, if there is at least a three year age difference. This constitutes sexual abuse of a minor and although treated as a misdemeanor, under state law and in the respondent's case by its terms constitutes an aggravated felony under Section 101(a)(43)(A) of the Immigration and Nationality Act.

Accordingly, I find that the respondent is statutorily barred from establishing eligibility for cancellation of removal under Section 240A(a)(3), and accordingly cannot otherwise establish either eligibility for cancellation of removal or that such relief should be granted to him in the proper exercise of this Court's discretion. I state that understanding that there are some extremely strong equities in this case but it is THE ORDER OF THE COURT, there being no other relief available, that this respondent be removed from the United States to Mexico on the charges contained in the Notice to Appear.

/s/
ELIZA C. KLEIN
United States
Immigration Judge

IMMIGRATION COURT
525 W. VAN BUREN, SUITE 500
CHICAGO, IL 60607

In the Matter of	Case No.: A078-012-548
VELASCO-GIRON, ALBERTO *_	IN REMOVAL PROCEEDINGS
Respondent	

ORDER OF THE IMMIGRATION JUDGE

This is a summary of the oral decision entered on 2/27/12.

This memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[✓] The respondent was ordered removed from the United States to MEXICO or in the alternative to _____.

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to MEXICO or in the alternative to _____.

[ ] Respondent's application for voluntary departure was granted until _____ upon posting a bond in the amount of $_____ with an alternate order of removal to MEXICO.

Respondent's application for:

[ ] Asylum was ( ) granted ( ) denied ( ) withdrawn.

[ ] Withholding of removal was ( ) granted ( ) denied ( ) withdrawn.

[ ] A Waiver under Section was ( ) granted ( ) denied ( ) withdrawn.
[ ] Cancellation of removal under section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

[✓] Cancellation under section 240A(b)(1) was ( ) granted (✓) denied ( ) withdrawn. If granted, it is ordered that the respondent be issued all appropriate documents necessary to give effect to this order.
[ ] Cancellation under section 240A(b) (2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Adjustment of Status under Section _____was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.
[ ] Respondent's application of ( ) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted ( ) denied ( ) withdrawn.
[ ] Respondent's status was rescinded under section 246.
[ ] Respondent is admitted to the United States as a _____ until _____.
[ ] As a condition of admission, respondent is to post a $_____ bond.
[ ] Respondent knowingly filed a frivolous asylum application after proper notice.
[ ] Respondent was advised of the limitation on discretionary relief for failure to appear as

ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____.

Date: Feb 27, 2012

/s/
ELIZA C. KLEIN
Immigration Judge

Appeal: Waived/Reserved
Appeal Due By: 3/29/12

APPENDIX D

U.S. Department of Justice
Executive Office for Immigration Review
United States Immigration Court

In the Matter of		File: A078-012-548
ALBERTO VELASCO-GIRON	)	IN REMOVAL PROCEEDINGS
RESPONDENT	)	Transcript of Hearing

Before ELIZA C. KLEIN, Immigration Judge

Date: February 27, 2012 Place: CHICAGO, ILLINOIS

Transcribed by FREE STATE REPORTING, Inc.

Official Interpreter:

Language: SPANISH

Appearances:

For the Department of Homeland Security: DANIEL RAH

For the RESPONDENT: HINA MONSARI

JUDGE FOR THE RECORD

This is the Immigration Court in Chicago, Illinois, Monday, February 27th, 2012. Immigration Judge Eliza C. Klein presiding. These are removal proceedings relating to Alberto Velasco-Giron, file number 78 012 548. The respondent is appearing by, in person with his attorney, Hina Monsari. Present in court on behalf of the Department of Homeland Security, Daniel Rah and proceedings are conducted in English and interpreted into Spanish. We have a contract interpreter on the phone.

JUDGE TO INTERPRETER

And ma'am, do you swear that you are fluent in both English and Spanish and will faithfully translate these proceedings from English to Spanish and vice versa to the best of your ability?

INTERPRETER TO JUDGE

I do affirm, Your Honor.

JUDGE TO INTERPRETER

Thank you, ma'am.

JUDGE TO MR. VELASCO

Q. And through the interpreter, to the respondent. Sir, would you please state your name?

A. Alberto Giron Velasco.

Q. All right. And sir, I'm going to be speaking to your attorney about your case for a moment. And the issue is she has filed a statement arguing that you are eligible for cancellation, despite your convictions. You had filed an application for cancellation of removal with another Immigration Judge on December 22nd. Your case was scheduled to be heard before me on February 13th, but you were not

brought to court for that hearing. I rescheduled it to a half hour hearing today to determine if you're eligible for cancellation.

JUDGE TO MR. RAH

I have not yet heard from the Government as to their view of eligibility, Mr. Rah.

MR. RAH TO JUDGE

Do you want that now, Judge?

JUDGE TO MR. RAH

Yes.

MR. RAH TO JUDGE

Judge, we believe the respondent's not eligible as this an aggravated felony. The, the Seventh Circuit has taken the broad approach in looking at sexual abuse of minor cases and have cited and they have been given deference to *Matter of Rodriguez-Rodriguez*, which is the Board's [indiscernible] case kind of outlining the, the reaches of sexual abuse of a minor. Now counsel has cited a Ninth Circuit case in her opinion and the Ninth Circuit case takes a different approach than the Seventh Circuit, seems to have taken thus far. The—I mean, the—I'm looking at the, the brief here and, and counsel argues that *Rodriguez-Rodriguez*, should not be given deference and such but these aren't, I mean, these aren't the standard by which we are judging this crime because the, the Board [indiscernible] a crime, a crime like this to be sexual abuse against a minor. And in this circuit the answer is yes. Perhaps not so in the, the Ninth Circuit but unfortunately for the respondent we're not in the Ninth Circuit. He—there—so I guess to summarize the crime, it seems somewhat like a statutory rape

type of offense and, and that's not, generally speaking, that's not a, a case where the Seventh Circuit has said this is positively not a sexual abuse of a minor. I, I recall one case of a person where the court had, had seemed to carve out exception, where the ages were very similar. These weren't—it was no violent offense. This case is different. We're looking at, I believe the statute itself distinguishes the ages of the participants as three years if I'm not mistaken. But again the case the respondent was I believe 19 and the victim was about 15. We're looking at a wide expense than the, you know, the Seventh Circuit has, has found in terms of its exceptions and otherwise in this, in this circuit this is clearly a, a crime of sexual abuse against a minor.

JUDGE TO MS. MONSARI

And Ms. Monsari, I do conclude that the Government is correct in this case. Again, if the case was arising out of the Ninth Circuit there might be a different outcome but it is in the Seventh Circuit. The Seventh Circuit has adopted the rationale in *Rodriguez* or at least determined that the rationale broadly interpreting sexual abuse of a minor is reasonable. So I think my hands are tied here. Is there any other relief available to the respondent?

MS. MONSARI TO JUDGE

Unfortunately not, Your Honor.

JUDGE TO MS. MONSARI

And do you know if he's going to be appealing the Court's decision?

MS. MONSARI TO JUDGE

We are going to reserve appeal at—

JUDGE TO MS. MONSARI

All right.

MS. MONSARI TO JUDGE

—this juncture.

JUDGE TO MR. VELASCO

So sir, unfortunately I do conclude in your case that you are not statutorily eligible for cancellation of removal. Your attorney has indicated that there is no other relief available at this time so I am going to issue an order and I will try to break that down into segments so that the interpreter can summarize what I am saying.

JUDGE TO INTERPRETER

I'm sorry, to the, to the translator, you do not need to interpret everything I'm saying, just the substance of the Court's decision. And—

INTERPRETER TO JUDGE

That is fine.

JUDGE TO INTERPRETER

—summarize it, not word for word. So and I will take a break.

JUDGE RENDERS ORAL DECISION

JUDGE TO INTERPRETER

And operator—sorry, interpreter, could you just summarize that, what I just said?

INTERPRETER TO JUDGE

Okay.

JUDGE TO INTERPRETER

Thank you.

JUDGE RESUMES ORAL DECISION

JUDGE TO INTERPRETER

Thank you, madam interpreter.

INTERPRETER TO JUDGE

Yes. The last part, Your Honor, could be repeated.

JUDGE TO INTERPRETER

Which although a misdemeanor punishes sexual intercourse where the victim is under the age of 18 and there is at least a three year age difference.

JUDGE RESUMES ORAL DECISION

JUDGE TO MR. RAH

Is there any appeal by the Government on any issue?

MR. RAH TO JUDGE

No, Your Honor.

JUDGE TO MR. RAH

All right.

JUDGE TO MR. VELASCO

So sir, your attorney has reserved appeal on your behalf and that appeal is due by March 29th. All right. Good luck to you, sir.

JUDGE FOR THE RECORD

Case is closed.

HEARING CLOSED

A078-012-548 February 27, 2012

APPENDIX E

Sworn Affidavit of Alberto Giron Velasco
A078-012-548

I, Alberto Giron Velasco, under penalty of perjury, hereby declare the following:

1. My name is Alberto Giron Velasco. I was born in Tenejapa, near San Cristobal de las Casas, within the state of Chiapas, Mexico on April 11, 1986. My mother's name is Antonia Giron Velasco; I never knew my father. I have lived in the United States since November 2000 and have been a lawful permanent resident since January 2003.

2. I grew up in Mexico with my mother. At the age of six, my mother met her boyfriend, and for a small time they were happy. However, about a year later they began to have many problems. My stepfather never liked for me to call him "papa" and he regularly drank a lot. When he came home he would beat my mother and me wildly, sometimes with a cord, lasso, or his belt. He always punished me and I always had to do as he said. He was very cruel towards me and my mother.

3. Where we lived there was no justice or anybody who would get involved in these types of problems. Time went by and everything got worse: my stepfather always beat my mother and left her bruised. Sometimes they sent my stepfather to the jail but after awhile he would get out. When this

happened he would become drunk and afterwards would not give money to my mother for food.

4. When I was seven years old I began working for rich people in my town. This is when I began to eat better although I sometimes only ate tortillas with salt because we were so poor.

5. The years passed and I grew older: the abuse towards my mother and me continued. I attended primary school but almost always arrived late because I worked very early in the morning and classes began at 8am. However, I continued going to school with the all the strength that I had.

6. Afterwards, I enrolled in secondary school. I worked in the mornings and went to school in the afternoons, from 1:30pm until 8pm. I completed my first year of secondary school and began my second.

7. Now I was a little bit bigger and I remember seeing my stepfather hit my mother with great force so that she was all bloody and bruised from the hits. It was in that moment that I decided to get involved and defend my mother. It made me feel better, and I remember that he then beat me and ran after me, threatening me with death while carrying a machete. At that moment I left my home.

8. Afterwards I heard that my stepfather no longer beat my mother as much because the people had told him that I was growing up while he was becoming old and that he had to be careful.

9. I began living in a small place within the home of my boss. I continued working and going to school in the afternoons. I sometimes went to visit my mother when her boyfriend was not there and gave her money to buy things to eat. I began my third

year of secondary school and everything became very difficult. I was supporting my other because her boyfriend almost never worked, and I had to pay for school. I began to think about my future and what I would do. Then it was announced in my town that there were jobs in Tijuana for all who wanted to go. This was when I began to work very hard to complete my third year of secondary school, because they would only give me work in Tijuana if I was either 18 years of age or had a third year diploma. I also saved up 1000 pesos, which is what the ticket from my village to Tijuana cost.

10. I graduated from my third year of secondary school. I was almost 14 years old and I said goodbye to my other with much pain in my heart. With tears in my eyes and with a kiss, I said goodbye to my mother and told her that I loved her a lot. After four days and three nights I arrived in Tijuana by bus.

11. I began working for Sanyo, from 5 pm until 2:00 in the morning. After a few months, I began working for Panasonic, making parts of electronics such as televisions and cell phones. I almost never went out, except to go shopping for food and personal items. On one of those days while I was walking I met a person who asked me if I wanted to go to the United States.

12. The coyotes in charge of taking us across the border asked us whether we had family in the United States: I said no while my friend said yes. He had half the money and his family would provide the other half. I had been in Tijuana almost four months and had already saved almost $1000. My friend insisted that we come to the United States.

13. As we tried to cross the border, many of our companions were caught by immigration authorities, but my friend and I were able to avoid detection and eventually cross into the United States. We arrived at a house in San Diego, where we stayed for one day. Then my friend asked me what I was going to do and where I was going to go and I asked him if I could stay with him and his family. He said yes, but only for a short while. I went to a town near Los Angeles with my friend, where his family was surprised to see me and asked who I was. They let me stay for two days but then said that I had to leave.

14. I spent two days in the street and on the third day I told myself that I had to ask for help from the police. I was very hungry, and at night I was very cold. I decided to ask for help from the first policeman that I saw. When I saw a parole car I began running and crying that I needed help: I was very dirt and very hungry. The policeman did not understand what I was saying but then a police officer who spoke Spanish arrived and began asking me many questions. He told me not to worry and that they would help me. After they were done asking me questions they took me into the police car and I began to cry because I thought that they were going to deport me. I arrived at the police station and they asked me many questions, and gave me food and money. Afterwards they told me that everything was okay and that they were going to take me to a place where I would be safe.

15. I spent the next few months in a group home. I remember that many people visited me, including psychologists, detectives, and a social worker. They asked me all about my life and where I was from.

They took me to school, museums, parks, and many other places. I felt very content: the food was very good and there were people of other races there. A woman who worked there began teaching me English and was very good to me. I behaved very well, following all of the rules and trying to learn all that I could. After a few months I remember that they told me that I would be going to a foster home. I did not know what that was until somebody told me that I was going to a house where I would have adoptive parents.

16. I moved into the home of my foster parents, Maria Ramos and Hilberto Siu, in Glendora, California. They had three children of their own as well as three other foster children; I became friends with their son Jose Ramos who was close to my age. They enrolled me in school, and I began to dream about being somebody in this life. I attended the ninth grade and then entered into the tenth grade. I had good grades, I behaved well, I was obedient towards others and did what I was told both in school and at home. I was very thankful to everybody who helped me and to God for giving me an opportunity to be in this country. I was interested in everything having to do with school and in learning about everything around me, because it was so different from Mexico.

17. I enrolled in the JROTC program and also became involved in soccer, track, and cross country. I earned medals and certificates in the JROTC program and in track and cross country. I asked my social worker if I could have a bicycle so that I could bike to and from school rather than having my foster mother take me extra early or pick me up later in the

evening. I continued participating in these activities in the eleventh grade.

18. In that same year I obtained my permanent resident status. I was very happy and my social worker was very proud of me. I passed into the twelfth grade, where I had two A.P. classes and also took two classes at the community college after school. Everything was going well.

19. Halfway through the year, I decided that I wanted to enroll in the Marines, and I took their exam. I did not pass the exam and became disillusioned. I also did not do well on the S.A.T.

20. I graduated from high school in 2004, and then lived a short while longer with my foster parents. I then decided to go live with a friend in Bloomington, California. I began working there and looking for a school to attend in the afternoons. I believe I enrolled in school in October of 2004.

21. There was a basketball court near my friend's house, and I began playing basketball there. It was there that I met the young woman, Yesenia, that led to my problems in California. I was eighteen, and I believed she was 15 or 16 years old. We became boyfriend and girlfriend and fell in love. We saw each other almost every day there in the street in front of everybody. Many people knew that we were together and in love.

22. Yesenia's father was a truck driver, and eventually he found out about our relationship and did not like it. Afterwards he would barely let her go out, and Yesenia and I only spoke over the phone. I remember it was in December that she called me and told me that she wanted to see me. She left her house without her father's permission and when her father

realized this he called her and told her to come home right away. That was the last time we kissed each other goodbye. By that time we had become sexually involved.

23. The next day, there was a knock on the door, and there were about four police officers looking for me because they had an arrest warrant for me. I was very scared and began crying because I did not know what was happening. I asked the police why they were arresting me, and they told me that my girlfriend's father had reported me to the police because I had had sexual relations with his daughter.

24. Yesenia's father never wanted me to have a relationship with his daughter and for this reason reported me so that I would stay away from her. I understand that it is against the law to have sexual relations with a girl who is underage, but I never raped Yesenia or abused her sexually. We did it because we were in love with each other.

25. I was later taken to jail, and I felt very sad and disappointed in life. I could not believe it. They put me with other inmates, and later the others asked me why I was in jail. After I told them they began to beat me, and I felt very bad and hurt emotionally. The jail transferred me to protective custody. I saw individuals of all types, such as rapists and murderers, and I felt even worse.

26. The days passed and I still could not believe it, nor did I know what was going on at my court hearings. The only thing I wanted was to get out of jail. Finally the day arrived when I got out of jail. They gave me unsupervised probation and I was happy that I was finally free.

27. I returned to school and my boss let me return to work because he knew that it was a mistake. I continued living there although I felt much pain inside and was not well psychologically.

28. I did not speak to my girlfriend again until three years later, in 2008, when she was 18 years old. When we finally spoke she told me that her father had beaten her and I asked her why she did not tell the police. She told me that she was afraid of her father. She also told me that the detectives had spoken with her about the charges against me and that she had told them that everything that happened between us was because we were in love. I remember crying and crying that day.

29. In 2007, I decided to move to Azusa, California. I continued going to school and was one year away from obtaining my bachelor's degree. But I had to work and could not pay all of my school fees, and since then I have not been able to complete my studies. In 2007 and 2008 I continued to work and live in Azusa. I worked in a company that made chocolates and in one that installed lockers in schools. Finally in 2008 I decided to move to Canoga Park, California. I began working for Goodwill and in all of this time did not have any problems. In 2009, I spoke again with Yesenia, and since then we have remained friends and speak on MySpace. She is now married and has a baby, and I know if the judge spoke with her she would tell the truth about what happened between us and what her father did.

30. In March 2009 I decided to move to Colorado to look for a better life because it was difficult to find good work in California. I had a friend in Erie, Colorado and went to him. I began learning how to

be a mechanic during the day and in the evenings I worked at McDonalds. In August 2009, a friend offered me a good job in Vail, Colorado. I worked for a man named Edward Gorton in his company, which was first called Four Season Painting and then was called Protective and Decorative Finishes. We put down floors in restaurants, schools, hospitals, and garages. The boss rented us workers a hotel room and gave us money each day for food, and every 15 days we returned to Denver. I worked 12 hours a day and sometimes more. I made good money and was very content with this work.

31. One day in late September or early October, as we were returning to Vail, we went to a laundromat in Lafayette, Colorado. While there, I met a woman named Sandra Davila Torres and we began talking: she asked me a lot of questions and afterwards I gave her my number. I returned to work in Vail and we began talking at night. Sandra had a 7 year old son and she was 30 years old, while I was just 24. She seemed like a good woman, hard working and responsible. Sandra however also told me that she did not have a job and that she had a lot of problems.

32. Sandra and I began seeing each other and had a great relationship. On Thanksgiving she invited me to her home to meet her family. I accepted and went, but while there I realized that her family did not accept me as her boyfriend. The reason for this was that Sandra's ex-boyfriend, the father of her son, lived in the same house as her. Afterwards, Sandra and I had a serious talk, and she suggested that she and I move in together. I thought about it and talked to my boss about my hopes to move in with Sandra. He told me that it was not a good idea until we knew

each other better and moreover, she was 30 years old with a child, but he agreed to help me with $600.

33. In early December I began looking for an apartment for Sandra and me, and I found a trailer that was for sale. The owner and I came to an agreement for me to rent-to-own. I complied with all of his requirements, and in January 2010 Sandra and I began living together in the trailer. I was making a good income and I began buying furniture for the trailer from second-hand stores. Towards the end of February, my boss told me that we were not going to have work for two or three months. And so I began to work for a florist in Fort Lupton, Colorado.

34. Around that time Sandra and I began having problems. Of course Sandra's son lived with us and I always treated him like my own child and he called me "papa." The problems began when Sandra began to talk more with her son's father. After a while I began to think that something was wrong. I talked to Sandra but she told me that it was not important; I left the house for most of the day so that we would not have problems. One day when I returned home from work Sandra and her ex-boyfriend were in the trailer talking about their old relationship and planning to get together again. I got angry and left the house that night, telling Sandra that she should leave and that I did not want to see her the next day.

35. When I arrived home the next day there was nobody there. However, Sandra later called me on the phone and told me that she needed to speak to me. I agreed, and Sandra came to the trailer. She told me she was pregnant. She seemed very happy, and since that moment she changed again, and it was almost like before.

36. The month of May arrived, and I continued to believe that Sandra was pregnant and even hung a pair of white baby socks on the refrigerator. On the 10th of May, I decided to give Sandra a beautiful gift: I asked the owner of the trailer to change the name on the papers from mine to hers. Sandra had once or twice commented to me that if I put the trailer in her name she would be the happiest woman in the world. And so I put the trailer in her name as a surprise gift on Mother's Day. I never imagined how much it would cost me. Everything continued going very well for me for Sandra and me.

37. However, we began to have problems again. Sandra and I began arguing again. Finally, one day towards the end of May I heard Sandra speaking with her son's father and telling him that she missed him and hoped that one day they could be together again. I left home and went out with friends, and I called Sandra and told her that I did not want to find her in the trailer when I returned. I returned the next day, a Saturday, and Sandra arrived while I was there. We argued again and I left again. I went back home again the next day, Sunday, to see Sandra there, looking happy. On Monday Sandra left the house really early, telling me that she was going to watch her nephew at her sister's house. I stayed at home all day and she never came back.

38. At around 7 or 8pm there was a knock on the door and three or four police officers were there. They told me I had an arrest warrant for domestic violence. I was amazed because I had never hit Sandra. I went to court, where I pleaded guilty to harassment. The judge also ordered me not to have contact with Sandra.

39. After that, everything was okay, and I did not have any communication with Sandra for 4 or 5 weeks, until I saw her in a car with another man. I became angry because it had cost me so much to buy the trailer and now I could not get it back because of my mistake in changing the trailer from my name to hers. I called Sandra on her cell and told her that she knew well that everything was mine and that the only thing I wanted was to return to the trailer or have back the money I had invested in it.

40. Sandra called the police and told them that I had called her. The next day, the police took me to the station and I went to jail again for having violated the protection order. I remained in jail in Boulder, Colorado for several weeks, and when I got out I was very depressed about everything. I became aware that Sandra had never been pregnant. I felt that Sandra had taken advantage of me. I called Sandra again to let her know how I felt.

41. I decided to drink in the home of a friend, and as I was returning home the police stopped me for a DUI. This was not something that I normally would have done, and I regret drinking and driving that night.

42. To avoid further problems with Sandra I decided to leave Colorado altogether and to go to the city of Lexington, Kentucky to do asphalt work for two or three months, or perhaps do tar work on the highways. When I arrived in Kentucky I remembered that I was supposed to complete 24 hours of community service but the only thing that I wanted was to get as far away as possible from Sandra.

43. I arrived in Kentucky in July 2011 and the next day I began working. Everything was fine until August 25, 2011, when I went with a group of work companions to have some beers. That same afternoon, the boss called us and told us to come in to work. One of my friends began arguing with another work friend and somebody called the police. I went to take my friend home and was arrested for a DUI.

44. I spent a short time in jail in Lexington. While there, they told me that I had an ICE hold. I came into ICE custody in September and have been in ICE custody since then, at Boone, Tri-County, and now McHenry County Jail.

45. I would like to ask the authorities, the judge, the community, and the United States to forgive me for the crimes I have committed in California, Colorado, and Kentucky. I feel much remorse for what I have done. I would like to ask that you give me the opportunity to remain in the United States.

46. In the future, I would like to complete my studies and become a good citizen of the United States. I also want to change my life and live without problems, walking on a good path and avoiding more errors. I want to be more intelligent. Now that I am in the hands of Immigration I have learned my lesson to avoid problems, especially with the law.

47. I speak English, I finished high school here, and I went to two years of college here. I believe that that I deserve a second chance: in my country I have nothing and the little that I have made for myself is in the United States. Please allow me to remain in the United States as a lawful permanent resident.

I, Hena Mansori, hereby declare that I have reviewed the above statement with the affiant, Ms. Alberto Giron Velasco, in his native language, which is Spanish, and he has declared that it is true and correct to the best of his ability.

s/Hena Mansori	2/3/12
Hena Mansori	**Date**

APPENDIX F

8 U.S.C. § 1101 provides:

§ 1101. Definitions

(a) As used in this chapter—

* * *

(43) The term "aggravated felony" means—

(A) murder, rape, or sexual abuse of a minor;

(B) illicit trafficking in a controlled substance (as defined in section 802 of Title 21), including a drug trafficking crime (as defined in section 924(c) of Title 18);

(C) illicit trafficking in firearms or destructive devices (as defined in section 921 of Title 18) or in explosive materials (as defined in section 841(c) of that title);

(D) an offense described in section 1956 of Title 18 (relating to laundering of monetary instruments) or section 1957 of that title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the amount of the funds exceeded $10,000;

(E) an offense described in—

(i) section 842(h) or (i) of Title 18, or section 844(d), (e), (f), (g), (h), or (i) of that title (relating to explosive materials offenses);

(ii) section 922(g)(1), (2), (3), (4), or (5), (j), (n), (o), (p), or (r) or 924(b) or (h) of Title 18 (relating to firearms offenses); or

(iii) section 5861 of Title 26 (relating to firearms offenses);

(F) a crime of violence (as defined in section 16 of Title 18, but not including a purely political offense) for which the term of imprisonment at least one year;

(G) a theft offense (including receipt of stolen property) or burglary offense for which the term of imprisonment at least one year;

(H) an **o**ffense described in section 875, 876, 877, or 1202 of Title 18 (relating to the demand for or receipt of ransom);

(I) an offense described in section 2251, 2251A, or 2252 of Title 18 (relating to child pornography);

(J) an offense described in section 1962 of Title 18 (relating to racketeer influenced corrupt organizations), or an offense described in section 1084 (if it is a second or subsequent offense) or 1955 of that title (relating to gambling offenses), for which a sentence of one year imprisonment or more may be imposed;

(K) an offense that—

(i) relates to the owning, controlling, managing, or supervising of a prostitution business;

(ii) is described in section 2421, 2422, or 2423 of Title 18 (relating to transportation for the purpose of prostitution) if committed for commercial advantage; or

(iii) is described in any of sections 1581-1585 or 1588-1591 of Title 18 (relating to peonage, slavery, involuntary servitude, and trafficking in persons);

(L) an offense described in—

(i) section 793 (relating to gathering or transmitting national defense information), 798 (relating to disclosure of classified information), 2153 (relating to sabotage) or 2381 or 2382 (relating to treason) of Title 18;

(ii) section 3121 of Title 50 (relating to protecting the identity of undercover intelligence agents); or

(iii) section 3121 of Title 50 (relating to protecting the identity of undercover agents);

(M) an offense that—

(i) involves fraud or deceit in which the loss to the victim or victims exceeds $10,000; or

(ii) is described in section 7201 of Title 26 (relating to tax evasion) in which the revenue loss to the Government exceeds $10,000;

(N) an offense described in paragraph (1)(A) or (2) of section 1324(a) of this title (relating to alien smuggling), except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter 5.

(O) an offense described in section 1325(a) or 1326 of this title committed by an alien who was previously deported on the basis of a conviction for an offense described in another subparagraph of this paragraph;

(P) an offense (i) which either is falsely making, forging, counterfeiting, mutilating, or altering a passport or instrument in violation of section 1543 of Title 18 or is described in section 1546(a) of such title (relating to document fraud) and (ii) for which the

term of imprisonment is at least 12 months, except in the case of a first offense for which the alien has affirmatively shown that the alien committed the offense for the purpose of assisting, abetting, or aiding only the alien's spouse, child, or parent (and no other individual) to violate a provision of this chapter;

(Q) an offense relating to a failure to appear by a defendant for service of sentence if the underlying offense is punishable by imprisonment for a term of 5 years or more;

(R) an offense relating to commercial bribery, counterfeiting, forgery, or trafficking in vehicles the identification numbers of which have been altered for which the term of imprisonment is at least one year;

(S) an offense relating to obstruction of justice, perjury or subornation of perjury, or bribery of a witness, for which the term of imprisonment is at least one year;

(T) an offense relating to a failure to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony for which a sentence of 2 years' imprisonment or more may be imposed; and

(U) an attempt or conspiracy to commit an offense described in this paragraph.

The term applies to an offense described in this paragraph whether in violation of Federal or State law and applies to such an offense in violation of the law of a foreign country for which the term of imprisonment was completed within the previous 15 years. Notwithstanding any other provision of law (including any effective date), the term applies

regardless of whether the conviction was entered before, on, or after September 30, 1996.

* * *

8 U.S.C. § 1229b provides:

§ 1229b. Cancellation of removal; adjustment of status

(a) Cancellation of removal for certain permanent residents

The Attorney General may cancel removal in the case of an alien who is inadmissible or deportable from the United States if the alien—

(1) has been an alien lawfully admitted for permanent residence for not less than 5 years,

(2) has resided in the United States continuously for 7 years after having been admitted in any status, and

(3) has not been convicted of any aggravated felony.

(b) Cancellation of removal and adjustment of status for certain nonpermanent residents

(1) In general

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien—

(A) has been physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application;

(B) has been a person of good moral character during such period;

(C) has not been convicted of an offense under section 1182(a)(2), 1227(a)(2), or 1227(a)(3) of this title, subject to paragraph (5); and

(D) establishes that removal would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence.

(2) Special rule for battered spouse or child

(A) Authority

The Attorney General may cancel removal of, and adjust to the status of an alien lawfully admitted for permanent residence, an alien who is inadmissible or deportable from the United States if the alien demonstrates that—

(i)(I) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a United States citizen (or is the parent of a child of a United States citizen and the child has been battered or subjected to extreme cruelty by such citizen parent);

(II) the alien has been battered or subjected to extreme cruelty by a spouse or parent who is or was a lawful permanent resident (or is the parent of a child of an alien who is or was a lawful permanent resident and the child has been battered or subjected to extreme cruelty by such permanent resident parent); or

(III) the alien has been battered or subjected to extreme cruelty by a United States citizen or lawful permanent resident whom the alien intended to marry, but whose marriage is not

legitimate because of that United States citizen's or lawful permanent resident's bigamy;

(ii) the alien has been physically present in the United States for a continuous period of not less than 3 years immediately preceding the date of such application, and the issuance of a charging document for removal proceedings shall not toll the 3-year period of continuous physical presence in the United States;

(iii) the alien has been a person of good moral character during such period, subject to the provisions of subparagraph (C);

(iv) the alien is not inadmissible under paragraph (2) or (3) of section 1182(a) of this title, is not deportable under paragraphs (1)(G) or (2) through (4) of section 1227(a) of this title, subject to paragraph (5), and has not been convicted of an aggravated felony; and

(v) the removal would result in extreme hardship to the alien, the alien's child, or the alien's parent.

(B) Physical presence

Notwithstanding subsection (d)(2) of this section, for purposes of subparagraph (A)(ii) or for purposes of section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), an alien shall not be considered to have failed to maintain continuous physical presence by reason of an absence if the alien demonstrates a connection between the absence and the battering or extreme cruelty perpetrated against the alien. No absence or portion of an absence connected to the

battering or extreme cruelty shall count toward the 90-day or 180-day limits established in subsection (d)(2) of this section. If any absence or aggregate absences exceed 180 days, the absences or portions of the absences will not be considered to break the period of continuous presence. Any such period of time excluded from the 180-day limit shall be excluded in computing the time during which the alien has been physically present for purposes of the 3-year requirement set forth in this subparagraph, subparagraph (A)(ii), and section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(C) Good moral character

Notwithstanding section 1101(f) of this title, an act or conviction that does not bar the Attorney General from granting relief under this paragraph by reason of subparagraph (A)(iv) shall not bar the Attorney General from finding the alien to be of good moral character under subparagraph (A)(iii) or section 1254(a)(3) of this title (as in effect before the Title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996), if the Attorney General finds that the act or conviction was connected to the alien's having been battered or subjected to extreme cruelty and determines that a waiver is otherwise warranted.

(D) Credible evidence considered

In acting on applications under this paragraph, the Attorney General shall consider any credible evidence relevant to the application. The determination of what evidence is credible and the

weight to be given that evidence shall be within the sole discretion of the Attorney General.

(3) Recordation of date

With respect to aliens who the Attorney General adjusts to the status of an alien lawfully admitted for permanent residence under paragraph (1) or (2), the Attorney General shall record the alien's lawful admission for permanent residence as of the date of the Attorney General's cancellation of removal under paragraph (1) or (2).

(4) Children of battered aliens and parents of battered alien children

(A) In general

The Attorney General shall grant parole under section 1182(d)(5) of this title to any alien who is a—

(i) child of an alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996); or

(ii) parent of a child alien granted relief under section 1229b(b)(2) or 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996).

(B) Duration of parole

The grant of parole shall extend from the time of the grant of relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to the time the application

for adjustment of status filed by aliens covered under this paragraph has been finally adjudicated. Applications for adjustment of status filed by aliens covered under this paragraph shall be treated as if the applicants were VAWA self-petitioners. Failure by the alien granted relief under subsection (b)(2) of this section or section 1254(a)(3) of this title (as in effect before the title III-A effective date in section 309 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996) to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) may result in revocation of parole.

(5) Application of domestic violence waiver authority

The authority provided under section 1227(a)(7) of this title may apply under paragraphs (1)(B), (1)(C), and (2)(A)(iv) in a cancellation of removal and adjustment of status proceeding.

(6) Relatives of trafficking victims

(A) In general

Upon written request by a law enforcement official, the Secretary of Homeland Security may parole under section 1182(d)(5) of this title any alien who is a relative of an alien granted continued presence under section 7105(c)(3)(A) of Title 22, if the relative—

(i) was, on the date on which law enforcement applied for such continued presence—

(I) in the case of an alien granted continued presence who is under 21 years of age, the spouse, child, parent, or unmarried sibling under 18 years of age, of the alien; or

(II) in the case of an alien granted continued presence who is 21 years of age or older, the spouse or child of the alien; or

(ii) is a parent or sibling of the alien who the requesting law enforcement official, in consultation with the Secretary of Homeland Security, as appropriate, determines to be in present danger of retaliation as a result of the alien's escape from the severe form of trafficking or cooperation with law enforcement, irrespective of age.

(B) Duration of parole

(i) In general

The Secretary may extend the parole granted under subparagraph (A) until the final adjudication of the application filed by the principal alien under section 1101(a)(15)(T)(ii) of this title.

(ii) Other limits on duration

If an application described in clause (i) is not filed, the parole granted under subparagraph (A) may extend until the later of—

(I) the date on which the principal alien's authority to remain in the United States under section 7105(c)(3)(A) of this title is terminated; or

(II) the date on which a civil action filed by the principal alien under section 1595 of Title 18, is concluded.

(iii) Due diligence

Failure by the principal alien to exercise due diligence in filing a visa petition on behalf of an alien described in clause (i) or (ii) of subparagraph (A), or in pursuing the civil action described in clause (ii)(II) (as determined by the Secretary of Homeland

Security in consultation with the Attorney General), may result in revocation of parole.

(C) Other limitations

A relative may not be granted parole under this paragraph if—

(i) the Secretary of Homeland Security or the Attorney General has reason to believe that the relative was knowingly complicit in the trafficking of an alien permitted to remain in the United States under section 7105(c)(3)(A) of Title 22; or

(ii) the relative is an alien described in paragraph (2) or (3) of section 1182(a) of this title or paragraph (2) or (4) of section 1227(a) of this title.

(c) Aliens ineligible for relief

The provisions of subsections (a) and (b)(1) of this section shall not apply to any of the following aliens:

(1) An alien who entered the United States as a crewman subsequent to June 30, 1964.

(2) An alien who was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title, or has acquired the status of such a nonimmigrant exchange alien after admission, in order to receive graduate medical education or training, regardless of whether or not the alien is subject to or has fulfilled the two-year foreign residence requirement of section 1182(e) of this title.

(3) An alien who—

(A) was admitted to the United States as a nonimmigrant exchange alien as defined in section 1101(a)(15)(J) of this title or has acquired the status of such a nonimmigrant exchange alien after

admission other than to receive graduate medical education or training,

(B) is subject to the two-year foreign residence requirement of section 1182(e) of this title, and

(C) has not fulfilled that requirement or received a waiver thereof.

(4) An alien who is inadmissible under section 1182(a)(3) of this title or deportable under section 1227(a)(4) of this title.

(5) An alien who is described in section 1231(b)(3)(B)(i) of this title.

(6) An alien whose removal has previously been cancelled under this section or whose deportation was suspended under section 1254(a) of this title or who has been granted relief under section 1182(c) of this title, as such sections were in effect before September 30, 1996.

(d) Special rules relating to continuous residence or physical presence

(1) Termination of continuous period

For purposes of this section, any period of continuous residence or continuous physical presence in the United States shall be deemed to end (A) except in the case of an alien who applies for cancellation of removal under subsection (b)(2) of this section, when the alien is served a notice to appear under section 1229(a) of this title, or (B) when the alien has committed an offense referred to in section 1182(a)(2) of this title that renders the alien inadmissible to the United States under section 1182(a)(2) of this title or

removable from the United States under section 1227(a)(2) or 1227(a)(4) of this title, whichever is earliest.

(2) Treatment of certain breaks in presence

An alien shall be considered to have failed to maintain continuous physical presence in the United States under subsections (b)(1) and (b)(2) of this section if the alien has departed from the United States for any period in excess of 90 days or for any periods in the aggregate exceeding 180 days.

(3) Continuity not required because of honorable service in Armed Forces and presence upon entry into service

The requirements of continuous residence or continuous physical presence in the United States under subsections (a) and (b) of this section shall not apply to an alien who—

(A) has served for a minimum period of 24 months in an active-duty status in the Armed Forces of the United States and, if separated from such service, was separated under honorable conditions, and

(B) at the time of the alien's enlistment or induction was in the United States.

(e) Annual limitation

(1) Aggregate limitation

Subject to paragraphs (2) and (3), the Attorney General may not cancel the removal and adjust the status under this section, nor suspend the deportation and adjust the status under section 1254(a) of this title (as in effect before September 30, 1996), of a total of more than 4,000 aliens in any fiscal year.

The previous sentence shall apply regardless of when an alien applied for such cancellation and adjustment, or such suspension and adjustment, and whether such an alien had previously applied for suspension of deportation under such section 1254(a) of this title. The numerical limitation under this paragraph shall apply to the aggregate number of decisions in any fiscal year to cancel the removal (and adjust the status) of an alien, or suspend the deportation (and adjust the status) of an alien, under this section or such section 1254(a) of this title.

(2) Fiscal year 1997

For fiscal year 1997, paragraph (1) shall only apply to decisions to cancel the removal of an alien, or suspend the deportation of an alien, made after April 1, 1997. Notwithstanding any other provision of law, the Attorney General may cancel the removal or suspend the deportation, in addition to the normal allotment for fiscal year 1998, of a number of aliens equal to 4,000 less the number of such cancellations of removal and suspensions of deportation granted in fiscal year 1997 after April 1, 1997.

(3) Exception for certain aliens

Paragraph (1) shall not apply to the following:
(A) Aliens described in section 309(c)(5)(C)(i) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (as amended by the Nicaraguan Adjustment and Central American Relief Act).

(B) Aliens in deportation proceedings prior to April 1, 1997, who applied for suspension of deportation under section 1254(a)(3) of this title (as in effect before September 30, 1996).

* * *

California Penal Code § 261.5 provides:

§ 261.5. Unlawful sexual intercourse with person under 18; age of perpetrator; civil penalties

a) Unlawful sexual intercourse is an act of sexual intercourse accomplished with a person who is not the spouse of the perpetrator, if the person is a minor. For the purposes of this section, a "minor" is a person under the age of 18 years and an "adult" is a person who is at least 18 years of age.

(b) Any person who engages in an act of unlawful sexual intercourse with a minor who is not more than three years older or three years younger than the perpetrator, is guilty of a misdemeanor.

(c) Any person who engages in an act of unlawful sexual intercourse with a minor who is more than three years younger than the perpetrator is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to subdivision (h) of Section 1170.

(d) Any person 21 years of age or older who engages in an act of unlawful sexual intercourse with a minor who is under 16 years of age is guilty of either a misdemeanor or a felony, and shall be punished by imprisonment in a county jail not exceeding one year, or by imprisonment pursuant to

subdivision (h) of Section 1170 for two, three, or four years.

(e)(1) Notwithstanding any other provision of this section, an adult who engages in an act of sexual intercourse with a minor in violation of this section may be liable for civil penalties in the following amounts:

(A) An adult who engages in an act of unlawful sexual intercourse with a minor less than two years younger than the adult is liable for a civil penalty not to exceed two thousand dollars ($2,000).

(B) An adult who engages in an act of unlawful sexual intercourse with a minor at least two years younger than the adult is liable for a civil penalty not to exceed five thousand dollars ($5,000).

(C) An adult who engages in an act of unlawful sexual intercourse with a minor at least three years younger than the adult is liable for a civil penalty not to exceed ten thousand dollars ($10,000).

(D) An adult over the age of 21 years who engages in an act of unlawful sexual intercourse with a minor under 16 years of age is liable for a civil penalty not to exceed twenty-five thousand dollars ($25,000).

(2) The district attorney may bring actions to recover civil penalties pursuant to this subdivision. From the amounts collected for each case, an amount equal to the costs of pursuing the action shall be deposited with the treasurer of the county in which the judgment was entered, and the remainder shall be deposited in the Underage Pregnancy Prevention Fund, which is hereby created in the State Treasury. Amounts deposited in the Underage Pregnancy

Prevention Fund may be used only for the purpose of preventing underage pregnancy upon appropriation by the Legislature.

(3) In addition to any punishment imposed under this section, the judge may assess a fine not to exceed seventy dollars ($70) against any person who violates this section with the proceeds of this fine to be used in accordance with Section 1463.23. The court shall, however, take into consideration the defendant's ability to pay, and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this subdivision.

* * *

18 U.S.C. § 3509 provides:

§ 3509. Child victims' and child witnesses' rights

(a) Definitions.—For purposes of this section—

(1) the term "adult attendant" means an adult described in subsection (i) who accompanies a child throughout the judicial process for the purpose of providing emotional support;

(2) the term "child" means a person who is under the age of 18, who is or is alleged to be—

(A) a victim of a crime of physical abuse, sexual abuse, or exploitation; or

(B) a witness to a crime committed against another person;

(3) the term "child abuse" means the physical or mental injury, sexual abuse or exploitation, or negligent treatment of a child;

(4) the term "physical injury" includes lacerations, fractured bones, burns, internal injuries, severe bruising or serious bodily harm;

(5) the term "mental injury" means harm to a child's psychological or intellectual functioning which may be exhibited by severe anxiety, depression, withdrawal or outward aggressive behavior, or a combination of those behaviors, which may be demonstrated by a change in behavior, emotional response, or cognition;

(6) the term "exploitation" means child pornography or child prostitution;

(7) the term "multidisciplinary child abuse team" means a professional unit composed of representatives from health, social service, law enforcement, and legal service agencies to coordinate the assistance needed to handle cases of child abuse;

(8) the term "sexual abuse" includes the employment, use, persuasion, inducement, enticement, or coercion of a child to engage in, or assist another person to engage in, sexually explicit conduct or the rape, molestation, prostitution, or other form of sexual exploitation of children, or incest with children;

(9) the term "sexually explicit conduct" means actual or simulated—

(A) sexual intercourse, including sexual contact in the manner of genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between persons of the same or of opposite sex; sexual contact means the intentional touching, either directly or through clothing, of the

genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify sexual desire of any person;

(B) bestiality;

(C) masturbation;

(D) lascivious exhibition of the genitals or pubic area of a person or animal; or

(E) sadistic or masochistic abuse;

(10) the term "sex crime" means an act of sexual abuse that is a criminal act;

(11) the term "negligent treatment" means the failure to provide, for reasons other than poverty, adequate food, clothing, shelter, or medical care so as to seriously endanger the physical health of the child; and

(12) the term "child abuse" does not include discipline administered by a parent or legal guardian to his or her child provided it is reasonable in manner and moderate in degree and otherwise does not constitute cruelty.

(b) Alternatives to live in-court testimony.—

(1) Child's live testimony by 2-way closed circuit television.—

(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, or a guardian ad litem appointed under subsection (h) may apply for an order that the child's testimony be taken in a room outside the courtroom and be televised by 2-way closed circuit television. The person seeking such an order shall apply for such an

order at least 7 days before the trial date, unless the court finds on the record that the need for such an order was not reasonably foreseeable.

(B) The court may order that the testimony of the child be taken by closed-circuit television as provided in subparagraph (A) if the court finds that the child is unable to testify in open court in the presence of the defendant, for any of the following reasons:

(i) The child is unable to testify because of fear.

(ii) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying.

(iii) The child suffers a mental or other infirmity.

(iv) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(C) The court shall support a ruling on the child's inability to testify with findings on the record. In determining whether the impact on an individual child of one or more of the factors described in subparagraph (B) is so substantial as to justify an order under subparagraph (A), the court may question the minor in chambers, or at some other comfortable place other than the courtroom, on the record for a reasonable period of time with the child attendant, the prosecutor, the child's attorney, the guardian ad litem, and the defense counsel present.

(D) If the court orders the taking of testimony by television, the attorney for the Government and

the attorney for the defendant not including an attorney pro se for a party shall be present in a room outside the courtroom with the child and the child shall be subjected to direct and cross-examination. The only other persons who may be permitted in the room with the child during the child's testimony are—

(i) the child's attorney or guardian ad litem appointed under subsection (h);

(ii) Persons necessary to operate the closed-circuit television equipment;

(iii) A judicial officer, appointed by the court; and

(iv) Other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child, including an adult attendant.

The child's testimony shall be transmitted by closed circuit television into the courtroom for viewing and hearing by the defendant, jury, judge, and public. The defendant shall be provided with the means of private, contemporaneous communication with the defendant's attorney during the testimony. The closed circuit television transmission shall relay into the room in which the child is testifying the defendant's image, and the voice of the judge.

(2) Videotaped deposition of child.—(A) In a proceeding involving an alleged offense against a child, the attorney for the Government, the child's attorney, the child's parent or legal guardian, or the guardian ad litem appointed under subsection (h) may apply for an order that a deposition be

taken of the child's testimony and that the deposition be recorded and preserved on videotape.

(B)(i) Upon timely receipt of an application described in subparagraph (A), the court shall make a preliminary finding regarding whether at the time of trial the child is likely to be unable to testify in open court in the physical presence of the defendant, jury, judge, and public for any of the following reasons:

(I) The child will be unable to testify because of fear.

(II) There is a substantial likelihood, established by expert testimony, that the child would suffer emotional trauma from testifying in open court.

(III) The child suffers a mental or other infirmity.

(IV) Conduct by defendant or defense counsel causes the child to be unable to continue testifying.

(ii) If the court finds that the child is likely to be unable to testify in open court for any of the reasons stated in clause (i), the court shall order that the child's deposition be taken and preserved by videotape.

(iii) The trial judge shall preside at the videotape deposition of a child and shall rule on all questions as if at trial. The only other persons who may be permitted to be present at the proceeding are—

(I) the attorney for the Government;

(II) the attorney for the defendant;

(III) the child's attorney or guardian ad litem appointed under subsection (h);

(IV) persons necessary to operate the videotape equipment;

(V) subject to clause (iv), the defendant; and

(VI) other persons whose presence is determined by the court to be necessary to the welfare and well-being of the child.

The defendant shall be afforded the rights applicable to defendants during trial, including the right to an attorney, the right to be confronted with the witness against the defendant, and the right to cross-examine the child.

(iv) If the preliminary finding of inability under clause (i) is based on evidence that the child is unable to testify in the physical presence of the defendant, the court may order that the defendant, including a defendant represented pro se, be excluded from the room in which the deposition is conducted. If the court orders that the defendant be excluded from the deposition room, the court shall order that 2-way closed circuit television equipment relay the defendant's image into the room in which the child is testifying, and the child's testimony into the room in which the defendant is viewing the proceeding, and that the defendant be provided with a means of private, contemporaneous communication with the defendant's attorney during the deposition.

(v) Handling of videotape.—The complete record of the examination of the child, including the image and voices of all persons who in any way participate in the examination, shall be made and preserved on video tape in addition to being stenographically recorded. The videotape shall be transmitted to the clerk of the court in which the action is pending and shall be made available for viewing to the prosecuting attorney, the defendant, and the defendant's attorney during ordinary business hours.

(C) If at the time of trial the court finds that the child is unable to testify as for a reason described in subparagraph (B)(i), the court may admit into evidence the child's videotaped deposition in lieu of the child's testifying at the trial. The court shall support a ruling under this subparagraph with findings on the record.

(D) Upon timely receipt of notice that new evidence has been discovered after the original videotaping and before or during trial, the court, for good cause shown, may order an additional videotaped deposition. The testimony of the child shall be restricted to the matters specified by the court as the basis for granting the order.

(E) In connection with the taking of a videotaped deposition under this paragraph, the court may enter a protective order for the purpose of protecting the privacy of the child.

(F) The videotape of a deposition taken under this paragraph shall be destroyed 5 years after the date on which the trial court entered its judgment, but not before a final judgment is

entered on appeal including Supreme Court review. The videotape shall become part of the court record and be kept by the court until it is destroyed.

(c) Competency examinations.—

(1) Effect on Federal Rules of Evidence.— Nothing in this subsection shall be construed to abrogate rule 601 of the Federal Rules of Evidence.

(2) Presumption.—A child is presumed to be competent.

(3) Requirement of written motion.—A competency examination regarding a child witness may be conducted by the court only upon written motion and offer of proof of incompetency by a party.

(4) Requirement of compelling reasons.—A competency examination regarding a child may be conducted only if the court determines, on the record, that compelling reasons exist. A child's age alone is not a compelling reason.

(5) Persons permitted to be present.—The only persons who may be permitted to be present at a competency examination are—

(A) the judge;

(B) the attorney for the Government;

(C) the attorney for the defendant;

(D) a court reporter; and

(E) persons whose presence, in the opinion of the court, is necessary to the welfare and well-being of the child, including the child's attorney, guardian ad litem, or adult attendant.

(6) Not before jury.—A competency examination regarding a child witness shall be conducted out of the sight and hearing of a jury.

(7) Direct examination of child.—Examination of a child related to competency shall normally be conducted by the court on the basis of questions submitted by the attorney for the Government and the attorney for the defendant including a party acting as an attorney pro se. The court may permit an attorney but not a party acting as an attorney pro se to examine a child directly on competency if the court is satisfied that the child will not suffer emotional trauma as a result of the examination.

(8) Appropriate questions.—The questions asked at the competency examination of a child shall be appropriate to the age and developmental level of the child, shall not be related to the issues at trial, and shall focus on determining the child's ability to understand and answer simple questions.

(9) Psychological and psychiatric examinations.—Psychological and psychiatric examinations to assess the competency of a child witness shall not be ordered without a showing of compelling need.

(d) Privacy protection.—

(1) Confidentiality of information.—(A) A person acting in a capacity described in subparagraph (B) in connection with a criminal proceeding shall—

(i) keep all documents that disclose the name or any other information concerning a child in a secure place to which no person who does

not have reason to know their contents has access; and

(ii) disclose documents described in clause (i) or the information in them that concerns a child only to persons who, by reason of their participation in the proceeding, have reason to know such information.

(B) Subparagraph (A) applies to—

(i) all employees of the Government connected with the case, including employees of the Department of Justice, any law enforcement agency involved in the case, and any person hired by the Government to provide assistance in the proceeding;

(ii) employees of the court;

(iii) the defendant and employees of the defendant, including the attorney for the defendant and persons hired by the defendant or the attorney for the defendant to provide assistance in the proceeding; and

(iv) members of the jury.

(2) Filing under seal.—All papers to be filed in court that disclose the name of or any other information concerning a child shall be filed under seal without necessity of obtaining a court order. The person who makes the filing shall submit to the clerk of the court—

(A) the complete paper to be kept under seal; and

(B) the paper with the portions of it that disclose the name of or other information concerning a child redacted, to be placed in the public record.

(3) Protective orders.—(A) On motion by any person the court may issue an order protecting a child from public disclosure of the name of or any other information concerning the child in the course of the proceedings, if the court determines that there is a significant possibility that such disclosure would be detrimental to the child.

(B) A protective order issued under subparagraph (A) may—

(i) provide that the testimony of a child witness, and the testimony of any other witness, when the attorney who calls the witness has reason to anticipate that the name of or any other information concerning a child may be divulged in the testimony, be taken in a closed courtroom; and

(ii) provide for any other measures that may be necessary to protect the privacy of the child.

(4) Disclosure of information.—This subsection does not prohibit disclosure of the name of or other information concerning a child to the defendant, the attorney for the defendant, a multidisciplinary child abuse team, a guardian ad litem, or an adult attendant, or to anyone to whom, in the opinion of the court, disclosure is necessary to the welfare and well-being of the child.

(e) Closing the courtroom.—When a child testifies the court may order the exclusion from the courtroom of all persons, including members of the press, who do not have a direct interest in the case. Such an order may be made if the court determines on the record that requiring the child to testify in open court would cause substantial psychological harm to the child or would result in the child's inability to

effectively communicate. Such an order shall be narrowly tailored to serve the Government's specific compelling interest.

(**f) Victim impact statement**.—In preparing the presentence report pursuant to rule 32(c) of the Federal Rules of Criminal Procedure, the probation officer shall request information from the multidisciplinary child abuse team and other appropriate sources to determine the impact of the offense on the child victim and any other children who may have been affected. A guardian ad litem appointed under subsection (h) shall make every effort to obtain and report information that accurately expresses the child's and the family's views concerning the child's victimization. A guardian ad litem shall use forms that permit the child to express the child's views concerning the personal consequences of the child's victimization, at a level and in a form of communication commensurate with the child's age and ability.

(g) Use of multidisciplinary child abuse teams.—

(1) In general.—A multidisciplinary child abuse team shall be used when it is feasible to do so. The court shall work with State and local governments that have established multidisciplinary child abuse teams designed to assist child victims and child witnesses, and the court and the attorney for the Government shall consult with the multidisciplinary child abuse team as appropriate.

(2) Role of multidisciplinary child abuse teams.—The role of the multidisciplinary child abuse team shall be to provide for a child services

that the members of the team in their professional roles are capable of providing, including—

(A) medical diagnoses and evaluation services, including provision or interpretation of x-rays, laboratory tests, and related services, as needed, and documentation of findings;

(B) telephone consultation services in emergencies and in other situations;

(C) medical evaluations related to abuse or neglect;

(D) psychological and psychiatric diagnoses and evaluation services for the child, parent or parents, guardian or guardians, or other caregivers, or any other individual involved in a child victim or child witness case;

(E) expert medical, psychological, and related professional testimony;

(F) case service coordination and assistance, including the location of services available from public and private agencies in the community; and

(G) training services for judges, litigators, court officers and others that are involved in child victim and child witness cases, in handling child victims and child witnesses.

(h) Guardian ad litem.—

(1) In general.—The court may appoint, and provide reasonable compensation and payment of expenses for, a guardian ad litem for a child who was a victim of, or a witness to, a crime involving abuse or exploitation to protect the best interests of the child. In making the appointment, the court

shall consider a prospective guardian's background in, and familiarity with, the judicial process, social service programs, and child abuse issues. The guardian ad litem shall not be a person who is or may be a witness in a proceeding involving the child for whom the guardian is appointed.

(2) Duties of guardian ad litem.—A guardian ad litem may attend all the depositions, hearings, and trial proceedings in which a child participates, and make recommendations to the court concerning the welfare of the child. The guardian ad litem may have access to all reports, evaluations and records, except attorney's work product, necessary to effectively advocate for the child. (The extent of access to grand jury materials is limited to the access routinely provided to victims and their representatives.) A guardian ad litem shall marshal and coordinate the delivery of resources and special services to the child. A guardian ad litem shall not be compelled to testify in any court action or proceeding concerning any information or opinion received from the child in the course of serving as a guardian ad litem.

(3) Immunities.—A guardian ad litem shall be presumed to be acting in good faith and shall be immune from civil and criminal liability for complying with the guardian's lawful duties described in paragraph (2).

(i) Adult attendant.—A child testifying at or attending a judicial proceeding shall have the right to be accompanied by an adult attendant to provide emotional support to the child. The court, at its discretion, may allow the adult attendant to remain in close physical proximity to or in contact with the

child while the child testifies. The court may allow the adult attendant to hold the child's hand or allow the child to sit on the adult attendant's lap throughout the course of the proceeding. An adult attendant shall not provide the child with an answer to any question directed to the child during the course of the child's testimony or otherwise prompt the child. The image of the child attendant, for the time the child is testifying or being deposed, shall be recorded on videotape.

(j) Speedy trial.—In a proceeding in which a child is called to give testimony, on motion by the attorney for the Government or a guardian ad litem, or on its own motion, the court may designate the case as being of special public importance. In cases so designated, the court shall, consistent with these rules, expedite the proceeding and ensure that it takes precedence over any other. The court shall ensure a speedy trial in order to minimize the length of time the child must endure the stress of involvement with the criminal process. When deciding whether to grant a continuance, the court shall take into consideration the age of the child and the potential adverse impact the delay may have on the child's well-being. The court shall make written findings of fact and conclusions of law when granting a continuance in cases involving a child.

(k) Stay of civil action.—If, at any time that a cause of action for recovery of compensation for damage or injury to the person of a child exists, a criminal action is pending which arises out of the same occurrence and in which the child is the victim, the civil action shall be stayed until the end of all phases of the criminal action and any mention of the

civil action during the criminal proceeding is prohibited. As used in this subsection, a criminal action is pending until its final adjudication in the trial court.

(l) Testimonial aids.—The court may permit a child to use anatomical dolls, puppets, drawings, mannequins, or any other demonstrative device the court deems appropriate for the purpose of assisting a child in testifying.

(m) Prohibition on reproduction of child pornography.—

(1) In any criminal proceeding, any property or material that constitutes child pornography (as defined by section 2256 of this title) shall remain in the care, custody, and control of either the Government or the court.

(2)(A) Notwithstanding Rule 16 of the Federal Rules of Criminal Procedure, a court shall deny, in any criminal proceeding, any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that constitutes child pornography (as defined by section 2256 of this title), so long as the Government makes the property or material reasonably available to the defendant.

(B) For the purposes of subparagraph (A), property or material shall be deemed to be reasonably available to the defendant if the Government provides ample opportunity for inspection, viewing, and examination at a Government facility of the property or material by the defendant, his or her attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial.